

Federation of American Scientists
307 Massachusetts Avenue, NE
Washington, D.C. 20002

for more information:
Steven Aftergood
(202)675-1012

SECRECY & GOVERNMENT BULLETIN

To Challenge Excessive Government Secrecy and
To Promote Public Oversight and Free Exchange
In Science, Technology, Defense, and Intelligence

Issue No. 4
November 1991

New Secrecy Policy Looms

The most far-reaching revision of government secrecy policy in a decade is in the final stages of formulation. Administration officials and senior industry executives have been meeting (in secrecy, naturally) over the past year to establish the "National Industrial Security Program." According to two government reports issued to date, a new executive order authorizing the program will be promulgated in January 1992 and the implementing regulations will be published later next year.

The National Industrial Security Program (NISP) is nominally intended to provide a uniform standard to govern the security of classified procurement and operations, to replace the "indiscriminate, inconsistent, unnecessary and even unworkable security procedures" by which each agency now conducts its business. There are currently an estimated 47 different security standards, manuals, and directives.

But while the current secrecy infrastructure is undoubtedly a bureaucratic morass, that is hardly its worst feature. Secrecy has increasingly become a tool for circumventing oversight and accountability. Overclassification and abuse of classification are rampant. Regrettably, these problems are not even mentioned in the NISP documentation.

A November 1990 NISP report observes that, "Frequently, contractors complain that there is an abundance of oversight." (p.14). Multi-billion dollar failures resulting from inadequate oversight (the A-12, Tacit Rainbow, etc.) are not acknowledged.

In order to remedy their complaints, contractors have been plugged into the highest levels of the NISP Task Force. The Steering Committee and each of the NISP working groups are co-chaired by a representative of major defense contractors, including Grumman, TRW, Litton, General Electric, Northrop, Boeing, and Hughes. The product should properly be called the Military-Industrial Secrecy Policy.

"The traditional role of industry in assisting the government ["government" in this context is always, and only, the Executive Branch] in the formulation of security policies and procedures should be continued to ensure a balance between application of resources and the value of the technology to be protected." (p. 15). The "traditional role" of checks and balances is nowhere in sight. The procurement scandals of the 1980s may as well never have occurred.

According to a draft NISP report (obtained by Inside the Air Force, 9/13/91) dated September 1991, "The National Industrial Security Program has been accepted by government [again, this doesn't include Congress] and industry officials and early implementation is expected."

The "majority of policy and program changes can be fully developed and instituted by the end of" 1993.

Executive Order 12356, which has served as the foundation of secrecy policy since 1982, will be replaced with a new Executive Order "to create the legal foundation and framework for the NISP" (p. 9).

Bureaucratic inefficiencies aside, there is no question that, with the end of the Cold War, the government secrecy apparatus requires a complete restructuring. But judging from the NISP documentation made available to date, the most fundamental problems remain unaddressed. Thus:

There is no discussion of the need to reevaluate the arbitrary bases for establishing classified programs (cf. Timberwind), or to improve the accountability to Congress of those programs.

NISP will perpetuate, not abolish, special access procedures, which have been the source of so much waste and deception.

The prominent role of industry in the formulation of the new secrecy standards, to the exclusion of other interested parties, bodes ill for the chances of achieving a balanced, responsible policy.

So far, Congress has not held hearings on the development or contents of the new secrecy policy.

The Cost of Secrecy

Not only is public access to information increasingly obstructed, the public ends up paying for the obstruction.

The Aerospace Industries Association conducted a survey of fourteen major aerospace companies to assess the costs incurred to implement secrecy procedures (Appendix C of the November 1990 NISP report). The NISP report extrapolates from this data to the more than 15,000 industrial facilities that have obtained clearance and the 1.5 million cleared contractor employees.

The result is "a total estimated program cost to the government of \$13.8 billion for 1989" alone. (Actually, since the government doesn't have any money of its own, this should read "a total cost to the taxpayers of \$13.8 billion.")

By eliminating contradictory and duplicative requirements, the NISP plan is intended to reduce these costs. But a more judicious, post-Cold War policy would reduce costs further, while protecting legitimately classified information and conforming to democratic practices.

On-Site Inspection Costs

The Department of Energy has been conducting mock site inspections of DOE facilities for the last five

years, in anticipation of START Treaty verification requirements (Inside the Air Force, 7/5/91, p. 2). In the mock inspections, DOE officials play the role of Soviet inspectors, to assess the potential for disclosure of classified information and to estimate the costs of conducting real inspections.

These cost estimates have hitherto been withheld from the public as "sensitive" information.

But a "limited external distribution" report prepared at Lawrence Livermore National Laboratory and obtained by the FAS Secrecy Project fills in the blanks. (Report No. UCRL-ID-106558)

The Livermore estimates assume that the 27 DOE facilities of greatest concern are subject to Soviet inspection on 9 hours notice. They further assume a 32 hour inspection by ten Soviet inspectors with diplomatic immunity, who will be denied access to any building or room not accessible to a "treaty limited item" that is 3.8 feet in diameter, 21.8 feet long, and weighing 25,600 pounds. The results:

There will be a one-time readiness cost for preparation, training, etc. of \$21 million. But DOE goes on to claim annually recurring costs of a whopping \$542 million.

A closer look at that recurring cost estimate is revealing. Of the \$542 million total, \$517 million (over 95%) is attributed to alleged "productivity losses," which are supposedly due to the time spent preparing facilities for inspection rather than, say, designing new types of explosives.

The Livermore report notes quickly in passing that, "If the required level of protection of sensitive information were reduced, then productivity losses would also be reduced."

Energy Dept Lowers the Cone of Silence

According to federal regulations, "It is the policy of the Department of Energy to make information publicly available to the fullest extent possible." (10 CFR 1004.3a) In practice, however, DOE would classify the weather report if it could. A few recent examples:

DOE blocked public and media attendance at a conference of international specialists on the Iraqi nuclear weapons program, even though the United Nations Special Commission which was presenting its findings at the meeting stated that "the theme and agenda points are ... of a completely unclassified nature." (Washington Post, 8/28/91)

DOE pressured scientists at the national laboratories not to attend a landmark conference on nuclear warhead dismantlement co-sponsored by the Federation of American Scientists and the Natural Resources Defense Council in mid-October, with participation of Soviet nuclear weapons experts who attended under the auspices of the Soviet Foreign Ministry. Although DOE thought highly enough of the joint US-Soviet scientists working group to purchase 30 copies of their recent report, the agency threatened punitive action against any government scientists who participated in the workshop. (Science, 10/18/91; New York Times, 10/20/91)

DOE was obliged by law to submit a report to Congress by April 30, 1991, on verification of warhead dismantlement and a cut-off of fissile material production. The report was explicitly required to be in unclassified form with optional classified appendices. (Defense Authorization Act of 1991, section 3151) The report was finally submitted to Congress in October-- in classified form only. It is rumored to rely heavily on the aforementioned US-Soviet scientists working group report.

On a happier note, a related DOE study on "Options and Regulatory Issues Related to Disposition of Fissile Materials from Arms Reduction" was placed in the National Technical Information Service document retrieval

system reportedly without the authors' knowledge or approval, and is now available to anyone foolish enough to spend \$25 or so (NTIS Order Number DE 91008750). The 1990 document breaks no new ground, but may serve as a useful introduction to the subject.

Congress Gives CIA a Free Ride

Congress still lacks the will to impose discipline on the Central Intelligence Agency. With several glorious exceptions, the Legislative Branch seems to believe its function is to make deals, to take the path of least resistance, to ease tensions. But sometimes tensions ought to be increased.

The Senate debate on Senator Glenn's Intelligence Authorization amendment to require Senate confirmation of an additional three senior CIA officials provides an appalling case study. (Congressional Record, 10/16/91, pp. S 14788 -14820).

The pertinent facts, as we read them, are these: The Gates confirmation hearings clearly demonstrated that there are serious problems in the management of the Agency that would never have come to light if not for the confirmation process. The CIA is almost uniquely exempt from effective oversight. Unlike the FBI or other intelligence organizations, it is not subordinate to any other department of government. The General Accounting Office cannot investigate the CIA. Even the Intelligence Committees' oversight is limited to selected investigations. Senate confirmation is one of the few semi-open windows into the Agency. Of the 1,065 federal positions requiring confirmation, only 3 are at CIA, while there are 16 such positions at the Department of Agriculture, for example.

Does the CIA require as much oversight through confirmation as the Department of Agriculture? The Senate answered no, by a vote of 59 to 38. To confirm six senior CIA officials instead of three would "politicize" the Agency, they concluded.

BCCIA

The scandal surrounding the Bank of Credit and Commerce International (BCCI) provides yet another reminder, if one were needed, of the requirement for greater oversight of the Central Intelligence Agency.

In the absence of such oversight, an internal review by the CIA of its dealings with BCCI found... "no evidence of wrong doing." (Associated Press, 10/16/91)

Under questioning by Congress, the Agency did admit to making an "honest mistake" when it failed to notify the appropriate U.S. authorities of BCCI misconduct. (Washington Post, 10/26/91, p. C1)

Classified Leaks to Special Interest Groups

Several Defense Department contractors have been mobilizing to save the Timberwind secret nuclear rocket program after they learned it was zeroed out by the Senate Appropriations Committee. Somehow industry is privy to classified Congressional deliberations even as they occur.

Using their access to classified program information, Timberwind contractors are waging a battle royal. United Technologies, Grumman, Babcock & Wilcox, and Sandia National Laboratory personnel have swung into action to save the secret rocket program which has awarded them nearly \$200 million to date.

If the program is not stopped, sources say they are ready to start "moving dirt" in November for a Timberwind ground test facility in Nevada. The environmental assessment? It's classified. Actually, since Timberwind is a special access program, the Energy Department claims that even the existence of an environmental assessment is classified information.