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Department of Energy's Office of Intelligence and Counterintelligence (OICI)

Background

The Department of Energy's Office of Intelligence and Counterintelligence (OICI) can trace its origins to the Second World War, when the U.S. government sought to collect intelligence on German efforts to develop a nuclear weapon while safeguarding the secrecy of its own Manhattan Project. OICI's antecedents had both foreign intelligence collection and counterintelligence responsibilities, which OICI retains.

In 1946, Congress, in P.L. 79-585, established the Atomic Energy Commission (AEC), the forerunner of the Department of Energy (DOE). The AEC, in turn, established the Office of Security and Intelligence for liaison with the congressional Joint Committee on Atomic Energy, and elements of the intelligence community, including the Central Intelligence Agency (CIA) and Federal Bureau of Investigation (FBI). The office was also responsible for providing physical security as well as the establishment of security standards, policies, and procedures.

In 1974, Congress enacted the Energy Reorganization Act (P.L. 93-438). The Act dissolved the AEC, splitting its functions between two new entities, the Nuclear Regulatory Commission (NRC, responsible for regulating the nuclear power industry), and the Energy Research and Development Administration (ERDA, responsible for managing U.S. nuclear research and development, nuclear weapons, and nuclear reactors). The ERDA inherited the AEC's foreign intelligence and counterintelligence responsibilities under an Assistant Administrator for National Security.

Intelligence and Counterintelligence within the New Department of Energy

In 1977, Congress enacted the Department of Energy Organization Act (P.L. 95-91), which established the DOE by bringing together 40 existing government organizations into a single department that would oversee and support U.S. energy programs, research and development, and infrastructure. These included the NRC, ERDA, national laboratories, and other facilities. DOE's bureaucracy posed challenges in managing physical security, protecting classified information, screening personnel, and monitoring foreign visitors.

In 1992, through a provision of the Intelligence Authorization Act (IAA) for Fiscal Year 1993 (P.L. 102-496), Congress amended the statutory definition of the "intelligence community" to include the DOE's intelligence and counterintelligence organization. This gave the Director of Central Intelligence (DCI) oversight authority over

DOE's foreign intelligence and counterintelligence activities, complementing both DOE internal and congressional oversight.

Presidential Decision Directive-61

In February 1998, President Clinton, concerned that China had penetrated U.S. nuclear weapons laboratories, and acting on recommendations of the National Counterintelligence Policy Board (NACIPB), issued Presidential Decision Directive-61 (PDD-61). Among other things, PDD-61 reorganized the foreign intelligence and counterintelligence component of DOE into two separate offices—the Office of Counterintelligence and the Office of Intelligence—which would each report directly to the Energy Secretary. PDD-61 also mandated the Office of Counterintelligence be headed by a senior FBI official, who, in addition to the Energy Secretary, would have direct access to the DCI and the Director of the FBI.

National Defense Authorization Act for Fiscal Year 2000

Congress codified PDD-61 reforms in the National Defense Authorization Act (NDAA) for Fiscal Year 2000 (P.L. 106-65), including provisions that required DOE to maintain an Office of Counterintelligence—under the directorship of a senior official detailed from the FBI—as well as a separate Office of Intelligence.

The legislation further established within the department the semi-autonomous National Nuclear Security Administration (NNSA), headed by an Administrator and responsible for U.S. military nuclear programs, including nuclear weapons and reactor safety, reliability, security, and research and development. Other provisions in the NDAA for FY2000 created a second, *parallel*, counterintelligence structure within NNSA. This office, called the Office of Defense Nuclear Counterintelligence, was responsible for implementing, at NNSA facilities, policy developed by the DOE Office of Counterintelligence. Arguably, these changes created more complex lines of authority and accountability for counterintelligence policy implementation within the department: one entity, the Office of Counterintelligence, reported directly to the Energy Secretary, and the other, the NNSA's Office of Defense Nuclear Counterintelligence, to the NNSA Administrator. The Senate Select Committee on Intelligence in 2002 noted the two offices shared

the same program staff at DOE headquarters and manage their field programs at sites delineated along lines of the NNSA/DOE organization. However, although the sites are characterized as

either DOE or NNSA, the program activities are not as easily separated since many NNSA program activities are supported by DOE sites. The Committee is concerned that this bifurcation has created administrative inefficiencies that affect day-to-day operations, has an adverse impact on counterintelligence investigations management, and diminishes the lines of program responsibility as well as overall accountability.

Establishment of OICI

Congress subsequently abolished the NNSA's Office of Defense Nuclear Counterintelligence through a provision of the John Warner National Defense Authorization Act for Fiscal Year 2007 (P.L. 109-364). The office's personnel and functions were transferred to the DOE Office of Counterintelligence. This legislation thereby eliminated the dual structure of counterintelligence within DOE. DOE further consolidated its offices of Intelligence and Counterintelligence to create a unified approach to related challenges and requirements in the Department under the present-day OICI. In 2020, Congress codified OICI's chain of authority, leadership, and responsibilities in Subtitle C of the National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92). P.L. 116-92 OICI Leadership and Responsibilities

The Secretary of Energy appoints the Director of OICI with the concurrence of the Director of National Intelligence (DNI). The OICI Director, who reports directly to the DOE Secretary, is required by statute to have "substantial expertise in matters relating to the intelligence community, including foreign intelligence and counterintelligence." The Secretary of Energy is required to consult with the DNI prior to making a decision to remove the Director of OICI (Executive Order 12333, *United States Intelligence Activities*, para. 1.3(e)(2)). OICI is funded under the National Intelligence Program (NIP) (42 U.S.C. §7144(b)). Its budget is classified. According to information published by the Office of the DNI, the mission of OICI is

to protect, enable, and represent the vast scientific brain trust resident in DOE's laboratories and plants. The office protects vital national security information and technologies, representing intellectual property of incalculable value, and provides unmatched scientific and technical expertise to the U.S. government to respond to foreign intelligence, terrorist and cyber threats, to solve the hardest problems associate with U.S. energy security, and to address a wide range of other national security issues.

OICI's intelligence component produces and disseminates intelligence unique to DOE and is a consumer of actionable intelligence disseminated from other elements of the intelligence community. OICI's counterintelligence component provides support for DOE's 17 national laboratories and offices; this includes investigations and DOE's insider-threat program. OICI conducts cyber functions, including analysis of foreign-origin cyber incidents that require coordination with the Chief

Information Officers of both DOE and the NNSA. OICI also manages a 24/7 Intelligence Operations Center enabling communications with all DOE component organizations, other elements of the intelligence community, and the White House up to and including information at the TOP SECRET/SENSITIVE COMPARTMENTED INFORMATION (TS/SCI) classification level.

OICI maintains a liaison relationship with the NNSA. In addition, OICI has nearly 30 intelligence and counterintelligence offices throughout the United States, as well as representation on two FBI-managed inter-agency coordination entities—the Joint Terrorism Task Force and the National Cyber Investigative Joint Task Force—and two coordination entities within the Office of the DNI—the National Counterterrorism Center and the Climate and Security Advisory Council.

Relevant Statutes

Title 42 U.S.C. §7144b

Title 50 U.S.C. §§2401, 2408(b)(4), 3003(4)(H), 3041(b)(2)(E)

CRS Products

CRS In Focus IF10527, *U.S. Intelligence Community Establishment Provisions*, by Michael E. DeVine

Other Resources

Executive Order 12333, *United States Intelligence Activities*

Atomic Heritage Foundation, "Alsos Mission," June 6, 2014

Office of the Director of National Intelligence, "Members of the IC: Department of Energy"

U.S. Atomic Energy Commission, "Letter from the Chairman and Members of the United States Atomic Energy Commission," 80th Cong., 2nd Sess., Doc. No. 118, February 2, 1948

U.S. Congress, House of Representatives Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, *Statement of Stanley L. Borgia, Deputy Director for Counterintelligence at the Office of Intelligence and Counterintelligence, U.S. Department of Energy*, 110th Cong., 2nd Sess., September 25, 2008

U.S. Congress, Senate Select Committee on Intelligence, report to accompany S. 2506, *Intelligence Authorization Act for Fiscal Year 2003*, 107th Cong., 2nd Sess., S.Rept. 107-149

"Science at its Best, Security at its Worst: A Report on Security Problems at the U.S. Department of Energy," President's Foreign Intelligence Advisory Board, June 1999

U.S. Department of Energy, *Transition 2016 Organization Overviews, Book Three*

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