

THE WHITE HOUSE
WASHINGTON

January 19, 1993

NATIONAL SECURITY DIRECTIVE 79

MEMORANDUM FOR THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE DIRECTOR, OFFICE OF MANAGEMENT & BUDGET
THE DIRECTOR OF CENTRAL INTELLIGENCE
THE CHAIRMAN, JOINT CHIEFS OF STAFF

SUBJECT: Approval and Review of Covert Action (TS)

The President has formally approved the attached National Security Directive on the Approval and Review of Covert Action. This Directive conforms National Security Decision Directive 286 to the Intelligence Authorization Act, Fiscal Year 1991. (TS)


Brent Scowcroft

Attachment

DECLASSIFIED
E.O. 13526
Authority NSC email 2/22/2018
MARK SD Date 5/4/2018

THE WHITE HOUSE
WASHINGTON

January 19, 1992

NATIONAL SECURITY DIRECTIVE 79

APPROVAL AND REVIEW OF COVERT ACTION (TS)

I. INTRODUCTION

- A. The Policy Context
- B. The Role of the Assistant to the President for National Security Affairs and the National Security Council Staff

II. APPROVAL AND REVIEW OF COVERT ACTION

- A. Presidential Findings and Memoranda of Notification
 - 1. Presidential Findings
 - 2. Memoranda of Notification
 - 3. Contents and Accompanying Documents
- B. NSC Review of Proposals for Covert Action
 - 1. The National Security Council
 - 2. The Deputies Committee
 - a. NSC/DC Review of Proposals
 - b. Results of NSC/DC Review
 - c. Working Groups
- C. Periodic NSC Review of Covert Action
 - 1. Periodic Review by the NSC/DC
 - 2. Periodic Review by the NSC
- D. Executive Secretary of the NSC
- E. Conduct of Covert Action
- F. Restricted Consideration
 - 1. Security
 - 2. Focal Points
- G. Congressional Notification
 - 1. The Requirement to Notify Congress
 - 2. Contents of Notification
 - 3. Prior Notification
 - 4. Extraordinary Circumstances

III. COVERT ACTION NOT CONDUCTED BY THE CIA

DECLASSIFIED IN PART
E.O. 13526

Authority NSC email 2/22/2018
NAHA SO Date 5/4/2018

I. INTRODUCTION

A. The Policy Context

In discharging his constitutional responsibility for the conduct of foreign relations and for ensuring the security of the United States, the President may find it necessary that activities conducted in support of national foreign policy objectives abroad be planned and executed so that the role of the United States Government is not apparent or acknowledged publicly. Such activities, the failure or exposure of which may entail high costs, must be conducted only after the President reaches an informed judgment regarding their utility in particular circumstances. To the extent possible, they should be conducted only when we are confident that, if they are revealed, the American public would find them sensible. (TS)

This Directive rescinds NSDD 286 and sets forth revised procedures for presidential approval and review, through the National Security Council (NSC) process, of all "covert action" as defined by section 503(e) of the National Security Act of 1947 as amended by the Intelligence Authorization Act, Fiscal Year 1991 (Public Law 102-88) (the Act). (TS)

These procedures are designed, inter alia, (1) to ensure that any covert action conducted by, or at the direction of, the United States is consistent with national defense and foreign policies and applicable law; (2) to provide standards ensuring the secrecy of such actions even when the results become publicly known or the actions themselves are the subject of unauthorized disclosure; and (3) to implement section 503(c) of the Act, concerning notification to Congress of such activities. (TS)

B. The Role of the Assistant to the President for National Security Affairs and the National Security Council Staff

Within the framework and in accordance with the requirements set forth in NSD 1 and NSDD 266, the Assistant to the President for National Security Affairs (the National Security Advisor) shall serve as manager of the NSC process and as principal advisor on the President's staff with respect to all national security affairs, including covert action. The NSC staff, through the Executive Secretary of the NSC, shall assist the National Security Advisor in discharging these responsibilities. The National Security Advisor and the NSC staff themselves shall not undertake the conduct of covert actions. (TS)

II. APPROVAL AND REVIEW OF COVERT ACTION

A. Presidential Findings and Memoranda of Notification

1. Presidential Findings

In all cases, covert action by the Central Intelligence Agency (CIA) or by any Executive department, agency, or entity in foreign countries requires, under the terms of section 503(a) of

the Act, Findings by the President that such "action is necessary to support identifiable foreign policy objectives of the United States and is important to the national security of the United States." No covert action may be conducted except under the authority of, and subsequently to, such Finding by the President.

(TS)

In all but the rarest of circumstances, no covert action may be undertaken prior to the President's having signed a written Finding. In cases in which the President determines that immediate action is required and that the national security requires that a covert action be undertaken before a written Finding can be presented for signature, and that oral authorization therefore is required, the National Security Advisor shall ensure that a contemporaneous record of the President's authorization shall be made in writing and that a corresponding Finding shall be submitted for signature by the President as soon as possible, but in no event more than 48 hours thereafter. No Finding may retroactively authorize or sanction a covert action. (TS)

2. Memoranda of Notification

In the event of any proposal to change substantially the means of implementation of, or the level of resources, assets, or activity under, a Finding; or in the event of any significant change in the operational conditions, country or countries significantly engaged, or risks associated with a covert action, a written Memorandum of Notification (MON) shall be submitted to the President for his approval. All actions to be authorized by means of an MON must be necessary to support identifiable foreign policy objectives and important to U.S. national security as set forth in a previously-approved Finding. An MON also shall be submitted to the President for his approval in order to modify a Finding in light of changed circumstances or passage of time; or to cancel a Finding because the covert action authorized has been completed or for any other reason. (TS)

The procedures for approval by the President of an MON shall be the same as those established by this Directive for approval of a Finding. (TS)

3. Contents and Accompanying Documents

Each Finding and MON submitted to the President for approval shall be accompanied by or include a statement setting forth, inter alia, the following:

(a) the policy objectives the covert action is intended to serve and the goals to be achieved thereby;

(b) the actions authorized, resources required, and Executive departments, agencies, and entities authorized to fund or otherwise participate significantly in the conduct of such covert action;

(c) consistent with the protection of intelligence sources and methods, whether it is anticipated that private individuals or organizations will participate in any significant way in the conduct of the covert action;

(d) whether it is contemplated that a foreign government or element thereof or other third party will fund or participate significantly in the covert action or carry out a covert action on behalf of the United States; and

(e) an assessment of the risks associated with the action. (TS)

B. NSC Review of Proposals for Covert Action

Prior to its submission to the President, each proposed Finding and MON shall be reviewed within the NSC process as provided below. The result of such review shall be submitted to the President prior to his determination with regard to each proposed Finding or MON. (TS)

1. The National Security Council

Each proposed Finding and MON shall be reviewed by the NSC pursuant to NSD 1. The Attorney General and the Director, Office of Management and Budget, shall be invited to attend meetings of the NSC that address covert action. The National Security Advisor shall be responsible for the agenda and conduct of such meetings, at the President's direction. Unless exceptional circumstances dictate otherwise, the National Security Advisor shall circulate the agenda for, and papers to be considered at, such NSC meetings four (4) days in advance thereof. (TS)

NSC members shall review each proposed Finding and MON; their comments, recommendations, and dissents, if any, shall be provided to the President orally or in writing through the National Security Advisor. The National Security Advisor shall transmit all proposed Findings and MONS to the President. Each proposed Finding and MON shall be coordinated, in advance of its submission to the President, by the NSC Legal Adviser with the Counsel to the President. Under normal circumstances, the NSC will meet to review each Finding or MON prior to presidential approval. The President may, however, approve a Finding or MON on the basis of the NSC members' comments communicated other than in a formal NSC meeting. The National Security Advisor shall ensure that an appropriate record is made of the President's consultations with NSC members however conducted, and that the President's decision is committed to writing. The National Security Advisor shall notify all NSC members in writing of the President's decision with regard to each proposed Finding and MON. (TS)

Except in circumstances requiring urgent action and/or unusual limits on the dissemination of information, the NSC review of a proposed Finding or MON shall follow the review of a proposed Finding or MON by the NSC Deputies Committee, established by NSD 1. (TS)

2. The Deputies Committee

The Deputies Committee (NSC/DC) shall be the sub-Cabinet level interagency group responsible for review of covert action. The NSC/DC shall be comprised of the Deputy Assistant to the President for National Security Affairs (the "Deputy National Security Advisor"), a representative of the Office of the Vice President, the Under Secretary of State for Political Affairs, the Under Secretary of Defense for Policy, the CIA's Deputy Director for Operations, the Vice Chairman of the Joint Chiefs of Staff, the Deputy Director of the Office of Management and Budget, the Deputy Attorney General, or other senior officials of equivalent rank within such Executive departments and agencies. The Deputy National Security Advisor shall chair meetings of the NSC/DC, which shall be attended by the NSC Legal Adviser and the NSC's Senior Director for Intelligence Programs. Senior officials of other Executive departments and agencies and of the Executive Office of the President shall be invited to attend NSC/DC meetings as matters on the agenda of such meetings shall dictate. The Deputy National Security Advisor shall be responsible for the agenda and conduct of such meetings. Unless exceptional circumstances dictate otherwise, the Deputy National Security Advisor shall circulate the agenda for, and papers to be considered at, NSC/DC meetings four (4) days in advance thereof. (TS)

(a) NSC/DC Review of Proposals. The NSC/DC may identify situations in which covert action may be appropriate to further national policy; it shall review proposals for covert action to ensure that such action would be important to the national security and consistent with, and in furtherance of, national policy. Without limitation, the NSC/DC shall evaluate the operational aspects of proposed covert action, including the resources required, the threat or opportunity giving rise to the proposal, the U.S. interests at stake, the legal framework and requirements that must be met, and relevant security requirements. The NSC/DC further shall evaluate international and domestic risks in connection with the proposed activities, including the risks associated with public disclosure. In cooperation with other Executive departments and agencies as appropriate under the circumstances, the CIA shall prepare all Findings and MONS. (TS)

(b) Results of NSC/DC Review. The Deputy National Security Advisor shall be responsible for conveying the results of the NSC/DC review of proposed covert action, including any dissenting views, to the NSC. (TS)

(c) Working Groups. To assist in, and support, its work, the NSC/DC may convene appropriate working groups. A working group, composed of the NSC Legal Adviser, the Counsel to the President, the Legal Adviser of the Department of State, a senior representative of the Attorney General, the General Counsels of the Department of Defense and the CIA, and the Legal Adviser to the Chairman of the Joint Chiefs of Staff, shall be convened as necessary or desirable to ensure that legal

considerations are fully addressed in connection with proposed or ongoing covert action. (TS)

C. Periodic NSC Review of Covert Action

1. Period Review by the NSC/DC

Not less often than once each calendar year, the NSC/DC shall conduct a comprehensive review of each covert action in light of the purposes it is intended to serve, its consistency with current national policy and applicable legal requirements, its demonstrated effectiveness, the sufficiency of allocated resources, and relevant security considerations. The NSC/DC shall submit the results of its annual review to the NSC. Evaluations made by the NSC/DC shall include a recommendation to reaffirm, revise, or terminate each Finding. (TS)

2. Periodic Review by the NSC

Not less often than once each calendar year, the NSC shall review each covert action, and recommend to the President those Findings to be reaffirmed, revised, or terminated. Unless, within thirty (30) days following the conclusion of such review, the President approves in writing the continuation of a Finding, or otherwise directs, such Finding and associated MONs, if any, together with the authority to undertake covert action thereunder, shall be deemed cancelled upon appropriate notice to the DCI or head of such other Executive department, agency, or entity authorized to conduct the covert action. The National Security Advisor shall provide a written report of the results of this review to NSC members. The Director of the Office of Management and Budget shall ensure that the President's budget provides resources consistent with all Findings for the congressional budget request. (TS)

D. Executive Secretary of the NSC

The Executive Secretary of the NSC and the NSC staff shall assist the National Security Advisor and Deputy National Security Advisor with appropriate preparations for, and follow-up to, all NSC and NSC/DC meetings relating to covert action. Such assistance shall include preparation of meeting minutes and the development and dissemination of decision and other documents. The Executive Secretary of the NSC shall have custody of record copies of Findings and MONs as approved by the President. The DCI, other members of the NSC, and the head of such other Executive department, agency or entity the President may direct to undertake a covert action, shall be provided with a copy of each Finding and MON as signed by the President, together with the National Security Advisor's memorandum recording the President's decision. (TS)

E. Conduct of Covert Action

Absent a specific presidential decision, as provided in section 1.8(e) of Executive Order No. 12333, that another Executive department, agency or entity is more likely to achieve

3.3(b)(1)

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ / [REDACTED]

a particular objective, no department, agency or entity other than the CIA shall be responsible as lead agency for the conduct of a covert action. Private individuals and organizations used in the conduct of covert action shall be subject to observation and supervision, as appropriate in the interests of proper operational security and control, in accordance with written policies and regulations established for such purpose by the CIA, or other Executive department, agency, or entity. (TS)

F. Restricted Consideration

1. Security

The National Security Advisor shall establish a separate, specially compartmented control and access system at the Top Secret classification level for all policy matters concerning covert actions. The NSC's Senior Director for Intelligence Programs shall have responsibility for administration of the special access security compartment for covert action. Each NSC member shall ensure that access to information on covert action is restricted to the absolute minimum number of persons. NSC members also shall ensure that the absolute minimum number of files necessary for consideration of covert action are created or maintained. (TS) [REDACTED]

3.3(b)(1)

2. Focal Points

Each NSC member shall designate one senior member of his department or agency and one alternate, as the sole focal point for all matters related to covert action for both the NSC and NSC/DC. Each focal point shall adhere to the special access security compartment procedures regarding covert action. In accordance with these procedures, each focal point shall develop implementing procedures for ensuring strict limitation of knowledge and for separating knowledge of policy with regard to covert action from knowledge of operational activities or support. (TS)

G. Congressional Notification

1. The Requirement to Notify Congress

Consistent with section 503(c) of the Act, and unless the President otherwise directs in writing pursuant to his constitutional authorities and duties, Congress shall be notified on the President's behalf of all covert action in accordance with this Directive including any significant change in a previously approved covert action or any significant undertaking pursuant to a previously approved Finding. (TS)

2. Contents of Notification

In all cases, notification to Congress as provided herein shall include a copy of the Finding or associated MON, if any, as signed by the President, and the statement described in section II.A.3 hereof. (S)

3.3(b)(1)

~~TOP SECRET~~ [REDACTED]

BUSH LIBRARY PHOTOCOPY

~~TOP SECRET~~ / [REDACTED]

3. Prior Notification

Consistent with the expectation of prior notification to Congress, in all but extraordinary circumstances as specified herein, the DCI, or head of such other Executive department, agency, or entity authorized to conduct a covert action, shall notify Congress, on the President's behalf, through the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives (hereinafter collectively referred to as the "Intelligence Committees"), prior to initiation of each covert action authorized by a Finding and associated MON, if any. If the President determines that it is essential to limit access to a Finding in extraordinary circumstances affecting the vital interests of the United States, the DCI, or head of such other Executive department, agency, or entity authorized to conduct a covert action, shall notify Congress, on the President's behalf, through the Majority and Minority Leaders of the Senate, the Speaker and Minority Leader of the House of Representatives, and the Chairman and Vice Chairman of the Senate Select Committee on Intelligence, the Chairman and Ranking Minority Member of the Permanent Select Committee on Intelligence of the House of Representatives, and such other member or members of the congressional leadership as the President may direct prior to initiation of a covert action authorized by a Finding and associated MON, if any. The DCI, or the head of such other Executive department, agency, or entity authorized to conduct a covert action also shall provide the Chairman of each intelligence committee with a statement of the reasons for providing such restricted notification. (TS)

4. Extraordinary Circumstances

If the President determines that it is necessary, in order to meet rare, extraordinary circumstances, to delay notification until after the initiation of a covert action, the DCI, or head of such other Executive department, agency, or entity authorized to conduct a covert action, shall delay notification, consistent with section 503(c)(3) of the Act at the direction of the President. Unless the President otherwise directs, not later than two working days after the President signs a Finding or associated MON, if any, the Intelligence Committees shall be notified in accordance with established procedures. In all such cases, notification shall include the reasons for not giving prior notice to the Intelligence Committees. In the event the President directs that notification to Congress be delayed beyond two working days after presidential authorization of a covert action as provided herein, the grounds for such delay shall be memorialized in writing and shall be re-evaluated by the NSC not less frequently than every ten (10) days. (TS)

III. COVERT ACTION NOT CONDUCTED BY THE CIA

If, as provided in section 1.8(e) of Executive Order No. 12333, the President directs that an Executive department, agency or entity other than the CIA conduct a covert action, the provisions of this Directive shall apply to such department, agency or

3.3(b)(1)

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ / [REDACTED]

entity. In such cases, the head of such other Executive department, agency, or entity shall fully and currently inform the DCI of all aspects of the covert action, and jointly with the DCI shall notify Congress of the covert action, in accordance with the DCI's role as the President's principal advisor on intelligence matters as set forth in NSDD 266. (TS)

Cy Bush

3.3(b)(1)

~~TOP SECRET~~ [REDACTED]

BUSH LIBRARY PHOTOCOPY

~~TOP SECRET~~ / [REDACTED]