

(U) Disseminating or sharing any part of this document outside CIA must comply with AR 10-16.

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AR 2-3 (U) Covert Action (Formerly AR 50-15)

DO - Agency Regulation Series 2 (Intelligence Activities) Published on 07 February 2017

Revision Summary

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Regulation Summary

(U//~~AWO~~) This regulation sets forth the procedures for Agency review and approval of Covert Action. Other Agency regulations (AR 13-3, (U) *Reporting of Intelligence Activities to Congress*) address reporting obligations to Congress, as well as general procedures applicable to the conduct of Agency activities (AR 2-2, (U) *Law and Policy Governing the Conduct of Intelligence Activities*, formerly HR 7-1, and its annexes).

Definitions

(U) Covert Action - As defined by statute, Covert Action is "an activity or activities of the U.S. Government to influence political, economic, or military conditions abroad, where it is intended that the role of the U.S. Government will not be apparent or acknowledged publicly," but does not include: a) Activities the primary purpose of which is to acquire intelligence, traditional counterintelligence activities, traditional activities to improve or maintain the operational security of U.S. Government programs, or administrative activities; b) Traditional diplomatic or military activities, or routine support to such activities; c) Traditional law enforcement activities conducted by U.S. Government law enforcement agencies, or routine support to such activities; or d) Activities to provide routine support to the overt activities (other than activities described in paragraphs (a), (b), or (c) above) of other U.S. Government agencies abroad.

(U//~~AWO~~) Finding - For the purpose of this regulation, Finding is defined as a determination

by the President that provides the authority for a Covert Action. The Finding must document the President's determination that the Covert Action is necessary to support identifiable foreign policy objectives of the United States and is important to the national security of the United States.

~~(U//FOUO)~~ **Memorandum of Notification (MoN)** - For the purpose of this regulation, a MoN is a determination by the President that documents a significant change in a previously approved Covert Action or any significant undertaking pursuant to a previously approved Finding. A MoN may be issued in order to document a substantial change in the means of implementation, level of resources, program assets or activity under a Finding, or to continue a Covert Action despite a significant change in the operational conditions, country or countries engaged, or risks associated with the program. A MoN also is required to modify a Finding in light of significantly changed circumstances or to cancel a Finding because the Covert Action authorized has been completed or for any other reason.

I. (U) Authorities

(U//~~FOUO~~) Section 503 of the National Security Act of 1947, as amended (50 U.S.C. 3093); Executive Order 12333, United States Intelligence Activities, December 8, 1981, as amended; National Security Directive 79, 19 January 1993; [REDACTED]

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[REDACTED]; AR 1-3 (U) *The Agency Regulatory System*; and [REDACTED]

[REDACTED]; AR 1-3 (U) *The Agency*

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II. (U) Policy

A. (U) Statutory Requirements, Executive Branch Policy, and Agency Policy and Guidance

1. (U) Statutory Requirements

(U) CIA may not engage in intelligence activities meeting the definition of Covert Action absent specific, prior authority from the President; only the President can authorize Covert Action. Any employee, contractor, or contract agent of a department, agency, or entity of the U.S. Government other than the CIA directed to participate in any way in a Covert Action shall be subject either to the policies and regulations of the CIA or to written policies or regulations adopted by such department, agency, or entity to govern such participation.

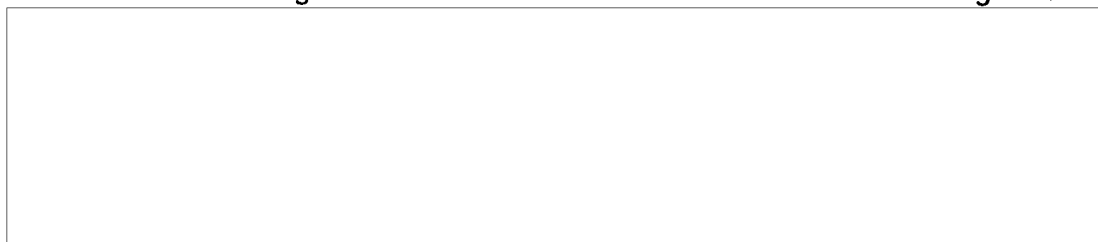
(U) Section 503 of the National Security Act of 1947, as amended ("Section 503"), defines and establishes the statutory requirements for the approval and reporting of Covert Action. Under the terms of this statute, the President may not authorize a

Covert Action unless the President determines the Covert Action is "necessary to support identifiable foreign policy objectives of the United States and is important to the national security of the United States." The President must document these determinations in a written "Finding," which must be reported to the Congressional intelligence committees, with limited exceptions, as soon as possible after the President's approval and before the Covert Action may begin except as provided in paragraph (2)(a) below.

2. (U) Congressional Notification of Findings

(U//~~FOUO~~) Section 503(c) requires the President to ensure that any Finding is reported in writing to the Congressional intelligence committees. The Director of Central Intelligence Agency (D/CIA) normally notifies Congress on behalf of the President pursuant to language contained in the Finding directing such notification. Section 503 also includes detailed requirements to ensure D/CIA currently and fully informs the intelligence committees of any Covert Action conducted by the CIA. The Director of National Intelligence (DNI) and the heads of all departments, agencies, and entities of the U.S. Government that are involved in the Covert Action must also adhere to this requirement.

- a. (U//~~FOUO~~) Covert activities may be initiated before providing a written notification to the specified members of Congress in the extraordinary circumstances that the President orally approves a Covert Action after determining immediate action by the United States is required and time does not permit the preparation of a written Finding. In such cases, a written record of the President's decision must be contemporaneously made and reduced to a written Finding as soon as possible, but not later than 48 hours after the decision is made.
- b. (U//~~FOUO~~) The National Security Act defines "Congressional intelligence committees" for these purposes to be the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence.



- c. (U//~~FOUO~~) The President may also determine that it is essential to limit access to the Finding to meet extraordinary circumstances affecting vital interests of the United States, limit notification to the Chairman and Ranking Member of the Congressional intelligence committees, the Speaker and

Minority Leaders of the House of Representatives, the Majority and Minority Leaders of the Senate, and such other members of Congressional leadership as may be included by the President.

3. (U) Executive Branch Guidance

(U//~~FOUO~~) Section 1.7 of Executive Order 12333 assigns to the D/CIA the responsibility to conduct Covert Actions approved by the President, and provides that no agency other than CIA (or U.S. Armed Forces in time of war declared by Congress or during a period covered by a report from the President to Congress consistent with the War Powers Resolution, Public Law 93-148) may conduct any Covert Action activity unless the President determines that another agency is more likely to achieve a particular objective. Section 1.2 of E.O. 12333 precludes the National Security Council (NSC) from undertaking the conduct of Covert Actions and requires the NSC to consider and submit to the President a policy recommendation, including all dissents, on each proposed Covert Action; to conduct a periodic review of ongoing Covert Action activities, including an evaluation of the effectiveness and consistency with current national policy of such activities and consistency with applicable legal requirements; and to perform such other functions related to Covert Actions as the President may direct. Section 1.3 of E.O. 12333 directs the DNI to oversee and provide advice to the President and the NSC with respect to all ongoing and proposed Covert Action programs. Consistent with longstanding practice and Presidential guidance, the D/CIA shall continue to report directly to the NSC and the President with respect to CIA's development and implementation of Covert Action, while concurrently ensuring that the DNI has the full visibility necessary to enable him/her to oversee and provide advice to the President and the NSC.

4. (U) Significant Changes to Previously Approved Covert Action

- a. (U//~~FOUO~~) Section 503(d) requires the President to ensure that the Congressional intelligence committees are notified in writing of any significant change in a previously approved Covert Action, or any significant undertaking pursuant to a previously approved Finding, in the same manner as Findings are reported to Congress. Additionally, the statute directs the President to consider whether an activity would result in the following when determining whether the activity constitutes a significant undertaking:

- (1) (~~U//FOUO~~) Involves significant risk of loss of life;
- (2) (~~U//FOUO~~) Requires an expansion of existing authorities, including authorities relating to research, development, or operations;
- (3) (~~U//FOUO~~) Results in the expenditure of significant funds or other resources;
- (4) (~~U//FOUO~~) Requires notification to Congress related to the reprogramming of funds or the use of funds from the Reserve for Contingencies pursuant to Section 504 of the National Security Act of 1947, as amended;
- (5) (~~U//FOUO~~) Gives rise to a significant risk of disclosing intelligence sources or methods; or
- (6) (~~U//FOUO~~) Presents a reasonably foreseeable risk of serious damage to the diplomatic relations of the United States if such activity were disclosed without authorization.

b. (~~U//FOUO~~) Notification to the intelligence committees of a significant change in or undertaking pursuant to a previously approved Finding, required by Section 503(d), is in most cases done through a Memorandum of Notification (MoN).

5. (U) Requirements for Findings and MoNs

- a. (U) The Presidential Finding required before Covert Action may be conducted must meet the conditions set forth below:
 - (1) (U) Findings must be in writing unless immediate action is required and time does not permit the preparation of a written Finding. In such cases, a written record of the President's decision must be made contemporaneously and reduced to writing as soon as possible, but not later than 48 hours after the decision is made.
 - (2) (U) Except as permitted by section II (A)(5)(a)(1), a Finding may not authorize or sanction a Covert Action or any aspect of any Covert Action which has already occurred.
 - (3) (~~U//FOUO~~) The Finding must set forth the authorities that are being granted in order to engage in the Covert Action activities as well as the policy objectives intended to be furthered by the proposed

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Covert Action.

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- (4) (U//~~FOUO~~) Findings must specify each department, agency, or entity of the U.S. Government authorized to fund or otherwise participate in any significant way in the Covert Action. Any employee, contractor, or contract agent of a department, agency, or entity of the U.S. Government other than the CIA directed to participate in any way in a Covert Action shall be subject either to the policies and regulations of the CIA or to written policies or regulations adopted by such department, agency, or entity to govern such participation.
- (5) (U) Findings must specify whether it is contemplated that any third party that is not an element of, or contractor or contract agency of, U.S. Government, or is not otherwise subject to U.S. Government policies and regulations, will be used to fund or otherwise participate in any significant way in the Covert Action, or will be used to undertake the Covert Action on behalf of the United States.
- (6) (U) A Finding may not authorize any action that would violate the Constitution or any statute of the United States.
- (7) (U) No Covert Action may be conducted which is intended to influence U.S. political processes, public opinion, policies, or media.

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(S//NF) As a general rule, a MoN should conform to the same conditions as a Finding, but there may be limited circumstances where all of these conditions need not be met (e.g., termination MoN).

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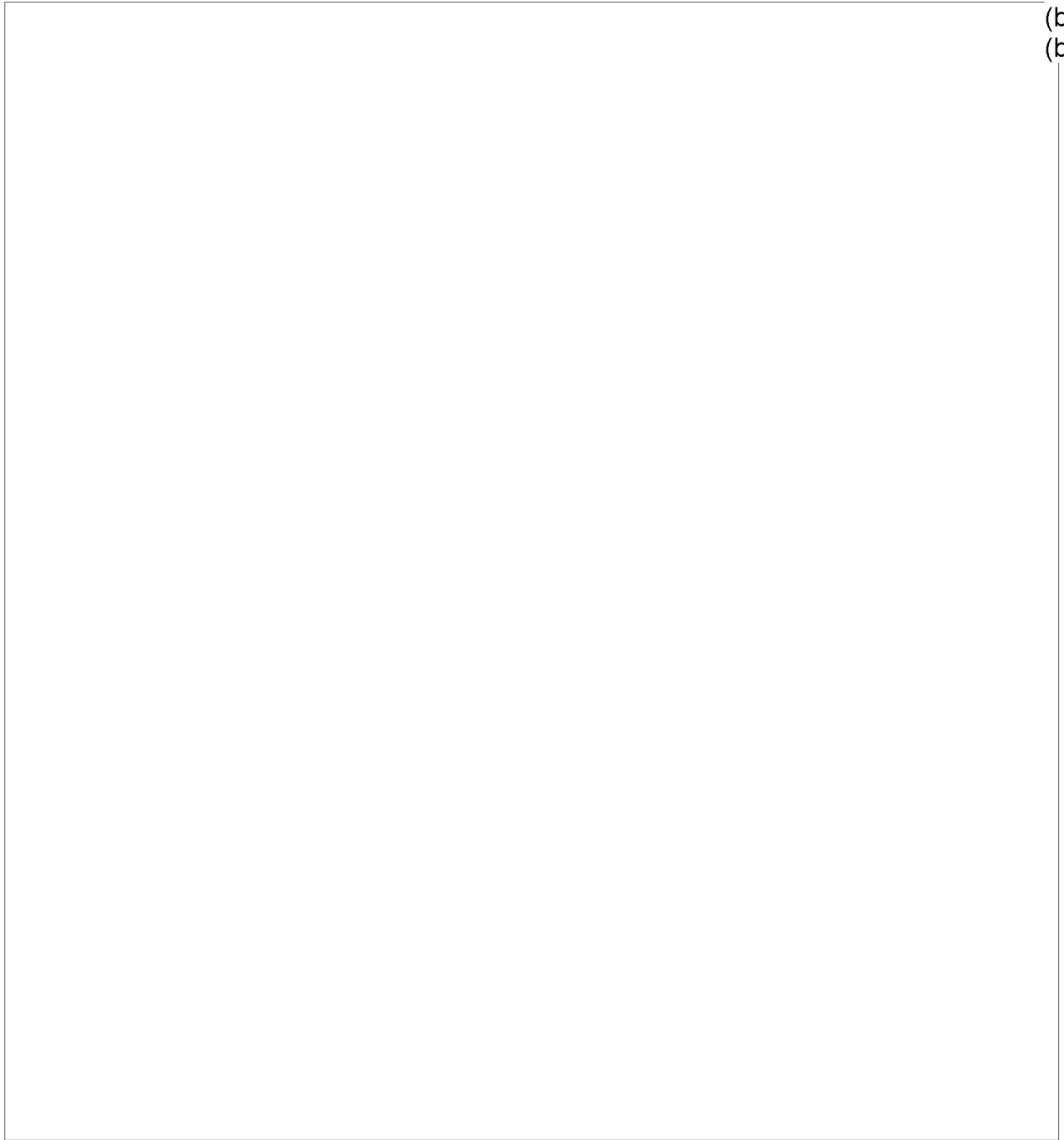
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6. ~~(U//FOUO)~~ **Review and Assessment of Proposed and Approved Findings and MoNs**

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References

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