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Date: 03/19/2009

Category: 7 - Management **OPR:** OGC

Title: AR 7-20 (U) EMPLOYEE AND CONTRACTOR COMMUNICATIONS WITH CONGRESS



(b)(3)

REVISION SUMMARY: 19 March 2009

(U) This regulation supersedes AR 7-20, dated 20 January 2006.

(U//~~AWO~~) AR 7-20 is revised primarily to bring contractors within its purview, consistent with 50 U.S.C. § 403q(d)(5)(A). It also makes clear that detailees may invoke these procedures to receive the same whistleblower protections as Agency employees and contractors. The definition of "urgent concern" is also narrowed slightly, consistent with 50 U.S.C. § 403q(d)(5)(G)(II). Finally, the Managing Associate General Counsel is removed from the list of Designated Officials. This issuance was approved by the Associate Deputy Director on 19 March 2009.

(U) *Boldfaced text in this regulation indicates revisions.*

This regulation was written by the Office of General Counsel, (secure).

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20. (U) EMPLOYEE AND CONTRACTOR COMMUNICATIONS WITH CONGRESS

(U) SYNOPSIS. This regulation sets forth the procedures to be followed in the reporting of urgent concerns to Congress by employees of the CIA. This regulation ensures that employees, contractors, and detailees have a mechanism to securely report to Congress urgent concerns, consistent with the Agency's legal obligations to protect vital national security, law enforcement or foreign affairs interests.

a. **(U) AUTHORITY.** The authority for this regulation is contained in Section 17 of the Central Intelligence Agency Act of 1949, 50 U.S.C. 403q, as amended.

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b. (U) DEFINITIONS

- (1) (U//~~AIUO~~) **For purposes of this regulation, "employee" means a staff or contract employee of CIA, an independent contractor of CIA, an employee of an industrial contractor of CIA or a detailee to CIA from another agency.**
- (2) (U) "Designated official" means the Deputy Director of Congressional Affairs, and the Assistant Inspector General for Investigations.
- (3) (U) The term "urgent concern" means:
 - (a) (U//~~AIUO~~) a serious or flagrant problem, abuse, violation of law or Executive Order, or deficiency relating to the funding, administration, or operation of an intelligence activity involving classified information;
 - (b) (U//~~AIUO~~) any false statement made to Congress, or willful withholding from Congress, on an issue of material fact **relating to the funding, administration, or operation of an intelligence activity;** or
 - (c) (U) an action constituting reprisal or threat of reprisal in response to an employee reporting an urgent concern pursuant to this regulation.

c. (U) EMPLOYEE PROCEDURES

- (1) (U) Employees who wish to report an urgent concern to Congress may do so by contacting designated officials. Employees shall furnish one of these designated officials with a written or oral statement describing the urgent concern they intend to communicate to Congress. Preparation of a written statement must be consistent with security requirements. These designated officials shall ensure that the employee is provided with instructions for reporting the matter to Congress. These designated officials, in appropriate consultation with other Agency officials, shall also ensure that a determination is made as to whether the information the employee wants to report to Congress is classified.
- (2) (U) If the employee wishes to report information to Congress that does not qualify as an "urgent concern," the employee may do so by contacting the Office of Congressional Affairs (OCA). OCA will handle the request to brief Congress in accordance with the procedures set forth in this Agency regulation.

d. (U) CLASSIFIED INFORMATION

- (1) (U//~~AIUO~~) If the information related to the urgent concern is classified, or if the employee making the report is under cover, the information may only be reported to the House Permanent Select Committee on Intelligence (HPSCI) or the Senate

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Select Committee on Intelligence (SSCI), and the report shall be made in accordance with appropriate security practices **and the procedures set forth in this regulation.** Employees may be authorized to send classified written communications through the designated officials to the Intelligence Committees, or they may be authorized by the designated official to speak directly to Members or appropriately cleared staff of the Intelligence Committees without a CIA representative present. In certain instances, the employee may be advised that the communication must be limited to particular staffers cleared for the information or to the Chairman/Ranking Minority Member of the HPSCI or the Chairman/Vice Chairman of the SSCI. Employees are reminded that the reporting of classified information under these rules and procedures does not constitute public disclosure or declassification of that information.

- (2) (~~U//AFO~~) If the information related to the urgent concern is not classified or otherwise privileged, and the employee is overt, the information related to the urgent concern may be reported to the HPSCI or SSCI, to the employee's congressional representatives, to any other Member or Committee of Congress, or to all of the above, **according to the procedures set forth in this regulation.** The reporting of such information to Congress does not constitute public disclosure of that information.
- (3) (~~U//AFO~~) The Agency will not, except in rare circumstances, restrict the passage of information related to an urgent concern. Only the Director of the Central Intelligence Agency (D/CIA) may prevent an employee from disclosing an urgent concern to Congress and only if such a disclosure would jeopardize vital national security, law enforcement or foreign affairs interests. The designated officials shall bring to the D/CIA's attention urgent concerns that may in their judgment implicate vital national security, law enforcement or foreign affairs interests so that the D/CIA can make a determination on whether the urgent concern can be reported to the Congress. If the D/CIA prevents the disclosure of an urgent concern to Congress, he will promptly inform the Intelligence Committees of the exercise of that authority. The D/CIA thereafter will conduct a periodic review of the determination to prevent a disclosure of an urgent concern to confirm whether the factors justifying that determination continue to pertain. The D/CIA will allow the employee to report the urgent concern to Congress as soon as it is no longer necessary to prevent such disclosure to protect vital national security, law enforcement or foreign affairs interests. The D/CIA may consult with appropriate senior officials in the Executive Branch prior to making a determination to prevent the disclosure of an urgent concern on grounds that it would jeopardize vital law enforcement, national security or foreign affairs interests.
- e. (~~U//AFO~~) **EMPLOYEE CONFIDENTIALITY.** Employees who seek to report urgent concerns to Congress may request confidentiality. If the report is made through the Inspector General, the Inspector General has a duty under law not to disclose the identity of the employee who made the report without the consent of the

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employee unless the Inspector General determines that such disclosure is unavoidable during the course of an investigation or the disclosure is made to an official of the Department of Justice responsible for determining whether a prosecution should be undertaken. If the report is made through the OCA, the identity of the employee who has requested confidentiality will only be disclosed to those in OCA who have a need to know, to the D/CIA or DD/CIA, to the Inspector General, or to senior officials at another Government agency that have a need to know the identity of the employee in the performance of an official function.

f. (U) REFERRAL PROCEDURES

- (1) (~~U//AFO~~) When a report of an urgent concern is made through the OCA, the report will be referred to the Inspector General for review. A report of an urgent concern to Congress that is referred to the Inspector General in this manner shall not be delayed because the Inspector General has not completed that review.
- (2) (~~U//AFO~~) Under section 17(d)(5) of the Central Intelligence Agency Act of 1949 (50 USC 403q(d)(5)), the Inspector General has a legal obligation to evaluate urgent concerns received from employees who intend to report such matters to Congress and, within fourteen calendar days after **the Inspector General receives** an urgent concern, **the Inspector General** shall report to the D/CIA concerning whether the Inspector General has determined the urgent concern to be credible. This report will be transmitted by the D/CIA, with appropriate comments, to the HPSCI and SSCI within seven calendar days. If the Inspector General determines the matter is not credible, or does not transmit the report in an accurate form within the fourteen day period, the employee may report the matter to the Congress, by contacting either or both of the intelligence committees directly **as follows**:
 - (a) (~~U//AFO~~) **before contacting the committees, provide the Inspector General with a statement of the complaint or information to be conveyed, along with a notice of intent to contact the committees directly; and**
 - (b) (~~U//AFO~~) **seek and follow guidance from the Inspector General on how to contact the committees in accordance with appropriate security practices. The Inspector General will coordinate with the D/OCA, and the report will be drafted consistent with the D/CIA's obligation to prevent a disclosure that would jeopardize vital national security, law enforcement, or foreign affairs interests.**
- (3) (~~U//AFO~~) An employee who reports an urgent concern under this regulation shall be notified by the Inspector General of each action taken with respect to the report, and such notification will be provided not later than three days after the action is taken.

g. (~~U//AFO~~) EMPLOYEE RESPONSIBILITIES. Employees who follow these

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procedures for reporting urgent concerns to Congress will not be subject to serious disciplinary action, admonishment, reprimand, or **adverse contractual action** for making such reports. Management will not take or threaten to take an adverse action, or withhold or threaten to withhold a favorable action, as a result of an employee making or preparing to make a disclosure of an urgent concern to Congress in compliance with these procedures. The only exception to this prohibition is if a determination is made that the report of the urgent concern was made with the knowledge that it was false or with willful disregard for its truth or falsity. **Staff** employees who violate the reporting procedures contained in this regulation may be subject to the discipline as outlined in AR 13-3.

h. (U) METHOD OF COMMUNICATION

- (1) ~~(S)~~ Any questions regarding these procedures for reporting urgent concerns to Congress should be directed to a designated official.

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- (2) (U//~~AWO~~) Replies from the designated official will be marked

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