

UNCLASSIFIED

Extract from NSDD 286

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.

This Directive ... sets forth revised procedures for presidential approval and review, through the National Security Council (NSC) process, of all "special activities" as defined by section 3.4(h) of Executive Order No. 12333 (December 4, 1981).

These procedures are designed, inter alia, (1) to ensure that all special activities conducted by, or at the direction of, the United States are consistent with national defense and foreign policies and applicable law; (2) to provide standards ensuring the Secrecy of such activities even when the results become publicly known or the activities themselves are the subject of unauthorized disclosure; and (3) to implement section 501 of the National Security Act of 1947, as amended (50 U.S.C. 413), concerning notification to Congress of such activities.

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 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 special activities. 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 special activities.

II. APPROVAL AND REVIEW OF SPECIAL ACTIVITIES

A. Presidential Findings And Memoranda of Notification

1. Presidential Findings

In all cases, special activities of the Central Intelligence Agency (CIA) in foreign countries require, under the terms of section 662 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2422), Findings by the President that such activities are important to the national security of the United States. Presidential Findings shall be obtained with

respect to all CIA activities abroad, other than those activities that are intended solely for obtaining necessary intelligence within the meaning of section 662 of the Foreign Assistance Act of 1961, as amended.

No special activity may be conducted except under the authority of, and subsequent to, a Finding by the President that such activity is important to the national security of the United States. In all but the rarest of circumstances no special activity may be undertaken prior to the President's having signed a written Finding. In cases in which the President determines that time is of the essence and that the national security requires that a special activity be undertaken before a written Finding can be presented for signature, and that oral authorization therefore is required, a contemporaneous record of the President's authorization shall be made in writing, and a corresponding Finding shall be submitted for signature by the President as soon as possible, but in no event more than two working days thereafter. No Finding may retroactively authorize or sanction a special activity.

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 special activity, 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 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 special activity authorized has been completed or for any other reason.

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.

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 special activity 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 special activity;
- (c) consistent with the protection of intelligence sources and methods, whether it is anticipated that private individuals or organizations will be instrumental in the conduct of the special activity;
- (d) consistent with the protection of intelligence sources and methods, whether it is anticipated that a foreign government or element thereof will participate significantly in the special activity; and

(e) an assessment of the risks associated with the activity.

B. NSC Review of Proposals for Special Activities

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

1. The National Security Planning Group

Each proposed Finding and MON shall be reviewed by the National Security Planning Group (NSPG), a committee of the NSC... 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, NSPG meetings four (4) days in advance thereof.

NSPG 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 through the Chief of Staff to the President. Each proposed Finding and MON shall be coordinated, in advance of its submission to the President, by the NSC Legal Advisor with the Counsel to the President. Under normal circumstances, the NSPG 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 NSPG members' comments communicated other than in a formal NPSG meeting. The National Security Advisor shall ensure that an appropriate record is made of the President's consultations with NPSG members however conducted, and that the President's decision is committed to writing. The National Security Advisor shall notify all NSPG members in writing of the President's decision with regard to each proposed Finding and MON...

C. Periodic NSC Review of Special Activities

Not less often than once each calendar year, the NSPG shall review each special activity, 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 special activities 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 special activity. The National Security Advisor shall provide a written report of the results of this review to NSPC 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.

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... meetings relating to special activities. 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 NSPG and the head of such other Executive department, agency or entity the President may direct to undertake a special activity, 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.

E. Conduct of Special Activities

Absent a specific presidential decision, as provided in section 2.8(e) of Executive Order 12333, that another Executive department, agency or entity is more likely to achieve a particular objective, no department, agency or entity other than the CIA shall be responsible as lead agency for the conduct of a special activity. Private individuals and organizations used in the conduct of special activities shall be subject to observation and supervision, as appropriate in the interests of proper operational security and control, in accordance with procedures established for such purpose by the CIA, or other Executive department, agency, or entity.

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 special activities...

G. Congressional Notification

1. The Requirement to Notify Congress

Consistent with section 501 of the National Security Act of 1947, as amended (50 U.S.C. 413), 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 special activities in accordance with this Directive.

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.

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 special activity, 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 special activity authorized by a Finding and associated MON, if any. 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 special activity, 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, and the Chairman and Ranking minority Member of the Permanent Select Committee on Intelligence of the House of Representatives, prior to initiation of a special activity authorized by a Finding and associated MON, if any.

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 special activity, the DCI, or head of such other Executive department, agency, or entity authorized to conduct a special activity, shall delay notification consistent with section 501(b) 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 special activity as provided herein, the grounds for such delay shall be memorialized in writing and shall be re-evaluated by the NSPG not less frequently than every ten (10) days.

III. SPECIAL ACTIVITIES 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 special activity, the provisions of this Directive shall apply to such department, agency, or 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 special activity, and jointly with the DCI shall notify Congress of the special activity, in accordance with the DCI's role as the President's principal advisor on intelligence matters as set forth in NSDD 266.