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TASK FORCE

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NATIONAL SECURITY COUNCIL

John Podesta



Information Security Oversight Office
750 17th Street, NW., Suite 530
Washington, DC 20006



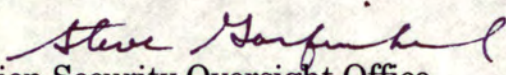
September 1, 1993

MEMORANDUM FOR: The Honorable John Podesta
Assistant to the President and Staff Secretary

The Honorable George Tenet
Special Assistant to the President and
Senior Adviser for Intelligence Programs

Michael Waguespack
Director for Counterintelligence Programs
National Security Council

Neal Wolin
Deputy Legal Adviser, National Security Council

FROM: Steven Garfinkel 
Director, Information Security Oversight Office

SUBJECT: Presidential Review Directive 29: August 31 Draft

We enclose four copies of the draft executive order and briefing book that I presented this morning to the Joint Security Review Commission. They conform with the agreed to changes from the August 17 draft.

Pending final word from you, we will be distributing copies to the Task Force agencies at meetings scheduled for tomorrow morning.

Enclosures



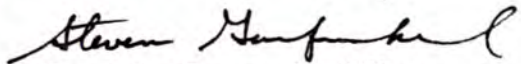


Information Security Oversight Office
750 17th Street, NW., Suite 530
Washington, DC 20006



August 31, 1993

MEMORANDUM FOR: Members, PRD 29 Task Force

FROM: Steven Garfinkel 
Director, Information Security Oversight Office

SUBJECT: Presidential Review Directive 29:
First Draft of Proposed Order

Based on the inputs to the Presidential Review Directive 29 Task Force, and the recommendations of the Task Force's committees, the Information Security Oversight Office has prepared a first draft of an Executive order to replace Executive Order 12356, "National Security Information." Please find enclosed for the review and comment of your agency the following documents pertaining to the draft dated August 31, 1993:

- Tab 1: Highlights of the major changes in the August 31 draft from E.O. 12356.
- Tab 2: A listing of all the major changes in the August 31 draft from E.O. 12356, presented in the order that they appear in the draft.
- Tab 3: A side-by-side comparison between E.O. 12356 and the August 31 draft.
- Tab 4: A table showing how declassification works under the August 31 draft.
- Tab 5: A table describing entities that would be established under the August 31 draft.
- Tab 6: A clean copy of the August 31 draft.
- Tab 7: A copy of the August 31 draft in legislative drafting style, showing the changes from the current Order.



We respectfully request that you not transmit copies of these materials outside those offices of your agency that need to review and comment on it. In order for the PRD 29 Task Force to meet its deadline, we are requesting receipt of comments no later than October 15, 1993. We also request that specific suggestions conform to the format attached to this memorandum.

Attachment and enclosures

**AGENCY FORMAT FOR COMMENTS
ON DRAFT EXECUTIVE ORDER**

AGENCY: State name of agency providing comment.

SECTION OR SUBSECTION: List the section or subsection of the draft order to be addressed.

DRAFT LANGUAGE: Include language of the section or subsection of the clean version of the draft executive order to be addressed.

SUGGESTED REVISION: Include suggested revised language in legislative format for the section or subsection of the draft executive order.

RATIONALE: Discuss reasons for suggested revision.

**PLEASE SUBMIT COMMENTS FOR EACH SECTION OR
SUBSECTION ON A SEPARATE PAGE**

SEE ATTACHED SAMPLE

S A M P L E

AGENCY: Information Security Oversight Office (ISOO)

SECTION: Section 1.2(c) Classification Standards

DRAFT LANGUAGE: (c) If there is reasonable doubt about the need to classify information, it shall not be classified.

SUGGESTED REVISION: (c) If there is reasonable doubt about the need to classify information, ~~it shall not be classified.~~ it shall be safeguarded as if it were classified pending a determination by an original classification authority, who shall make this determination within 30 days.

RATIONALE: By retaining the language contained in Executive Order 12356, agencies can safeguard information appropriately until a classification determination is made.

S A M P L E

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1

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HIGHLIGHTS OF MAJOR CHANGES

- Sets a positive tone by stressing the Administration's commitment to the democratic principle of open government.
- Emphasizes the opportunity for a declassification authority to weigh the public interest by declassifying information that otherwise continues to meet the standards for classification.
- Requires heads of agencies to demonstrate personal and senior management commitment for the effective implementation of this program.
- Abolishes the indefinite duration of classification, or "Originating Agency's Determination Required" (OADR).
- Establishes a maximum life span for all national security protected information.
- Curbs excessive classification by reducing the number of classification categories from 10 to 5, and narrowing their range of application.
- Prohibits classification when there is a reasonable doubt about the need to classify.
- Eliminates the presumption that any category of information is automatically classified.
- Requires the prompt removal of classification authority from an individual who demonstrates reckless disregard or a pattern of error in applying the classification standards of the Order.
- Prohibits the reclassification of information after it has been declassified and released to the public under proper authority.
- Reduces the levels of classification to two, **Top Secret** and **Secret**.

- Curbs excessive classification by requiring original classifiers to be able to identify or describe the damage to the national security that could result from the unauthorized disclosure of the information.
- Limits special access programs to meet narrow and specific criteria.
- Establishes an Interagency Security Classification Appeals Panel of senior government officials to serve as the last appellate authority for classification challenges and mandatory review appeals.
- Establishes an Information Security Policy Advisory Council consisting of Government and non-Government representatives to advise on matters concerning policies established under the Order, including recommended changes to those policies.
- Requires agencies to account for all costs associated with the security classification program and to report those costs to the Information Security Oversight Office for publication.
- Eliminates portion marking waivers.
- Requires that derivative classification authorities be designated in writing and be trained and certified.
- Eliminates waivers of the requirement to produce classification guides.
- Requires all originating agencies to establish a systematic declassification review program for all records that are 25 years old.

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2

Divider Title: _____

**MAJOR CHANGES
CONTAINED IN AUGUST 31, 1993
DRAFT EXECUTIVE ORDER ON
NATIONAL SECURITY PROTECTED INFORMATION
(IN ORDER OF APPEARANCE IN THE DRAFT)**

- Sets a positive tone by stressing the Administration's commitment to the democratic principle of open government. [Preamble]
- Acknowledges the need to balance the protection of critically sensitive information in the interest of the national security with that of promoting the flow of information essential for the nation's progress. [Preamble]
- Underscores the fact that dramatic geopolitical changes have altered the nature of security threats and that corresponding changes in classification policies are required. [Preamble]
- Promotes understanding of the Order by providing clear definitions of key terms at the beginning of each major section. [1.1; 2.1; 3.1; 4.1; and 5.1]
- Introduces a new term, "national security protected information," narrower in scope than the current "national security information." [1.1(c)]
- Promotes more reasoned classification decisions by grouping under one section the standards for original classification that are scattered throughout the current Order. [1.2(a)]
- Delineates clearly the conditions that original classifiers must meet in order to classify information in the first instance. [1.2(a)]
- Curbs excessive classification by requiring original classifiers to be able to identify or describe the damage to the national security that could result from the unauthorized disclosure of the information. [1.2(a)(4)]
- Prohibits classification when there is a reasonable doubt about the need to classify. [1.2(b)]
- Reduces the levels of classification to two, **Top Secret** and **Secret**. [1.3(a)]
- Requires original classifiers to classify information at the lower level when in doubt about the appropriate level of classification. [1.3(c)]

- Requires original classifiers to classify information at the lower level when in doubt about the appropriate level of classification. [1.3(c)]
- Directs that information classified **Confidential** under predecessor orders be declassified no later than six years from the effective date of this Order. Continued classification requires a new original classification decision to upgrade such information to **Secret**. [1.3(d)]
- Limits the authority to designate original classification authority. [1.4(c)]
- Specifies that an original classification authority may not exercise such authority until the individual is trained and certified as provided in the Order and its implementing directives. [1.4(d)]
- Curbs excessive classification by reducing the number of classification categories from 10 to 5, and narrowing their range of application. [1.5]
- Eliminates the presumption that any category of information is automatically classified.
- Abolishes the indefinite duration of classification, or "Originating Agency's Determination Required" (OADR).
- Eliminates portion marking waivers.
- Establishes a timetable for automatic declassification when original classifiers cannot determine a date or event for declassification. [1.6 (b), (c) and (d)]
- Encourages automatic declassification by restricting extensions of the duration of classification. [1.6(e)]
- Requires that the name or personal identifier of the original classification authority be included as one of the essential classification markings. [1.7(a)(2)]
- Requires that a concise reason for classification be included as one of the essential classification markings. [1.7(a)(5)]
- Instructs original classifiers to use, whenever practicable, a classified addendum when national security protected information constitutes a small portion of an otherwise unclassified document. [1.7(g)]
- Prohibits the reclassification of information after it has been declassified and released to the public under proper authority. [1.8(c)]

- Restricts the use of classification by compilation and delineates clearly the conditions that must be met for such classifications. [1.8(e)]
- Requires individuals to challenge classification decisions that they believe to be improper. [1.9(a)]
- Directs agencies to establish procedures for processing challenges to classification and ensuring that challengers are not subject to retribution. [1.9(b)]
- Requires that derivative classification authorities be designated in writing and be trained and certified. [2.2(a)]
- Requires that the name or personal identifier of the derivative classifier be included as one of the essential classification markings. [2.2(c)(2)(A)]
- Requires that classification guides conform to standards contained in directives issued by the Information Security Oversight Office. [2.3(a)]
- Requires periodic review and update of classification guides. [2.3(c)]
- Eliminates waivers of the requirement to produce classification guides. [2.3]
- Emphasizes the opportunity for a declassification authority to weigh the public interest by declassifying information that otherwise continues to meet the standards for classification. [3.2(b)]
- Requires agencies to declassify records of permanent historical value before they may be accessioned into the National Archives. [3.3(d)]
- Establishes a maximum life span for all national security protected information. [3.4(a)]
- Permits, after justification and approval, the exemption of four very narrow categories of information from the 40-year automatic declassification requirement. [3.4(b)]
- Requires that any exempted information remain subject to mandatory and systematic declassification review provisions. [3.4(d)]
- Requires the Secretary of State to renegotiate any treaties or international agreements that extend classification beyond 40 years. [3.4(e)]

- Requires all originating agencies to establish a systematic declassification review program for all records that are 25 years old. [3.5(a)]
- Requires agencies to prioritize the systematic declassification review program based upon researcher interest and likelihood of declassification. [3.5(a)]
- Requires the Information Security Oversight Office to assure that the declassification guides developed by the agencies and furnished to the National Archives are adequate and current. [3.5(b)]
- Excuses agencies from the requirement to conduct a mandatory declassification review when the same information has been reviewed within the prior two years. [3.6(a)(3)]
- Requires the Archivist, in conjunction with the agencies and the Information Security Oversight Office, to establish a Government-wide declassification database. [3.8]
- Requires the Archivist to explore further uses of technology to assist the declassification process. [3.8]
- Prevents departing Government officials from removing national security protected information from the agency's control. [4.2(b)]
- Emphasizes the requirement to safeguard national security protected information in automated information systems. [4.2(e)]
- Permits an originating agency to waive the requirement that another agency receive permission before it can disclose the first agency's information to a third agency. [4.2(g)]
- Requires the annual update of any automatic, routine or recurring distribution lists of national security protected information. [4.3(b)]
- Limits, generally, the establishment of special access programs to the Secretaries of State, Defense and Energy, and the Director of Central Intelligence or their principal deputies. [4.4(a)]
- Limits special access programs to meet narrow and specific criteria. [4.4(a) and (b)]
- Requires internal oversight and oversight by the Information Security Oversight Office for all special access programs. [4.4(b)(3)]

- Requires that any special access program be revalidated annually. [4.4(b)(4)]
- Requires unanimous approval of an executive committee of agency heads in order to continue any special access program beyond five years. [4.4(b)(5)]
- Requires the agency head or principal deputy to review for revalidation any special access program that predates this Order. [4.4(c)]
- Directs an agency to submit a written justification to the National Security Council when seeking to deny access to the Information Security Oversight Office. [5.3(b)(4)]
- Requires the Director of the Information Security Oversight Office, through directives, to establish uniform standards for safeguarding; security education and training programs; agency self-inspection programs; and classification and declassification guides. [5.3(c)]
- Establishes an Interagency Security Classification Appeals Panel of senior Government officials to serve as the last appellate authority for classification challenges and mandatory review appeals. [5.4]
- Establishes an Information Security Policy Advisory Council consisting of Government and non-Government representatives to advise on matters concerning policies established under the Order, including recommended changes to those policies. [5.5]
- Requires heads of agencies to demonstrate personal and senior management commitment for the effective implementation of this program. [5.6(a)(1)]
- Increases individual accountability by tying performance contracts to the effective implementation of this program. [5.6(a)(3)(G)]
- Requires agencies to account for all costs associated with the security classification program and to submit those costs to the Information Security Oversight Office for publication. [5.6(a)(3)(H)]
- Directs Inspectors General to conduct periodic audits of programs established under this Order. [5.6(b)]
- Requires sanctions when an individual creates or continues a special access program contrary to the requirements of the Order. [5.7 (b)(3)]

- Requires the prompt removal of classification authority from an individual who demonstrates reckless disregard or a pattern of error in applying the classification standards of the Order. [5.7(d)]

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**COMPARISON OF MAJOR FEATURES OF E.O. 12356
AND DRAFT ORDER DATED AUGUST 31, 1993**

PART 1 OF DRAFT ORDER

FEATURE	E.O. 12356	DRAFT ORDER DATED AUGUST 31	RATIONALE
<i>Tone</i>	Emphasizes in the Preamble and throughout the Order the need to protect national security information.	Stresses in the Preamble and throughout the Order the Administration's commitment to openness principles and balancing the need to protect critically sensitive information with the public's need to know.	Tone is in keeping with the Administration's commitment to openness and with changes in world conditions.
<i>Definition of Terms</i>	Provides definitions for only some of the terms used throughout the Order. Defines them at the end of the Order.	Refines definitions provided in E.O. 12356. It also provides definitions for terms used throughout the Order, but were not defined in E.O. 12356. Places these definitions at the beginning of each relevant section, instead of listing them at the end of the Order.	Enhances understanding of the provisions of the Order. Increases uniformity in the application of the requirements of the Order by providing clear and unambiguous definitions of terms.
<i>Key Term</i>	Uses the term "national security information."	Introduces a new term: "National security protected information."	Makes clear that not all information related to national defense or foreign relations warrants classification.
<i>Classification Standards</i>	No comparable provision. Those standards that appear in the Order are scattered throughout.	Introduces one section listing all the classification standards clearly and concisely.	Promotes more thoughtful original classification decisions by delineating clearly the conditions that must be met to classify originally. Makes it difficult for original classifiers to ignore the standards when they are clearly spelled out.

**COMPARISON OF MAJOR FEATURES OF E.O. 12356
AND DRAFT ORDER DATED AUGUST 31, 1993**

PART 1 OF DRAFT ORDER

FEATURE	E.O. 12356	DRAFT ORDER DATED AUGUST 31	RATIONALE
<i>Accountability for Original Classification</i>	No comparable provision.	Requires classifiers to be able to identify or describe the damage to the national security.	Makes rote classification more difficult by requiring the classifier to be able to identify or describe the damage that would result from unauthorized disclosure. Limits excessive classification. Holds classifiers accountable for their classification decisions.
<i>Reasonable Doubt</i>	Permits classification when there is a doubt about the need to classify.	Prohibits classification when there is a doubt about the need to classify.	Reinforces the openness theme set in the Preamble. Sends a clear message to classifiers on the need to use classification with restraint. Leads to fewer questionable classifications.
<i>Classification Levels</i>	Provides for three levels of classification: Top Secret - exceptionally grave damage Secret - serious damage Confidential - damage	Reduces the levels of classification to two: Top Secret - grave damage that the original classifier is able to identify or describe; Secret - damage that the original classifier is able to identify or describe.	Curbs excessive classification by requiring classifiers to be able to identify or describe the damage to the national security. Recognizes that the current Secret and Confidential levels are largely interchangeable.

**COMPARISON OF MAJOR FEATURES OF E.O. 12356
AND DRAFT ORDER DATED AUGUST 31, 1993
PART 1 OF DRAFT ORDER**

FEATURE	E.O. 12356	DRAFT ORDER DATED AUGUST 31	RATIONALE
<i>Classification Levels</i>	Permits classifiers to classify at the higher level when in doubt about the appropriate level.	Requires original classifiers to classify at the lower level when in doubt about the appropriate level.	Curbs the use of the higher classification level. Reduces costs in safeguarding classified information since information classified at a higher level is more expensive to protect.
<i>Delegation of Original Classification Authority</i>	Restricts delegations of Top Secret original classification authority to the President, agency heads, officials designated by the President in the <i>Federal Register</i> , and agency senior officials for oversight. Restricts delegations of Secret and Confidential original authority to the President, agency heads, officials designated by the President in the <i>Federal Register</i> , officials with original Top Secret classification authority, and the agency senior official for oversight.	Restricts delegation of original (i) Top Secret classification authority to the President or agency heads and officials designated by the President in the <i>Federal Register</i> ; and (ii) Secret classification authority to the individuals listed above and, the agency senior official for oversight provided that individual has been delegated Top Secret authority.	Reduces the number of officials who may designate original classification authorities. Increases controls over the delegation of original classification authority.
<i>Classification Categories</i>	Establishes ten categories, each very broad in scope.	Reduces the categories to five, each with a more limited range of application.	Curbs excessive classification by reducing the number of classification categories and narrowing their range.

**COMPARISON OF MAJOR FEATURES OF E.O. 12356
AND DRAFT ORDER DATED AUGUST 31, 1993
PART 1 OF DRAFT ORDER**

FEATURE	E.O. 12356	DRAFT ORDER DATED AUGUST 31	RATIONALE
<i>Training of Original Classifiers</i>	No comparable provision.	Specifies that an original classifier may not exercise such authority until the individual is trained and certified in the Order and its implementing directives.	Promotes greater expertise in classification standards and requirements and accountability for classification decisions. Enhances the quality of classification decisions.
<i>Presumption of Classification</i>	Establishes a presumption of damage for the unauthorized disclosure of certain categories of information.	Eliminates the presumption that any category of information is automatically classified.	Eliminates the automatic classification of information that may not meet classification standards. Encourages U.S. officials handling foreign government information to obtain explicit instructions concerning the sensitivity of the information.
<i>Portion Marking</i>	Permits agency heads to waive portion marking requirements.	Eliminates waivers of portion marking.	Reduces unnecessary classification that results from the derivative classification of documents that are not portion marked. Facilitates public access to information by making declassification reviews easier since information will be completely portion marked.
<i>Markings</i>	Requires the identity of the original classification authority by name or position if other than the person who signed the pertinent document.	Requires that the name or personal identifier and position of the original classifier be included as one of the essential classification markings.	Fixes responsibility and accountability for original classification actions more precisely. Provides a direct audit trail for challenges or consultation.

**COMPARISON OF MAJOR FEATURES OF E.O. 12356
AND DRAFT ORDER DATED AUGUST 31, 1993
PART 1 OF DRAFT ORDER**

FEATURE	E.O. 12356	DRAFT ORDER DATED AUGUST 31	RATIONALE
<i>Scope of Foreign Government Information</i>	Defines the scope of "foreign government information" as information received in confidence both expressly and impliedly.	Limits the scope of "foreign government information" to information expressly received in confidence.	Eliminates the presumption that all information obtained on foreign soil or indirectly tied to a foreign official is "foreign government information" that is to be maintained in confidence, i.e., classified.
<i>Duration of Classification</i>	Encourages classifiers to establish a date or event for declassification at the time of origination. Otherwise, assigns an indefinite duration of classification.	Abolishes the indefinite duration of classification. Unless a specific date or event is provided, establishes a 10 year limit for Secret information and a 15 year limit for Top Secret information. Allows no exceptions at the time of classification, but permits extensions by original classifiers applying classification standards when the information approaches the date of automatic declassification.	Eliminates overclassification associated with the indiscriminate use of the indefinite duration of classification. Requires classifiers to give serious thought about relating the sensitivity of information to a certain date or event. Shortens the life span of classified information, thus reducing costs associated with the administration of the program.

**COMPARISON OF MAJOR FEATURES OF E.O. 12356
AND DRAFT ORDER DATED AUGUST 31, 1993**

PART 1 OF DRAFT ORDER

FEATURE	E.O. 12356	DRAFT ORDER DATED AUGUST 31	RATIONALE
<i>Reason for Classification</i>	No comparable provision.	Requires that a concise reason for classification be included as one of the essential markings.	Eliminates the question of "why is this classified?" Promotes reasoned classification decisions by requiring classifiers to think about what they are doing.
<i>Use of Classified Addenda</i>	No comparable provision.	Instructs original classifiers to use, whenever practicable, a classified addendum when national security protected information constitutes a small portion of an otherwise unclassified document.	Makes more Government information readily available to the public. Reduces the volume of classified documents. Simplifies and expedites classified document review in response to FOIA requests.
<i>Reclassification Prohibition</i>	Allows the reclassification of information previously declassified and disclosed under certain limited conditions.	Prohibits the reclassification of information after it has been declassified and released to the public under proper authority.	Provides an additional incentive for classifiers and declassifiers to make judicious decisions. Removes a provision of E.O. 12356 that many feel is subject to abuse.
<i>Classification by Compilation</i>	By implication, allows for classification by compilation with few if any restrictions.	Restricts the use of classification by compilation and delineates clearly the conditions that must be met for such classification.	Standardizes the treatment of compilations of unclassified information throughout the Government. Prevents excessive classification that results when a compilation of unclassified information is unnecessarily classified.

**COMPARISON OF MAJOR FEATURES OF E.O. 12356
AND DRAFT ORDER DATED AUGUST 31, 1993**

PART 1 OF DRAFT ORDER

FEATURE	E.O. 12356	DRAFT ORDER DATED AUGUST 31	RATIONALE
<i>Challenges to Classification</i>	Encourages challenges to perceived improper classification, but does not provide any mechanism for processing such challenges or protection against retribution.	Requires individuals to challenge classification decisions that they believe to be improper. Directs agencies to (i) establish procedures for processing challenges to classification; (ii) ensure that challengers are not subject to retribution; (iii) provide for review by an impartial official or panel; and (iv) advise the challenger of his or her right to appeal the agency decision.	Fosters reasoned classification challenges by providing a mechanism for making such challenges. Minimizes the apprehension of challenging classification by assuring that challengers shall not be subject to adverse action. Compels agencies to give serious consideration to such challenges by (i) providing for an impartial review, and (ii) allowing the challenger to appeal the agency decision.

**COMPARISON OF MAJOR FEATURES OF E.O. 12356
AND DRAFT ORDER DATED AUGUST 31, 1993
PART 2 OF DRAFT ORDER**

FEATURE	E.O. 12356	DRAFT ORDER DATED AUGUST 31	RATIONALE
<i>Derivative Classifiers</i>	No comparable provision.	Requires that derivative classification authorities be designated in writing and be trained and certified. Requires that the name or personal identifier of the derivative classifier be included as one of the essential classification markings.	Reduces excessive classification through the designation of more qualified authorized classifiers. Broadens the perspective of derivative classifiers about the classification system. Holds derivative classifiers accountable for their classification decisions.
<i>Classification Guides</i>	Requires agencies with original classification authority to prepare classification guides, but does not establish a standard for the preparation of a guide. Allows for agency heads to waive this requirement.	Requires that classification guides conform to standards contained in directives issued by the Information Security Oversight Office. Eliminates waivers of the requirement to produce classification guides.	Promotes consistent and accurate classification decisions. Enforces the requirement to produce classification guides. Promotes a better understanding of the basis for classification determinations. Cuts back on the number of original decisions.

**COMPARISON OF MAJOR FEATURES OF E.O. 12356
AND DRAFT ORDER DATED AUGUST 31, 1993
PART 3 OF DRAFT ORDER**

FEATURE	E.O. 12356	DRAFT ORDER DATED AUGUST 31	RATIONALE
<i>Declassification Balancing Authority</i>	No comparable provision.	Emphasizes the opportunity for a declassification authority to weigh the public interest by declassifying information that otherwise continues to meet the standards for classification.	Allows agency heads or senior agency officials to balance the continued classification of information with the public interest in declassifying the information, permitting declassification even though the information continues to meet the standards for classification.
<i>Declassification of Transferred Information</i>	No comparable provision.	Requires agencies to declassify records of permanent historical value before they may be accessioned into the National Archives.	Prevents the continuing growth of a huge quantity of unprocessed classified records at the National Archives by requiring agencies to declassify records of permanent historical value before they are accessioned into the National Archives.
<i>Automatic Declassification</i>	No comparable provision.	Requires the automatic declassification of information that is 40 years old. Allows agency heads to exempt four very narrow categories of information, for example, the identity of a human intelligence source. An agency may set a later declassification date for such information.	Establishes a maximum life span for all national security protected information.

**COMPARISON OF MAJOR FEATURES OF E.O. 12356
AND DRAFT ORDER DATED AUGUST 31, 1993**

PART 3 OF DRAFT ORDER

FEATURE	E.O. 12356	DRAFT ORDER DATED AUGUST 31	RATIONALE
<i>Automatic Declassification</i>	No comparable provision.	Requires that all national security protected information created more than 40 years before the issuance of this Order, be declassified within two years after its issuance.	Reduces dramatically the amount of older classified material in current holdings. Demonstrates to the public the Administration's commitment to open Government.
<i>Automatic Declassification</i>	No comparable provision.	Requires that any exempted information remain subject to mandatory and systematic declassification review provisions.	Prevents the indefinite classification of information exempted from the 40-year automatic declassification requirement.
<i>Renegotiation of Treaties or International Agreements</i>	No comparable provision.	Requires the Secretary of State to renegotiate any treaties or international agreements that extend classification beyond 40 years.	Seeks to remedy the unending classification of certain foreign government information that no longer requires protection in the interest of national security.
<i>Systematic Review</i>	Requires the National Archives to review classified permanently valuable (archival) records and presidential papers as they become 30 years old, except for certain intelligence or cryptologic file series, which are reviewed as they become 50 years old.	Requires all originating agencies to establish a systematic declassification review program for records that are 25 years old and to prioritize the program based upon researcher interest and the likelihood of declassification.	Reduces the time frame for the commencement of a systematic review program and shifts the burden of the program from the National Archives, which does not have sufficient resources, to the originating agencies.

**COMPARISON OF MAJOR FEATURES OF E.O. 12356
AND DRAFT ORDER DATED AUGUST 31, 1993
PART 3 OF DRAFT ORDER**

FEATURE	E.O. 12356	DRAFT ORDER DATED AUGUST 31	RATIONALE
Declassification Guides	No comparable provision.	Requires the Information Security Oversight Office to assure that the declassification guides developed by the agencies and furnished to the National Archives are adequate and current.	Seeks to improve the systematic review process by assuring that the guidance is adequate to facilitate declassification.
Mandatory Declassification Review	No comparable provision.	Excuses agencies from the requirement to conduct a mandatory declassification review when the same information has been reviewed within the prior two years.	Remedies overlapping declassification reviews of the same or similar information, allowing agencies to devote resources to reviews more likely to result in declassification.

**COMPARISON OF MAJOR FEATURES OF E.O. 12356
AND DRAFT ORDER DATED AUGUST 31, 1993
PART 3 OF DRAFT ORDER**

FEATURE	E.O. 12356	DRAFT ORDER DATED AUGUST 31	RATIONALE
<i>Mandatory Declassification Review</i>	Provides that any decision by the Archivist regarding presidential records may be appealed to the Director of the Information Security Oversight Office.	Establishes an Interagency Security Classification Appeals Panel responsible for deciding appeals of mandatory declassification review denials.	Broadens the deliberative process for appeals of mandatory declassification review denials.
<i>Declassification Database</i>	No comparable provision.	Requires the Archivist, in conjunction with affected agencies and the Information Security Oversight Office, to establish a Government-wide declassification database. Also requires the Archivist to explore further uses of technology to assist the declassification process.	Seeks a Government-wide declassification database that will greatly enhance the process through the avoidance of duplication and non-uniform results.

**COMPARISON OF MAJOR FEATURES OF E.O. 12356
AND DRAFT ORDER DATED AUGUST 31, 1993
PART 4 OF DRAFT ORDER**

FEATURE	E.O. 12356	DRAFT ORDER DATED AUGUST 31	RATIONALE
<i>Restriction on Removal of Classified Information</i>	No comparable provision.	Prevents departing Government officials from removing classified information from the agency's control.	Prevents the situation of Government officials leaving Government service and taking classified materials with them. States explicitly what has only been implied before.
<i>AIS Safeguards</i>	No comparable provision.	Emphasizes the requirement to safeguard classified information in automated information systems.	Clarifies position that safeguards for classified information must include the protection of automated information systems that process such information.
<i>"Third Agency Rule"</i>	Requires that classified information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency.	Permits an originating agency to waive the requirement that another agency receive permission before it can disclose the first agency's information to a third agency.	Improves interagency dissemination of classified information by allowing the "third agency rule" to be waived by the originating agency in appropriate cases.
<i>Distribution Controls</i>	No comparable provision.	Requires the annual update of any automatic, routine or recurring distribution list of classified information.	Establishes controls over the automatic distribution of classified information, which: (i) saves costs in reproduction and distribution; (ii) enforces need-to-know; (iii) reduces overdistribution of classified information; and (iv) reduces the number of unauthorized disclosures.

**COMPARISON OF MAJOR FEATURES OF E.O. 12356
AND DRAFT ORDER DATED AUGUST 31, 1993**

PART 4 OF DRAFT ORDER

FEATURE	E.O. 12356	DRAFT ORDER DATED AUGUST 31	RATIONALE
<i>Establishment of Special Access Programs</i>	No comparable provision.	Defines and limits what kind of circumstances must exist before an agency head may establish a special access program.	Seeks to reduce significantly the number of special access programs by establishing standards and definitions that limit their authorization.
<i>Oversight of Special Access Programs</i>	Requires heads of agencies to establish and maintain a system of accounting for special access programs and provide the Director of the ISOO nondelegable access to all such accounts.	Requires internal oversight and oversight by the Information Security Oversight Office for all special access programs.	Increases significantly the internal and external oversight of special access programs.
<i>Oversight of Special Access Programs</i>	No comparable provision.	Requires that any special access program be revalidated annually.	Provides another control on the number and increases oversight of special access programs by requiring annual revalidation at the agency head or deputy level.
<i>Duration of Special Access Programs</i>	No comparable provision.	Requires unanimous approval of an executive committee of agency heads in order to continue any special access program beyond five years.	Limits special access programs that go beyond five years to those that will be endorsed by a unanimous committee of agency heads.

**COMPARISON OF MAJOR FEATURES OF E.O. 12356
AND DRAFT ORDER DATED AUGUST 31, 1993
PART 4 OF DRAFT ORDER**

FEATURE	E.O. 12356	DRAFT ORDER DATED AUGUST 31	RATIONALE
<i>Revalidation of Existing Special Access Programs</i>	No comparable provision.	Requires the agency head or principal deputy to review for revalidation any special access program that predates this Order.	Provides an immediate mechanism to assess special access programs created under prior orders.

**COMPARISON OF MAJOR FEATURES OF E.O. 12356
AND DRAFT ORDER DATED AUGUST 31, 1993**

PART 5 OF DRAFT ORDER

FEATURE	E.O. 12356	DRAFT ORDER DATED AUGUST 31	RATIONALE
<i>Authority of ISOO</i>	Requires ISOO Director to appeal agency denials of access to the National Security Council.	Requires agency to justify in writing to the National Security Council when it seeks to deny access to ISOO.	Places the onus on agency heads rather than ISOO in situations where agencies seek to deny access to ISOO. Increases ISOO's oversight capability.
<i>ISOO Directives</i>	No comparable provision.	Requires ISOO Director to issue directives that establish uniform standards for safeguarding; security education and training; agency self-inspections; and classification and declassification guides.	Establishes a system designed to result in cost savings through uniformity and the application of reasonable risk management principles.
<i>Policy Advisory Council</i>	No comparable provision.	Establishes an Information Security Policy Advisory Council consisting of Government and Non-Government representatives.	Provides a forum for interested organizations outside the Government to express their concerns about the system and to interact with those responsible for the system within Government.
<i>Accountability of Top Management</i>	No comparable provision.	Requires heads of agencies to demonstrate personal and senior management commitment for the effective implementation of the program.	Remedies a major shortfall in the current system by emphasizing the role and responsibility of senior management for the success of the program, rather than simply delegating the onus to non-policy security officials.

**COMPARISON OF MAJOR FEATURES OF E.O. 12356
AND DRAFT ORDER DATED AUGUST 31, 1993
PART 5 OF DRAFT ORDER**

FEATURE	E.O. 12356	DRAFT ORDER DATED AUGUST 31	RATIONALE
<i>Individual Accountability</i>	No comparable provision.	Requires that the performance contracts of critical personnel, including classifiers and security professionals, include the management of classified information as an element of performance to be evaluated annually.	Increases individual accountability for the effectiveness of the system by tying its management to the performance contracts or plans of its most important implementers, including original classifiers.
<i>Accounting for Costs</i>	No comparable provision.	Requires agencies to account for all costs associated with the security classification program and to submit those costs annually to ISOO for publication.	Enables the executive branch to account for the costs of the classification system, rather than simply speculate, as a means of cost control.
<i>Sanctions</i>	No comparable provision.	Requires sanctions when an individual creates or continues a special access program contrary to the requirements of the Order.	Establishes a further control mechanism to prevent the creation or continuance of unnecessary special access programs.
<i>Sanctions</i>	No comparable provision.	Requires the prompt removal of classification authority from an individual who demonstrates reckless disregard or a pattern of error in applying the classification standards of the Order.	Seeks to remedy the current situation in which, despite the general reference to sanctions for improper classification, such sanctions never seem to be imposed. Requires the prompt removal of classification authority while other sanctions are considered.

**COMPARISON OF MAJOR FEATURES OF E.O. 12356
AND DRAFT ORDER DATED AUGUST 31, 1993
PART 5 OF DRAFT ORDER**

FEATURE	E.O. 12356	DRAFT ORDER DATED AUGUST 31	RATIONALE
<i>Establishment of an Inter-agency Security Classification Appeals Panel</i>	No comparable provision	Establishes an Interagency Security Classification Appeals Panel responsible for deciding appeals of final agency decisions of (i) mandatory declassification review requests, and (ii) challenges to classification.	Allows for independent review of final agency decisions in the areas of classification challenges and declassification reviews.
<i>Role of Agency Inspector General</i>	No comparable provision.	Calls for the Inspector General to conduct periodic audits of the implementation and administration of the program.	Reinforces within agencies the need for internal oversight. Provides for more comprehensive reviews of implementation of the program.

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HOW DECLASSIFICATION WORKS: DRAFT EXECUTIVE ORDER OF AUGUST 31, 1993

Information classified SECRET under this Order		
A. If less than 25 years old	B. If over 25 years old	C. If over 40 years old
1. If marked with a date or event for declassification, automatically declassified at that date or event.	1. If of permanent historical value, may be declassified in the course of a systematic declassification review conducted by the agency of origin, or by the National Archives with respect to information in the Archivist's custody and control.	1. Automatically declassified.
2. Otherwise, automatically declassified ten years from the date of classification.		2. May remain classified only if the agency head exempts specific information that falls within one of four narrow categories, and provides written justification to the ISOO Director at least 180 days before the information is to be automatically declassified. Director may reject the extension. Agency head may appeal to NSC.
3. May remain classified for a longer period, not to exceed ten additional years if, no earlier than 180 days before the date of automatic declassification, an original classifier extends the classification in accordance with the original classification standards of the Order.	NOTE: In addition to the foregoing processes, information may be declassified at any time during its life span as the result of a declassification review, conducted at the agency's initiative or in response to a Freedom of Information Act or mandatory review request or appeal.	

HOW DECLASSIFICATION WORKS: DRAFT EXECUTIVE ORDER OF AUGUST 31, 1993

Information classified TOP SECRET under this Order		
A. If less than 25 years old	B. If over 25 years old	C. If over 40 years old
1. If marked with a date or event for declassification, automatically declassified at that date or event.	1. If of permanent historical value, may be declassified in the course of a systematic declassification review conducted by the agency of origin, or by the National Archives with respect to information in the Archivist's custody and control.	1. Automatically declassified.
2. Otherwise, automatically declassified 15 years from the date of classification.		2. May remain classified only if the agency head exempts specific information that falls within one of four narrow categories, and provides written justification to the ISOO Director at least 180 days before the information is to be automatically declassified. Director may reject the extension. Agency head may appeal to NSC.
3. May remain classified for a longer period, not to exceed ten additional years if, no earlier than 180 days before the date of automatic declassification, an original classifier extends the classification in accordance with the original classification standards of the Order.	NOTE: In addition to the foregoing processes, information may be declassified at any time during its life span as the result of a declassification review, conducted at the agency's initiative or in response to a Freedom of Information Act or mandatory review request or appeal.	

HOW DECLASSIFICATION WORKS: DRAFT EXECUTIVE ORDER OF AUGUST 31, 1993

Information classified CONFIDENTIAL under a prior Order		
A. If less than 25 years old	B. If over 25 years old	C. If over 40 years old
1. If marked with a date or event for declassification, automatically declassified at that date or event.	1. If of permanent historical value, may be declassified in the course of a systematic declassification review conducted by the agency of origin, or by the National Archives with respect to information in the Archivist's custody and control.	1. Automatically declassified no later than two years from the issuance of the Order.
2. If marked "OADR," automatically declassified six years from the issuance of the Order.		2. May remain classified only if the agency head exempts specific information that falls within one of four narrow categories, and provides written justification to the ISOO Director at least 180 days before the information is to be automatically declassified. Director may reject the extension. Agency head may appeal to NSC.
3. May remain classified for a longer period if, no earlier than 180 days before the date of automatic declassification, an original classifier classifies the information Secret in accordance with original classification standards of the Order.	NOTE: In addition to the foregoing processes, information may be declassified at any time during its life span as the result of a declassification review, conducted at the agency's initiative or in response to a Freedom of Information Act or mandatory review request or appeal.	

HOW DECLASSIFICATION WORKS: DRAFT EXECUTIVE ORDER OF AUGUST 31, 1993

Information classified SECRET under a prior Order		
A. If less than 25 years old	B. If over 25 years old	C. If over 40 years old
1. If marked with a date or event for declassification, automatically declassified at that date or event.	1. If of permanent historical value, may be declassified in the course of a systematic declassification review conducted by the agency of origin, or by the National Archives with respect to information in the Archivist's custody and control.	1. Automatically declassified no later than two years from the issuance of the Order.
2. If marked "OADR," automatically declassified 10 years from the issuance of the Order.		2. May remain classified only if the agency head exempts specific information that falls within one of four narrow categories, and provides written justification to the ISOO Director at least 180 days before the information is to be automatically declassified. Director may reject the extension. Agency head may appeal to NSC.
3. May remain classified for a longer period not to exceed ten additional years if, no earlier than 180 days before the date of automatic declassification, an original classifier extends the classification in accordance with the original classification standards of the Order.	NOTE: In addition to the foregoing processes, information may be declassified at any time during its life span as the result of a declassification review, conducted at the agency's initiative or in response to a Freedom of Information Act or mandatory review request or appeal.	

HOW DECLASSIFICATION WORKS: DRAFT EXECUTIVE ORDER OF AUGUST 31, 1993

Information classified TOP SECRET under a prior Order		
A. If less than 25 years old	B. If over 25 years old	C. If over 40 years old
1. If marked with a date or event for declassification, automatically declassified at that date or event.	1. If of permanent historical value, may be declassified in the course of a systematic declassification review conducted by the agency of origin, or by the National Archives with respect to information in the Archivist's custody and control.	1. Automatically declassified no later than two years from the issuance of the Order.
2. If marked "OADR," automatically declassified 15 years from the issuance of the Order.		2. May remain classified only if the agency head exempts specific information that falls within one of four narrow categories, and provides written justification to the ISOO Director at least 180 days before the information is to be automatically declassified. Director may reject the extension. Agency head may appeal to NSC.
3. May remain classified for a longer period if, no earlier than 180 days before the date of automatic declassification, an original classifier extends the classification in accordance with the original classification standards of the Order.	NOTE: In addition to the foregoing processes, information may be declassified at any time during its life span as the result of a declassification review, conducted at the agency's initiative or in response to a Freedom of Information Act or mandatory review request or appeal.	

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Divider Title: _____

MAJOR ENTITIES CREATED BY DRAFT ORDER OF AUGUST 31, 1993

ENTITY	ROLE/FUNCTION	COMPOSITION
Executive SAP Review Panel. [4.4]	Reviews and approves proposed continuation of any special access program beyond five years.	Head or principal deputy of the Departments of State, Defense, Justice and Energy, and the Central Intelligence Agency.
Information Security Oversight Office. [5.3]	Serves as the entity responsible to the President, through the National Security Council, for: (a) overseeing executive branch implementation of program; and (b) developing or clarifying national security protected information directives and policies.	The Director and a staff appointed by the Director.
Interagency Security Classification Appeals Panel. [5.4]	Takes final administrative action on appeals by persons who have filed: (a) classification challenges under the Order; and (b) requests for mandatory classification review.	Six options regarding the make-up of the appeals panel are presented. Other compositions may be recommended.
Information Security Policy Advisory Council. [5.5]	Advises the Chairman on all matters concerning the policies established under this Order; and serves as a forum to discuss policies and issues in dispute.	Rotating membership, with the Director of ISOO serving as Chairman. Non-Government members appointed by the President from among persons nominated by governing bodies of interested organizations. Government agency representatives appointed by the agency head or the senior agency official.

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Divider Title: _____



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DRAFT
August 31, 1993

Executive Order
National Security Protected Information

This Order prescribes a uniform system for classifying, safeguarding and declassifying national security protected information.

Our democratic principles require that the American people be informed concerning the activities of their Government. Also, our nation's progress depends on the free flow of information. Nevertheless, throughout our history, the national interest has required that certain information be maintained in confidence in order to protect our citizens, our democratic institutions, and our participation within the community of nations. Protecting critically sensitive information remains a national priority. In recent years, however, dramatic geopolitical changes have altered the national security threats that we confront. These changes provide a greater opportunity to emphasize our commitment to an open Government.

NOW, by the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered as follows:

Part 1

Original Classification

Section 1.1 *Definitions.*

As used in this Order, these terms are defined as follows:

(a) "National security" means the national defense or foreign relations of the United States.

(b) "Information" means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government. "Control" means the authority and ability of the agency that originates information, or its successor in function, to regulate access to the information.

(c) "National security protected information" means information that has been determined pursuant to this Order or any predecessor order to require protection against unauthorized disclosure or uncontrolled dissemination.

(d) "Foreign government information" means:

(1) Information provided by a foreign government or governments, an international organization of governments, or any element thereof, with the expressed expectation that the information, the source of the information, or both, are to be held in confidence; or

(2) information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence.

(e) "Classification" means the act or process by which information is determined to be national security protected information.

(f) "Original classification" means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure or uncontrolled dissemination.

(g) "Original classification authority" means an individual designated in writing, either by the President, or by agency heads or other officials designated by the President, to classify information in the first instance.

(h) "Unauthorized disclosure" means a communication or physical transfer of national security protected information to an unauthorized recipient.

(i) "Uncontrolled dissemination" means the distribution, reproduction or transmittal of information outside the control of the originating agency.

(j) "Agency" has the meaning provided at 5 U.S.C. § 552(f).

(k) "Senior agency official" means the official designated by the agency head under Section 5.5(c) of this Order to direct and administer the agency's program under which national security protected information is classified, safeguarded and declassified.

Section 1.2 *Classification Standards.*

(a) Information may be classified in the first instance under the terms of this Order only if all of the following conditions are met:

- (1) An original classification authority classifies the information;
- (2) the information is owned by, produced by or for, or is under the control of the United States Government;
- (3) the information falls within one of the categories of information listed in Section 1.5 of this Order; and

(4) the original classification authority determines that the release of the information reasonably could be expected to result in damage to the national security and the original classifier is able to identify or describe the damage.

(b) If there is reasonable doubt about the need to classify information, it shall not be classified.

(c) Information classified in accordance with this Order shall not be declassified automatically as a result of any unauthorized disclosure of identical or similar information.

Section 1.3 *Classification Levels.*

(a) National security protected information shall be classified at one of the following two levels:

(1) **Top Secret** shall be applied to information, the unauthorized disclosure or uncontrolled dissemination of which reasonably could be expected to cause grave damage to the national security that the original classification authority is able to identify or describe.

(2) **Secret** shall be applied to information, the unauthorized disclosure or uncontrolled dissemination of which reasonably could be expected to cause damage to the national security that the original classification authority is able to identify or describe.

(b) Except as otherwise provided by statute, no other terms shall be used to identify United States national security protected information.

(c) If there is a reasonable doubt about the appropriate level of classification, it shall be classified at the **Secret** level.

(d) Information classified **Confidential** under Executive Order 12356 or its predecessors may remain classified for a period not to exceed six years from the effective date of this Order. An original classification authority may upgrade specific **Confidential** information to **Secret** only in accordance with the classification standards and procedures for original classification established by this Order.

Section 1.4 *Classification Authority.*

(a) The authority to classify information originally may be exercised only by:

- (1) The President;
- (2) agency heads and officials designated by the President in the *Federal Register*; or
- (3) United States Government officials delegated this authority pursuant to paragraph (c), below.

(b) Officials authorized to classify information at the **Top Secret** level are also authorized to classify information at the **Secret** level.

(c) *Delegation of Original Classification Authority.*

(1) Delegations of original classification authority shall be limited to the minimum required to administer this Order. Agency heads are responsible for ensuring that designated subordinate officials have a demonstrable and continuing need to exercise this authority.

(2) **Top Secret** original classification authority may be delegated only by the President; or an agency head or official designated pursuant to paragraph (a)(2), above.

(3) **Secret** original classification authority may be delegated only by the President; an agency head or official designated pursuant to paragraph

(a)(2), above; or the senior agency official, provided that official has been delegated **Top Secret** original classification authority by the agency head.

(4) Each delegation of original classification authority shall be in writing and the authority shall not be redelegated except as provided in this Order. Each delegation shall identify the official by name or position title.

(d) Original classification authority may not be exercised by such authorities until they are trained and certified as provided in this Order and its implementing directives.

(e) *Exceptional Cases.* When an employee, contractor, licensee, or grantee of an agency that does not have original classification authority originates information believed by that person to require classification, the information shall be protected in a manner consistent with this Order and its implementing directives. The information shall be transmitted promptly as provided under this Order or its implementing directives to the agency that has appropriate subject matter interest and classification authority with respect to this information. That agency shall decide within thirty (30) days whether to classify this information. If it is not clear which agency has classification responsibility for this information, it shall be sent to the Director of the Information Security Oversight Office. The Director shall determine the agency having primary subject matter interest and forward

the information, with appropriate recommendations, to that agency for a classification determination.

Section 1.5 *Classification Categories.*

Information may be considered for classification only if its unauthorized disclosure or uncontrolled dissemination reasonably could be expected to:

- (a) (1) Impair the ability of the United States military to: (A) defend the nation from armed aggression; (B) engage in armed conflict; or (C) participate in peacekeeping or multinational operations; or
- (2) increase the vulnerability of the United States military, its personnel, installations, weapons, technology, and related systems;
- (b) damage relations between the United States and another country or international organization of governments; impede current diplomatic negotiations; or reveal foreign government information;

(c) reveal intelligence sources, methods and activities, including special activities and cryptologic activities;

(d) impair United States Government programs for safeguarding nuclear materials or facilities; or

(e) damage the ability of the United States to relate or apply critical research or technology to the national defense or foreign relations of the United States.

Section 1.6 *Duration of Classification.*

(a) At the time of original classification, the original classification authority shall attempt to establish a specific date or event for declassification based upon the duration of the national security sensitivity of the information. The date or event shall not exceed the time frames in paragraphs (b) and (c), below.

(b) For information originally classified under this Order, if the original classification authority cannot determine a specific date or event, information

classified **Secret** shall be marked for declassification no later than ten years from the date of the original decision.

(c) For information originally classified under this Order, if the original classification authority cannot determine a specific date or event, information classified **Top Secret** shall be marked for declassification no later than fifteen years from the date of the original decision.

(d) Information marked for an indefinite duration of classification under predecessor orders, for example, "Originating Agency's Determination Required," or information classified under predecessor orders that contains no declassification instructions shall be declassified as follows:

(1) Information classified at the **Confidential** level shall be declassified in accordance with Section 1.3(d) of this Order.

(2) Information classified at the **Secret** level shall be declassified no later than ten years from the effective date of this Order.

(3) Information classified at the **Top Secret** level shall be declassified no later than fifteen years from the effective date of this Order.

(e) No earlier than 180 days before information is to be declassified in accordance with paragraphs (b), (c), and (d), above, an original classification authority may extend the duration of classification. Such extensions must conform with the standards and procedures for original classification

established by this Order. An extension shall not exceed ten years.
Additional extensions must conform with the requirements of this paragraph.

Section 1.7 *Identification and Markings.*

(a) At the time of original classification, the following shall appear on the face of each classified document, or shall be applied to other classified media in an appropriate manner:

- (1) One of the two classification levels defined in Section 1.3 of this Order;
- (2) the identity, by name or personal identifier and position, of the original classification authority;
- (3) the agency and office of origin, if not otherwise evident;
- (4) the date or event for declassification; and
- (5) a concise reason for classification, in accordance with instructions contained in the implementing directives issued by the Director of the Information Security Oversight Office.

(b) Specific information contained in paragraph (a), above, shall be excluded if it would unnecessarily reveal additional national security protected information.

(c) Each classified document shall, by marking or other means, indicate which portions are classified, with the applicable classification level, and which portions are unclassified.

(d) Marking designations implementing the provisions of this Order, including abbreviations and requirements to safeguard classified working papers, shall conform to the standards prescribed in implementing directives issued by the Director of the Information Security Oversight Office.

(e) Foreign government information shall retain its original classification markings or shall be assigned a United States classification that provides a degree of protection at least equivalent to that required by the entity that furnished the information.

(f) Information assigned a level of classification under this Order or predecessor orders shall be considered as classified at that level of classification despite the omission of other required markings. Holders of such information shall refer it to an appropriate original classification authority for the application of omitted markings.

(g) The original classification authority shall, whenever practicable, use a classified addendum whenever national security protected information constitutes a small portion of an otherwise unclassified document.

Section 1.8 *Classification Prohibitions and Limitations.*

(a) In no case shall information be classified in order to:

- (1) conceal violations of law, inefficiency, or administrative error;
- (2) to prevent embarrassment to a person, organization, or agency;
- (3) to restrain competition; or
- (4) to prevent or delay the release of information that does not require protection in the interest of national security.

(b) Basic scientific research information not clearly related to the national security may not be classified.

(c) Information may not be reclassified after it has been declassified and released to the public under proper authority.

(d) Information that has not previously been disclosed to the public under proper authority may be classified after an agency has received a request for it under the Freedom of Information Act (5 U.S.C. § 552) or the Privacy Act of

1974 (5 U.S.C. § 552a), or the mandatory review provisions of Section 3.6 of this Order if such classification meets the requirements of this Order and is accomplished through the personal participation and authority and on a document-by-document basis by the agency head, the deputy agency head, or the senior agency official.

(e) Compilations of items of information which are individually unclassified shall not be classified unless the compiled information reveals an additional association or relationship that:

(1) Meets the standards for classification under this Order; and

(2) is not otherwise revealed in the individual items of information. As used in this Order, "compilation" means an arrangement of pre-existing unclassified items of information gathered together.

Section 1.9 *Classification Challenges.*

(a) Authorized holders of information who, in good faith, believe that its current status is improper because it:

(1) Should not be classified;

(2) should be classified; or

(3) should be classified at a different classification level;
shall challenge the classification status of the information in accordance with
agency procedures established under paragraph (b), below.

(b) In accordance with implementing directives issued by the Director of the
Information Security Oversight Office, an agency head or senior agency
official shall establish procedures under which authorized holders of
information shall challenge the classification of information that they
believe is improperly classified or unclassified. These procedures shall
assure that: (1) individuals are not subject to retribution for bringing such
actions; (2) an opportunity is provided for a review by an impartial official or
panel; and (3) individuals are advised of their right to appeal agency
decisions to the Interagency Security Classification Appeals Panel
established by Section 5.4 of this Order.

Part 2

Derivative Classification

Section 2.1 *Definitions.*

As used in this Order, these terms are defined as follows:

(a) "Derivative classification" means the act of incorporating, paraphrasing, restating or generating in new form information that is already classified, and marking the newly developed material consistent with the classification markings that apply to the source information. Derivative classification includes the classification of information based on classification guidance. The duplication or reproduction of existing national security protected information is not derivative classification.

(b) "Derivative classification authority" means an individual designated in writing under Section 2.2(a) of this Order to classify information derivatively.

(c) "Classification guidance" means any instruction or source that prescribes the classification of specific information.

(d) "Classification guide" means a documentary form of classification guidance issued by an original classification authority that describes the elements of information regarding a specific subject that must be classified and establishes the level and duration of classification for each such element.

(e) "Source document" means an existing document which contains national security protected information that is incorporated, paraphrased, restated, or generated in new form into a new document.

(f) "Multiple sources" means two or more sources which contain national security protected information that is incorporated, paraphrased, restated, or generated in new form into a new document.

Section 2.2 *Use of Derivative Classification.*

(a) An agency head or senior agency official shall identify those organizational units within an agency that may be required to classify information derivatively. An authorized agency official shall identify those organizational units within a contractor, licensee or grantee that may be required to classify information derivatively. The administrative head of each such unit shall designate at least one individual within that unit, who shall be trained and certified to serve as a derivative classification authority.

(b) A derivative classification authority will review and affirm each derivative classification action taken within the unit.

(c) Persons who apply derivative classification markings shall:

- (1) Observe and respect original classification decisions; and
- (2) carry forward to any newly created documents the pertinent classification markings, which shall be augmented by:

(A) The identity, by name or personal identifier and position, of the derivative classification authority; and

(B) for information derivatively classified based on multiple sources: (i) a date or event for declassification that corresponds to the longest period of classification among the sources; and (ii) on or attached to the official file or record copy, a listing of the sources.

Section 2.3 *Classification Guides.*

(a) Agencies with original classification authority shall prepare classification guides to facilitate the proper and uniform derivative classification of information. These guides shall conform to standards contained in directives issued under this Order.

(b) Each guide shall be approved personally and in writing by an official who:

(1) Has program or supervisory responsibility over the information or is the senior agency official; and

(2) is authorized to classify information originally at the highest level of classification prescribed in the guide.

(c) Agencies shall establish procedures to assure that classification guides are reviewed and updated periodically. A guide must be updated or reissued in accordance with the standards of Section 1.6(e) of this Order in order to extend the duration of classification of any information classified derivatively pursuant to the guide.

Part 3

Declassification and Downgrading

Section 3.1 Definitions.

As used in this Order, these terms are defined as follows:

(a) "Declassification" means the authorized change in the status of information from national security protected information to unclassified information.

(b) "Automatic declassification" means the declassification of information based solely upon:

(1) The occurrence of a specific date or event as determined by the original classification authority; or

(2) the expiration of a maximum time frame for duration of classification established under this Order.

(c) "Declassification authority" means:

- (1) the official who authorized the original classification, if that official is still serving in the same position;
- (2) the originator's successor;
- (3) a supervisory official of either; or
- (4) officials delegated declassification authority in writing by the agency head or the senior agency official.

(d) "Mandatory declassification review" means the review for declassification of national security protected information in response to a request for declassification that meets the requirements under Section 3.6 of this Order.

(e) "Systematic declassification review" means the review for declassification of national security protected information contained in records that have been determined by the Archivist of the United States to have permanent historical value in accordance with chapter 33 of title 44, United States Code.

(f) "Declassification guide" means written instructions issued by a declassification authority that describes the elements of information

regarding a specific subject that may be declassified and the elements that must remain classified.

(g) "Downgrading" means a determination by a declassification authority that information classified and safeguarded at the **Top Secret** level shall be classified and safeguarded at the **Secret** level.

Section 3.2 *Authority for Declassification.*

(a) Information shall be declassified or downgraded as soon as national security considerations permit. Agencies shall coordinate their review of national security protected information with other agencies that have a direct interest in the subject matter.

(b) If an agency head or senior agency official determines that the public interest in disclosure of specific information outweighs the national security interest in its continued classification, the information shall be declassified even though it continues to meet the standards for classification under this Order.

(c) If the Director of the Information Security Oversight Office determines that information is classified in violation of this Order, the Director may require the information to be declassified by the agency that originated the

classification. Any such decision by the Director may be appealed to the National Security Council. The information shall remain classified pending a prompt decision on the appeal.

(d) The provisions of this Section shall also apply to agencies that, under the terms of this Order, do not have original classification authority, but had such authority under predecessor orders.

Section 3.3 *Transferred Information.*

(a) In the case of national security protected information transferred in conjunction with a transfer of functions, and not merely for storage purposes, the receiving agency shall be deemed to be the originating agency for purposes of this Order.

(b) In the case of national security protected information that is not officially transferred as described in paragraph (a), above, but that originated in an agency that has ceased to exist and for which there is no successor agency, each agency in possession of such information shall be deemed to be the originating agency for purposes of this Order. Such information may be declassified or downgraded by the agency in possession after consultation

with any other agency that has an interest in the subject matter of the information.

(c) National security protected information accessioned into the National Archives of the United States as of the effective date of this Order shall be declassified or downgraded by the Archivist of the United States in accordance with this Order, the directives of the Information Security Oversight Office, and agency declassification guides.

(d) National security protected information that has been determined by the Archivist of the United States to have permanent historical value shall not be accessioned into the National Archives of the United States until that information has been declassified in accordance with this Order. This provision does not apply to information being transferred to the Archivist pursuant to section 2203 of title 44, United States Code, or information for which the National Archives and Records Administration serves as the custodian of the records of an agency or organization that goes out of existence.

Section 3.4 *Automatic Declassification.*

(a) National security protected information classified under this or any predecessor order shall be automatically declassified 40 years from the date of its creation. Within two years from the date of the issuance of this Order, all national security protected information more than 40 years old shall be automatically declassified, subject to paragraph (b), below.

(b) An agency head may exempt from automatic declassification under paragraph (a), above, specific information, the release of which could reasonably be expected to:

- (1) Identify a confidential human intelligence source;
- (2) reveal information not publicly available that would clearly assist in the development or use of weapons of mass destruction;
- (3) reveal information not publicly available that would clearly impair United States cryptologic systems or activities; or
- (4) violate a statute, treaty, or international agreement.

(c) Any exemption as provided in paragraph (b), above, requires a written justification that identifies the specific information, explains why the information must remain classified for a longer period of time, and establishes a specific date or event for automatic declassification. The agency head shall provide the Director of the Information Security Oversight Office

with a copy of such a justification at least 180 days before the information is subject to automatic declassification. The Director may direct the agency not to exempt the information or to designate the information for automatic declassification at an earlier date than recommended. The Director's decision may be appealed to the National Security Council. The information will remain classified while the appeal is pending.

(d) Information exempted from automatic declassification under this Section shall remain subject to the mandatory and systematic declassification review provisions of this Order.

(e) The Secretary of State shall commence negotiations with the appropriate officials of a foreign government or international organization of governments to modify any treaty or international agreement that requires the classification of information longer than 40 years from the date of its creation, unless the treaty or international agreement pertains to information that may otherwise remain classified beyond 40 years under this Section.

Section 3.5 *Systematic Declassification Review.*

(a) Each agency that has originated national security protected information under this Order or its predecessors shall establish and conduct a program for systematic declassification review. This program shall apply to pertinent records no later than 25 years from the date of their creation. Agencies shall prioritize the systematic review of records based upon the degree of researcher interest and the likelihood of declassification upon review.

(b) The Archivist of the United States shall conduct a systematic declassification review program for national security protected information accessioned into the National Archives of the United States as of the effective date of this Order; information transferred to the Archivist pursuant to section 2203 of title 44, United States Code; and information for which the National Archives and Records Administration serves as the custodian of the records of an agency or organization that has gone out of existence. This program shall apply to pertinent records no later than 25 years from the date of their creation. The Archivist shall prioritize the systematic review of these records based upon the degree of researcher interest and the likelihood of declassification upon review. These records shall be reviewed in accordance with the standards of this Order, its implementing directives, and declassification guides provided to the Archivist by each agency that originated the records. The Director of the Information Security Oversight

Office shall assure that agencies provide the Archivist with adequate and current declassification guides.

(c) After consultation with affected agencies, the Secretary of Defense may establish special procedures for systematic review for declassification of classified cryptologic information, and the Director of Central Intelligence may establish special procedures for systematic review for declassification of classified information pertaining to intelligence activities (including special activities), or intelligence sources or methods.

Section 3.6 *Mandatory Declassification Review.*

(a) Except as provided in paragraph (b), below, all information classified under this Order or predecessor orders shall be subject to a review for declassification by the originating agency if:

- (1) The request is made by a United States citizen or permanent resident alien, a federal agency, or a state or local government;
- (2) the request describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort; and
- (3) the information has not been reviewed for declassification within the past two years. If the agency has reviewed the information within the

past two years, the agency shall inform the requester of this fact and of the requester's appeal rights.

(b) Information originated by a President, the White House staff, by committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or acting on behalf of a President is exempted from the provisions of paragraph (a), above. The Archivist of the United States shall have the authority to review, downgrade and declassify information under the control of the Archivist pursuant to sections 2107, 2111, 2111 note or 2203 of title 44, United States Code.

Review procedures developed by the Archivist shall provide for consultation with agencies having primary subject matter interest and shall be consistent with the provisions of applicable laws or lawful agreements that pertain to the respective presidential papers or records. Agencies with primary subject matter interest shall be notified promptly of the Archivist's decision. Any final decision by the Archivist may be appealed by the requester or an agency to the Interagency Security Classification Appeals Panel established by Section 5.4 of this Order. The information shall remain classified pending a prompt decision on the appeal.

(c) Agencies conducting a mandatory review for declassification shall declassify information no longer requiring protection under this Order. They

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shall release this information unless withholding is otherwise authorized and necessary under applicable law.

(d) In accordance with directives issued pursuant to this Order, agency heads shall develop procedures to process requests for the mandatory review of national security protected information. These procedures shall apply to information classified under this or predecessor orders. They shall also provide a means for administratively appealing a denial of a mandatory review request, and for notifying the requester of the right to appeal a final agency decision to the Interagency Security Classification Appeals Panel established by Section 5.4 of this Order.

(e) After consultation with affected agencies, the Secretary of Defense shall develop special procedures for the review of cryptologic information, and the Director of Central Intelligence shall develop special procedures for the review of information pertaining to intelligence activities (including special activities), or intelligence sources or methods. The Archivist shall develop special procedures for the review of information accessioned into the National Archives of the United States.

Section 3.7 *Processing Requests.*

In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of this Order:

(a) An agency shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classified under this Order.

(b) When an agency receives any request for documents in its custody that were classified by another agency, it shall refer copies of the request and the requested documents to the originating agency for processing, and may, after consultation with the originating agency, inform the requester of the referral unless such association is itself classified under this Order. In cases in which the originating agency determines in writing that a response under paragraph (a), above, is required, the referring agency shall respond to the requester in accordance with that paragraph.

Section 3.8 *Declassification Database.*

(a) The Archivist of the United States, in conjunction with the Director of the Information Security Oversight Office and those agencies that originate national security protected information, shall establish a Government-wide database of information that has been declassified. The Archivist shall also explore other possible uses of technology to facilitate the declassification process.

(b) Agency heads shall fully cooperate with the Archivist in these efforts.

Part 4

Safeguarding

Section 4.1 *Definitions.*

As used in this Order, these terms are defined as follows:

(a) "Safeguarding" means protective measures and controls that are prescribed to secure national security protected information.

(b) "Access" means the ability or opportunity to gain knowledge of national security protected information.

(c) "Need-to-know" means a determination made by an authorized holder of national security protected information that a prospective recipient requires access to national security protected information in order to perform a lawful and authorized function.

(d) "Automated information system" means an assembly of computer hardware, software, or firmware configured to collect, create, communicate, compute, disseminate, process, store, or control data or information.

(e) "Integrity" means the state that exists when information is unchanged from its source and has not been accidentally or intentionally modified, altered, or destroyed.

(f) "Network" means a system of two or more computers which can exchange data or information.

(g) "Telecommunications" means the preparation, transmission, or communication of information by electronic means.

(h) "Special access program" means a program authorized by an agency head for a specific class of national security protected information that imposes safeguarding and access requirements that exceed those normally required for information at the same classification level.

Section 4.2 *General Restrictions on Access.*

(a) A person may have access to national security protected information provided that:

- (1) A determination of trustworthiness has been made by an agency head or the agency head's designee;
- (2) the person has signed an approved nondisclosure agreement; and
- (3) the person has a need-to-know the information.

(b) National security protected information must remain in the custody or under the control of the originating agency or its successor in function. An official or employee leaving agency service may not remove national security protected information from the agency's control.

(c) National security protected information may not be removed from official premises without proper authorization.

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(d) Authorized disseminations of national security protected information outside the executive branch shall assure the protection of the information in a manner equivalent to that provided within the executive branch.

(e) Consistent with law and regulation, an agency head or senior agency official shall establish uniform procedures to ensure that automated information systems, including networks and telecommunications systems, which collect, create, communicate, compute, disseminate, process, or store national security protected information have controls that:

- (1) Prevent access by unauthorized persons; and
- (2) ensure the integrity of the information.

(f) In accordance with national policy directives, each agency head or senior agency official shall establish controls to ensure that national security protected information is used, processed, stored, reproduced, transmitted, and destroyed under conditions that provide adequate protection and prevent access by unauthorized persons.

(g) Except as provided by statute or directives issued by the President through the National Security Council, national security protected information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency. An agency head or senior agency official may waive this

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requirement for specific information originated within that agency. For purposes of this Section, the Department of Defense shall be considered one agency.

Section 4.3 *Distribution Controls.*

(a) Each agency shall establish controls over the distribution of national security protected information to assure that it is distributed only to organizations or individuals eligible for access who also have a need-to-know the information.

(b) Each agency shall update, at least annually, the automatic, routine or recurring distribution of information that they classify. Recipients shall cooperate fully with distributors who are updating distribution lists, and shall notify distributors whenever a relevant change in status occurs.

Section 4.4 *Special Access Programs.*

(a) *Establishment of special access programs.* Unless otherwise authorized by the President, only the Secretaries of State, Defense and Energy, and the Director of Central Intelligence, or the principal deputy of each, may create a

special access program. These officials shall keep the number of these programs at an absolute minimum, and shall establish them only upon a specific finding that:

- (1) The vulnerability of, or threat to, specific information is exceptional; or
- (2) the normal criteria for determining eligibility for access applicable to information classified at the same level are not deemed sufficient to protect the information from unauthorized disclosure.

(b) Requirements and limitations.

(1) Special access programs shall be limited to programs in which the number of persons who will have access will be reasonably small and commensurate with the objective of providing extra protection for the information involved.

(2) Each agency head shall establish and maintain a system of accounting for special access programs consistent with directives promulgated by the Director of the Information Security Oversight Office.

(3) Special access programs shall be subject to the oversight program established under Section 5.5(c)(1) of this Order. In addition, the Director of the Information Security Oversight Office, or specific designees of the Director, shall be afforded access to these programs, in accordance with the security requirements of each program, in order to perform the functions assigned to the Information Security Oversight Office under this Order.

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(4) The agency head or principal deputy shall review annually each special access program to determine whether it continues to meet the requirements of this Order.

(5) No special access program shall continue beyond five years from the date of its establishment except upon the unanimous approval of an interagency review panel composed of the Secretaries of State, Defense, and Energy, the Director of Central Intelligence, and the Attorney General, or the principal deputy of each. A special access program approved for continued operation by the review panel shall be reviewed by the interagency review panel at each five year interval. An agency head may appeal the review panel's disapproval of a special access program to the President.

(c) Within 180 days after the effective date of this Order, each agency head or his or her principal deputy shall review all existing special access programs under the agency's jurisdiction. These officials shall terminate any special access programs that do not clearly meet the provisions of this Order. Each existing special access program that an agency head or his or her principal deputy revalidates shall be treated as if it were established on the effective date of this Order.

(d) Nothing in this Order shall supersede any requirement made by or under 10 U.S.C. § 119.

Section 4.5 *Access by Historical Researchers and Former Presidential Appointees.*

(a) The requirement in Section 4.2(a) of this Order that access to national security protected information may be granted only to individuals who have a need-to-know the information may be waived for persons who:

- (1) Are engaged in historical research projects; or
- (2) previously have occupied policy-making positions to which they were appointed by the President.

(b) Waivers under this Section may be granted only if the agency head or senior agency official of the originating agency:

- (1) Determines in writing that access is consistent with the interest of national security;
- (2) takes appropriate steps to protect national security protected information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with this Order; and
- (3) limits the access granted to former presidential appointees to items that the person originated, reviewed, signed, or received while serving as a presidential appointee.

Part 5

Implementation and Review

Section 5.1 *Definitions.*

(a) "Self-inspection" means the internal review and evaluation of individual agency activities and the agency as a whole with respect to the implementation of the program established under this Order and its implementing directives.

(b) "Violation" means:

(1) any knowing, willful or negligent action that could reasonably be expected to result in an unauthorized disclosure of national security protected information;

(2) any knowing, willful or negligent action to classify or continue the classification of information contrary to the requirements of this Order or its implementing directives; or

(3) any knowing, willful or negligent action to create or continue a special access program contrary to the requirements of this Order.

(c) "Infraction" means any knowing, willful or negligent action contrary to the requirements of this Order or its implementing directives that does not comprise a "violation," as defined above.

Section 5.2 *Policy Direction.*

(a) The National Security Council shall provide overall policy direction for the program established under this Order.

(b) [Reserved]

Section 5.3 *Information Security Oversight Office.*

(a) [Reserved]

(b) The Director shall:

(1) Develop, in consultation with the agencies, and promulgate, subject to the approval of the National Security Council, directives for the implementation of this Order, which shall be binding on the agencies;

(2) oversee agency actions to ensure compliance with this Order and its implementing directives;

(3) review agency implementing regulations and agency guides for systematic declassification review. The Director shall require any regulation or guide to be changed if inconsistent with this Order or its implementing directives. Any such decision by the Director may be appealed to the

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National Security Council. The agency regulation or guide shall remain in effect pending a prompt decision on the appeal;

(4) have the authority to conduct on-site reviews of each agency's program established under this Order, and to require of each agency, those reports, information, and other cooperation that may be necessary to fulfill the Director's responsibilities. If granting access to specific categories of national security protected information would pose an exceptional national security risk, the affected agency head or the senior agency official shall submit a written justification recommending the denial of access to the National Security Council within 60 days of the Director's request for access. Access shall be denied pending a prompt decision by the National Security Council;

(5) review requests for original classification authority from agencies or officials not granted original classification authority and, if deemed appropriate, recommend presidential approval;

(6) consider and take action on complaints and suggestions from persons within or outside the Government with respect to the administration of the program established under this Order;

(7) have the authority to prescribe, after consultation with affected agencies, standardization of forms or procedures that will promote the implementation of the program established under this Order;

(8) report at least annually to the President through the National Security Council on the implementation of this Order; and

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(9) have the authority to convene and chair interagency or other meetings to discuss matters pertaining to the program established under this Order.

(c) Directives issued by the Director of the Information Security Oversight Office shall establish uniform standards for:

- (1) Safeguarding national security protected information;
- (2) agency security education and training programs;
- (3) agency self-inspection programs; and
- (4) classification and declassification guides.

Section 5.4 *Interagency Security Classification Appeals Panel*

(a) *Establishment and Administration.*

[OPTION ONE (1) There is established an Interagency Security Classification Appeals Panel ("Panel"). The Director of the Information Security Oversight Office shall serve as Chairman of the Panel. The Secretaries of State and Defense, the Attorney General, and the Director of Central Intelligence shall each appoint a senior level employee to comprise the other members of the Panel.]

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[OPTION TWO (1) There is established an Interagency Security Classification Appeals Panel ("Panel"). The Associate Attorney General shall serve as Chairman of the Panel. The other members of the Panel shall include the Director of the Information Security Oversight Office and a senior level employee appointed respectively by the Secretaries of State and Defense, and the Director of Central Intelligence.]

[OPTION THREE (1) There is established an Interagency Security Classification Appeals Panel ("Panel"). The President shall appoint its members from among persons nominated by the Secretaries of State and Defense, the Attorney General, the Director of Central Intelligence, and the Director of the Information Security Oversight Office. The members of the Panel shall elect the Chairman.]

[OPTION FOUR (1) There is established an Interagency Security Classification Appeals Panel ("Panel"). The Associate Attorney General shall serve as Chairman of the Panel. The other members of the Panel shall include the Director of the Information Security Oversight Office and the senior legal officer of the Departments of State and Defense, and the Central Intelligence Agency.]

[OPTION FIVE (1) There is established an Interagency Security Classification Appeals Panel ("Panel"). The Deputy Attorney General shall serve as Chairman of the Panel. The other members of the Panel shall

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include the principal deputy of the Departments of State, Defense and Energy, and the Central Intelligence Agency.]

[OPTION SIX (1) There is established an Interagency Security Classification Appeals Panel ("Panel"). The five members of the Panel, including its Chairman, shall be appointed by the President.]

(2) Whenever a vacancy on the Panel occurs, it shall be filled as quickly as possible as provided in paragraph (1), above.

(3) The staff of the Information Security Oversight Office shall provide operational and administrative support for the Panel.

(4) The members and supporting staff of the Panel shall be required to meet eligibility for access standards in order to fulfill the Panel's functions.

(5) The Panel shall meet at the call of the Chairman. The Chairman shall schedule meetings as may be necessary for the Panel to fulfill its functions in a timely manner.

(6) The Information Security Oversight Office shall include in its reports to the President a summary of the Panel's activities.

(b) *Functions.* The Panel shall consider and, except as provided in (c), below, take final administrative action on:

(1) Appeals by persons who have filed classification challenges under Section 1.9 of this Order; and

(2) appeals by persons or entities who have filed requests for mandatory classification review under Section 3.6 of this Order.

(c) *Rules and Procedures.* The Panel shall issue by-laws, which shall be published in the *Federal Register* no later than 120 days from the effective date of this Order. The by-laws shall establish the rules and procedures that the Panel will follow in accepting, considering, and issuing decisions on appeals. The rules and procedures of the Panel shall provide that:

(1) The Panel will consider appeals only on actions in which the appellant has exhausted his or her administrative remedies within the responsible agency, and there is no current action pending on the issue within the federal courts;

(2) the Panel will assure compliance with the safeguarding requirements established by this Order and its implementing directives;

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(3) agency heads will cooperate fully with the Panel so that it can fulfill its functions in a timely and fully informed manner;

(4) the Panel will report to the President through the National Security Council any instance in which it believes that an agency head is not cooperating fully with the Panel;

(5) an agency head may appeal a final decision of the Panel to the National Security Council; and

(6) subject information will remain protected while the National Security Council considers an agency head's appeal.

Section 5.5 *Information Security Policy Advisory Council.*

(a) *Establishment.* There is established an Information Security Policy Advisory Council ("Council"). The Director of the Information Security Oversight Office shall serve as Chairman of the Council. The Director shall designate the initial agencies and organizations whose representatives shall comprise the Council. Non-Government representatives shall rotate among organizations concerned with the classification and declassification of national security protected information. They shall be appointed by the

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President from among persons nominated by the governing bodies of those organizations. Government representatives shall rotate among the agencies most affected by the program established under this Order and shall be selected by the agency head or senior agency official of those agencies. The Council's by-laws shall establish standards for length of service and rotation among agencies and organizations.

(b) *Functions.*

(1) The Council and its members shall advise the Chairman on all matters concerning the policies established under this Order, including recommended changes to those policies as reflected in this Order or its implementing directives; and

(2) the Council shall serve as a forum to discuss policy issues in dispute.

(c) The Council shall meet at the request of the Chairman, but at least once each calendar year.

(d) *Administration.*

(1) Members of the Council shall serve without compensation for their work on the Council. However, non-Government members may be allowed

travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701-5707).

(2) Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Council, shall be performed by the Administrator of General Services in accordance with the guidelines and procedures established by the General Services Administration.

Section 5.6 *General Responsibilities.*

(a) Heads of agencies that originate or handle national security protected information shall:

(1) Demonstrate personal commitment and commit senior management to the successful implementation of the program established under this Order;

(2) commit necessary resources to the effective implementation of the program established under this Order;

(3) designate a senior agency official to direct and administer the program, whose responsibilities shall include:

(A) Overseeing the agency's program established under this Order, including any authorized special access programs;

(B) promulgating implementing regulations, which shall be published in the *Federal Register* to the extent that they affect members of the public;

(C) establishing and maintaining security education and training programs, which shall include the certification of original and derivative classifiers;

(D) establishing and maintaining an ongoing self-inspection program, which shall include the periodic review and assessment of the agency's classified product;

(E) establishing procedures to prevent unnecessary access to national security protected information, including procedures that: (i) require that a need for access to national security protected information is established before initiating administrative clearance procedures; and (ii) ensure that the number of persons granted access to national security protected information is limited to the minimum consistent with operational and security requirements and needs;

(F) developing special contingency plans for safeguarding national security protected information used in or near hostile or potentially hostile areas;

(G) assuring that the performance contract or other system used to rate civilian or military personnel performance includes the management of national security protected information as a critical element or item to be evaluated in the rating of: (i) original and derivative classification authorities; (ii) security managers or security specialists; and (iii) all other personnel whose duties significantly involve the creation or handling of national security protected information; and

(H) accounting for the costs associated with the implementation of this Order, which shall be reported to the Director of the Information Security Oversight Office for publication.

(b) The Inspector General of each agency shall conduct periodic audits of the implementation and administration of the program established under this Order. Copies of each Inspector General's reports shall be provided to the agency head and the Director of the Information Security Oversight Office.

Section 5.7 *Sanctions.*

(a) If the Director of the Information Security Oversight Office finds that a violation of this Order or its implementing directives may have occurred, the Director shall make a report to the head of the agency or to the senior agency official so that corrective steps, if appropriate, may be taken.

(b) Officers and employees of the United States Government, and its contractors, licensees, and grantees shall be subject to appropriate sanctions if they knowingly, willfully, or negligently:

(1) Disclose to unauthorized persons information properly classified under this Order or predecessor orders;

(2) classify or continue the classification of information in violation of this Order or any implementing directive;

(3) create or continue a special access program contrary to the requirements of this Order; or

(4) contravene any other provision of this Order or its implementing directives.

(c) Sanctions may include reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions in accordance with applicable law and agency regulation.

(d) The agency head, senior agency official, or other supervisory official shall, at a minimum, promptly remove the classification authority of any individual who demonstrates reckless disregard or a pattern of error in applying the classification standards of this Order.

(e) The agency head or senior agency official shall:

(1) Take appropriate and prompt corrective action when a violation or infraction under paragraph (b), above, occurs; and

(2) notify the Director of the Information Security Oversight Office when a violation under paragraph (b)(1), (2) or (3), above, occurs.

Part 6

General Provisions

Section 6.1 *General Provisions*

(a) Nothing in this Order shall supersede any requirement made by or under the Atomic Energy Act of 1954, as amended, or the National Security Act of 1947. "Restricted Data" and "Formerly Restricted Data" shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and regulations issued under that Act.

(b) The Attorney General, upon request by the head of an agency or the Director of the Information Security Oversight Office, shall render an interpretation of this Order with respect to any question arising in the course of its administration.

- (c) Nothing in this Order limits the protection afforded any information by other provisions of law.
- (d) Executive Order No. 12356 of April 6, 1982, is revoked as of the effective date of this Order.
- (e) This Order shall become effective 180 days from the date of its issuance.