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DoD Changes to Establish the "RESTRICTED" Classification

(NOTE: Bracketed portions ([]) are to be deleted; underlined portions are to be added.)

Change Section 1-101 to read as follows:

> 1-101. National security information that requires protection against unauthorized disclosure [(hereinafter "classified information")]* shall be classified at one of the following [three] four levels:

*This part of the change appears also in Attachment 2 together with supporting rationale.

Add Section 1-101(d) to read as follows:

> 1-101(d). "Restricted" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause the loss to the United States of a technological, diplomatic, intelligence, cryptologic, or military advantage and which requires protection in the interest of national security.

Change Section 1-302 to read as follows:

> 1-302. Information which, either by itself or in the context of other information,* is determined to concern one or more of the categories in Section 1-301 shall be classified when an original classification authority also determines that its unauthorized disclosure reasonably could be expected to cause the loss of an advantage to the United States or cause damage to the national security. [In considering whether the disclosure of information could be expected to cause damage to the national security, information shall be classified if its unauthorized disclosure, when considered in the context of related information, reasonably could be expected to cause such damage.]*

*These parts of the change appear also in Attachment 2 together with supporting rationale.

Change Section 1-501(d) to read as follows:

> (d) one of the [three] four classification designations defined in Section 1-1.

Change Section 4-101 to read as follows:

> 4-101. A person is eligible for access to Restricted information only when such access is essential to the accomplishment of authorized and lawful Government purposes. A person is eligible

No Referral - On file OSD release instructions apply.

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for access to [classified] Top Secret, Secret, or Confidential information only after a [formal] favorable determination of trustworthiness, based on investigation, as appropriate,* has been reached by agency heads or designated [senior] subordinate* officials and provided that such access is essential to the accomplishment of authorized and lawful Government purposes. In the course of collecting background data on individuals pursuant to Executive Orders 10450, and 12036, or other authority in order to make this determination, agencies are authorized to collect criminal history record information.

*These parts of the change appear also in Attachment 2 together with supporting rationale.

RATIONALE FOR RESTRICTED CHANGES: There is a wide range of Government information that currently is below the threshold of the criteria for classification but nonetheless requires a minimal degree of safeguarding. Valuable information, such as that pertaining to technology, especially critical technology with military application, diplomatic endeavors of the State Department, certain aspects of intelligence and cryptologic activities, and military operations, does not reach to the criteria for higher levels of classification. Yet the loss of such information, and the advantage gained by our potential adversaries, demands that the Government take steps to provide legal and positive control over it. The "Restricted" classification would accomodate this need without incurring unacceptable safeguarding costs. It is contemplated that safeguarding requirements for the "Restricted" classification would be significantly less stringent than those established for the Confidential classification.

Most of the NATO member nations and NATO itself use a four-level security classification system to include the classification "Restricted." The incompatibility of the U.S. three-level system with NATO and many countries outside of NATO continually creates operational problems having an adverse effect on NATO interoperability and standardization. These and other persistent problems would be resolved with the establishment of "Restricted" as a U.S. security classification.

NOTE: The Justice Department has reviewed the definition of "Restricted" and does not find it legally objectionable.

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Other DoD Changes

(NOTE: Bracketed portions ([]) are to be deleted; underlined portions are to be added.)

Change the Preamble to read as follows:

> [The interests of the United States and its citizens require that certain information concerning our national defense and foreign relations be protected against unauthorized disclosure. It also is essential that the public be informed concerning the activities of its Government.] This Order prescribes a uniform [information security] system for classifying, declassifying, and safeguarding national security information. It [also establishes a monitoring system to ensure its effectiveness.] recognizes that it is essential that the public be informed concerning the activities of its Government, and that the interests of the United States and its citizens require that certain information concerning the national defense and foreign relations be protected against unauthorized disclosure. Nothing in this Order [shall] limits the protection afforded any information by [other] provisions of law.

RATIONALE: The revised preamble states clearly the countervailing principles involved in creating the Order. The Order's recognition of a nonbinding balance underlying classification and declassification determinations may be critical to the avoidance of unwarranted criticism that the revised order is attempting to encourage more classification and less declassification of national security information.

Change Section 1-101 to read as follows:

> 1-101. National security information that requires protection against unauthorized disclosure [(hereinafter "classified information")] shall be classified at one of the following [three] four* levels:

*The rationale for this part of the change is provided in Attachment 1.

RATIONALE: The draft order defines "national security" (Section 6-105), "information" (Section 6-102), and "classified information" (Section 6-103). The parenthetical phrase is in conflict with these definitions. As written, this Section may be interpreted to mean that "classified information" is synonymous with "national security information" which is not the intent.

Change Section 1-101(a) to read as follows:

> (a) "Top Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause [exceptionally] grave damage to the national security.

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RATIONALE: The damage is either grave or not grave. "Exceptionally grave" is incapable of meaningful definition.

Change Section 1-103 to read as follows:

> 1-103. If there is reasonable doubt about the need to classify information or which classification should be applied, the information shall be considered classified and shall be safeguarded as required for the higher level of classification under the provisions of this Order pending a final determination [by an original classification authority] or resolution of doubt.

RATIONALE: The current text does not address resolution of doubt about which classification should be applied to information. The phrase "by an original classification authority" is deleted since this Section provides guidance to such an authorities.

Change Section 1-201 to read as follows:

> 1-201. [Top Secret. The authority to classify information originally as Top Secret may be exercised only by:]
>
> [(a) The President;]
>
> [(b) agency heads and officials as designated by the President in the Federal Register; and]
>
> [(c) officials delegated this authority under Section 1-204.]
>
> The authority to classify information originally may be exercised only by the President and those agency heads and officials designated by the President in the Federal Register. Officials so designated or their designee may delegate such authority pursuant to the provisions of Section 1-202 and 1-203.

RATIONALE: See below.

Change Section 1-202 to read as follows:

> 1-202. [Secret. The authority to classify information originally as Secret may be exercised only by:]
>
> [(a) Agency heads and officials as designated by the President in the Federal Register;]
>
> [(b) officials with original Top Secret classification authority; and]
>
> [(c) officials delegated such authority pursuant to Section 1-204.]

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and the senior official designated under Section 5-301(a), provided that official has been delegated original Secret classification authority by the agency heads.]

[(d) Original Confidential classification authority may be delegated only by the President; an agency head or official designated pursuant to Sections 1-201(b), 1-202(a), and 1-203(a); and official with original Top Secret classification authority; and the senior official designated under Section 5-301(a), provided that official has been delegated original Secret or Confidential classification authority by the agency head.]

[(e) Each delegation of original classification authority shall be in writing. It shall identify the authority by name or position title.]

RATIONALE: This series of changes simplifies the draft order by eliminating several complicated and repetitious sections. Responsibility for the propriety of classification authority delegations is placed on the official making such a delegation. Also included is a statement clarifying the fact that delegated classification authority includes the stated level as well as lower levels. NOTE: These changes require redesignation of Section 1-205 as 1-204.

Change Section 1-205 (1-204) to read as follows:

1-204. Exceptional Cases. When an employee, contractor, or grantee of an agency that does not have original classification authority originates information believed by the employee, contractor, or grantee 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 under adequate safeguards to the agency which 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 [consult with] determine the agency [determined to have] having primary subject matter interest [in this] and forward the information [before making] to that agency for a classification determination.

RATIONALE: The Information Security Oversight Office's role in classification determinations should be advisory and that Office should not be given authority to usurp classification responsibility of Executive Branch agencies.

Comment concerning Section 1-2:

This draft contemplates publication in the Federal Register of

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original classification authorities as determined by the President. The provisions of the Freedom of Information Act (FOIA) make it imperative that this publication take place before the effective date of the new order. Otherwise, agencies that continue to classify information on or after the effective date of the order will do so without authority placing such information in jeopardy of disclosure in a FOIA proceeding.

Change Section 1-301 to read as follows:

1-301. Information shall be considered for classification only if it concerns:

RATIONALE: Insertion of the word "only" serves to clarify that the listed categories, and any approved by agency heads, are the only kinds of information that may be classified. Deletion of the word "only" which is now strongly implied by the language of the present Order would invite unnecessary criticism.

Change Section 1-301(b) to read as follows:

(b) the vulnerabilities or capabilities of systems, installations, projects, or plans [vital] pertaining to the national security;

RATIONALE: Vulnerabilities or capabilities of systems, installations, projects, or plans need not be "vital" to the national security to be classifiable. It is sufficient that such information be classifiable so long as it pertains to the national security.

Change Section 1-301(d) to read as follows:

(d) intelligence activities [(including special activities)], or intelligence sources or methods;

RATIONALE: The parenthetical phrase is overly broad and without definition, and may be vulnerable to abuse. Moreover, the term "special activities" is encompassed in the term "intelligence activities."

Add new Section 1-301(e) to read as follows:

(e) counterintelligence activities, sources, or methods;

RATIONALE: Counterintelligence information constitutes a distinct and important body of data requiring security classification protection. Such information is presently classified by associating it with some other category of information that is classifiable. This indirect approach places an unnecessary burden on personnel who must defend the classification from requests for disclosure. NOTE: This addition will require redesignation of the Sections that follow.

Change Section 1-302 to read as follows:

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1-302. Information which, either by itself or in the context of other information, is determined to concern one or more of the categories in Section 1-301 shall be classified when an original classification authority also determines that its unauthorized disclosure reasonably could be expected to cause the loss of an advantage to the United States or cause* damage to the national security. [In considering whether the disclosure of information could be expected to cause damage to the national security, information shall be classified if its unauthorized disclosure, when considered in the context of related information, reasonably could be expected to cause such damage.]

*This part of the change appears also in Attachment 1 together with supporting rationale.

RATIONALE: Clarity.

Change Section 1-303 to read as follows:

1-303. Unauthorized disclosure of intelligence sources or methods, cryptologic information, or foreign government information [, or information relating to intelligence sources or methods] is presumed to cause damage to the national security.

RATIONALE: The term "information relating to intelligence sources or methods" is overly broad and could cause the classification of vast amounts of information that may not warrant it. There exists in Section 1-302 (as revised) ample authority to protect information relating to, but not actually disclosing, intelligence sources and methods when protection is justified by the demands of national security. Cryptologic information has been added since its required protection is recognized by statute. This Section of the proposed draft provided protection for signals intelligence but did not provide similar protection for communications security information, the other element of cryptologic information.

Change Section 1-401 to read as follows:

1-401. Information shall be classified for as long as required by national security considerations. [If appropriate] When it can be predetermined, the original classification authority shall set a specific date or event for declassification at the time the information is originally classified.

RATIONALE: Clarity.

Change Section 1-501 to read as follows:

1-501. At the time of original classification, the following shall be shown on the face of all classified documents. [, and prominently displayed, where practicable, on all other forms of classified information:] Classified information in other than

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ORIGINAL DOCUMENT MISSING PAGE(S):

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"[Originating Agency Review Required] Notification by the Originator;" and

RATIONALE: As written, there is an implied direction requiring review for declassification that finds no basis in the order. The replacement wording conveys a clear instruction to the holder of a classified document that he must not declassify the document until properly notified.

Change Section 1-502 to read as follows:

1-502. [Marking designations implementing the provisions of this Order, including abbreviations, shall conform to the standards prescribed in implementing directives issued by the Information Security Oversight Office.] Each classified document shall, by marking or other means, indicate which portions are classified, with the applicable classification level, and which portions are not classified. Agency heads may, for good cause, grant and revoke waivers of this requirement for specified classes of documents or information.

RATIONALE: The present text must be deleted. To a large extent, it duplicates the provisions of Section 5-202(a) of the draft which already requires that the Information Security Oversight Office promulgate directives for implemention of the order. Moreover, the specificity of the language is such that it may preclude agency adaptations of the basic marking requirements to fit particular situations. In past drafts of the order, this Section prescribed portion marking requirements that could be waived by agency heads or the Information Security Oversight Office. Executive Orders 11652 and 12065 specifically address the matter of portion marking which has been of considerable benefit to this Department and others in that it reduces the unnecessary classification of information that does not require protection in the interest of national security thereby strengthening the protection of information which truly requires it. Elimination of the portion marking requirement from the draft order is without merit and it must be restored if its benefits are to be continued. In view of the negotiations leading to the present draft, it is recommended that the portion marking requirement be qualified with a provision for waivers by agency heads.

Change Section 1-602 to read as follows:

1-602. The President or an agency head or official as provided in Section[s] 1-201[(b), 1-202(a), or 1-203(a)] may re-classify information previously declassified and disclosed but not officially released if it is determined in writing that (a) the information requires protection in the interests of national security; and (b) the information may reasonably be recovered. Classification may not be restored to documents already declassified and released officially to the public under this Order, predecessor orders or the provisions of law.

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RATIONALE: This change, which is necessary, essentially restores this Section of the draft to the previously agreed upon text. Re-classification of information that has been disclosed to the public is nonsense in that it merely provides a false sense of security. Once released officially to the public, attempts to classify the information make a mockery of the security classification system. We recognize the possibility that information may be disclosed in a limited way where re-classification is reasonable. The revised text is the only practical approach to this matter.

Change Section 2-101 to read as follows:

> [Derivative classification is the determination that information is in substance the same as information currently classified, and the application of the same classification markings.] Persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide, need not possess original classification authority.

RATIONALE: The deleted sentence is a definition which more properly belongs in Section 6-1 of the draft. In this regard, it is noted that the draft does not provide the corollary definition of "original classification." See the changes recommended in Section 6-1.

Change Section 2-201 to read as follows:

> 2-201. Agencies with original classification authority shall prepare classification guides, as required, to facilitate the proper and uniform derivative classification of information.

RATIONALE: See below.

Delete Section 2-203 that reads as follows:

> [2-203. Agency heads may, for good cause, grant and revoke waivers of the requirement to prepare classification guides for specified classes of documents or information. The Director of the Information Security Oversight Office shall be notified of any waivers.]

RATIONALE: Classification guides have been used successfully for many years in the Department of Defense and defense industry to facilitate the identification and uniform classification of information requiring protection in the interest of national security. However, it is recognized that some departments and agencies in the Executive Branch have experienced difficulty in preparing meaningful classification guides. Accordingly, "as required" is added to Section 2-201 and Section 2-203 is deleted since it would no longer be necessary.

Delete Section 3-101 that reads as follows:

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[3-101. Information shall be declassified or downgraded as soon as national security considerations permit. Agencies shall coordinate their review of classified information with other agencies that have a direct interest in the subject matter. Information that continues to meet the classification requirements prescribed by Section 1-3 despite the passage of time will continue to be protected in accordance with this Order.]

RATIONALE: This Section, as written, says nothing about "Declassification Authority," the caption for the overall Section. The first and third sentences repeat the essence of the first sentence of Section 1-401. The second sentence is useful and can be incorporated into Section 3-102 (see below). NOTE: Deletion of this Section will require redesignation of those that follow.

Change Section 3-102 to read as follows:

3-102. Information shall be declassified or downgraded by the official who authorized the original classification, if that official is still serving in the same position; the originator's successor; a supervisory official of either, or officials delegated such authority in writing by the agency head or the senior agency official designated pursuant to Section 5-301(a). Agencies shall coordinate declassification reviews of classified information with other agencies that have a direct interest in the subject matter.

RATIONALE: This change is a companion to the one preceding. It incorporates the essence of the second sentence of Section 3-101 (to be deleted) as necessary policy guidance.

Change Section 3-103 to read as follows:

3-103. If the Director of the Information Security Oversight Office [determines] believes that information is classified in violation of this Order, the Director may [require] request that 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 until the appeal is decided.]

RATIONALE: The Information Security Oversight Office's role in declassification determinations should be advisory and that Office should not be given authority to usurp the classification/declassification responsibility of Executive Branch agencies. The changes are such that the Director will continue to have a strong charter for challenging a classification believed in error.

Change Section 3-301 to read as follows:

3-301. The Archivist of the United States shall [, consistent with procedures prescribed in the Information Security Oversight

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Office's directives implementing this Order,] develop procedures in consultation with the Director of the Information Security Oversight Office to systematically review for declassification (i) classified records accessioned into the National Archives of the United States, and (ii) classified presidential papers or records in the Archivist's possession and control. Such information shall be reviewed by the Archivist for declassification and declassified in accordance with systematic review guidelines that shall be provided by agency heads who originated the information, or in the case of foreign government information, by the Director of the Information Security Oversight Office, in consultation with interested agency heads. 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 [and] or methods.

RATIONALE: The Information Security Oversight Office should not prescribe internal National Archives and Records Services procedures for that Service's systematic review process. Such internal procedures should be developed by the Archivist. The proposed new language provides for coordination with the Information Security Oversight Office in the development of such procedures. Further, the draft order does not provide declassification authority to the Archivist. Such authority is necessary if the Archivist's systematic review is to be meaningful. The parenthetical phrase "including special activities" is deleted (see comment on Section 1-301(d)).

Change Section 3-401(a) to read as follows:

(a) the request is made by a United States citizen or permanent resident alien, or a United States Federal, State, or local governmental body or agency; and

RATIONALE: Addition of "United States Federal" is required in order to assure that one Federal agency has the needed right to make a Mandatory Review request of another Federal agency. The balance of the change is editorial and provides internal consistency.

Change Section 3-401(b) to read as follows:

(b) the request describes the [information] documents or records containing the information sought with sufficient specificity to enable the agency to locate it with a reasonable amount of effort.

RATIONALE: The substitute language effectively reduces the possibility of having to react to unreasonable requests and it is more in keeping with the Freedom of Information Act's usage of "records."

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Change Section 3-404 to read as follows:

> 3-404. Agency heads shall develop procedures to process requests for the mandatory review of classified 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. 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] and intelligence sources or methods, after consultation with affected agencies. The Archivist shall develop special procedures for the review of information accessioned into the National Archives of the United States. All procedures for mandatory review shall be [reviewed by] provided to the Director, Information Security Oversight Office [, to ensure that they are consistent with this Order and its implementing directives] for information and review.

RATIONALE: The parenthetical phrase "including special activities" is deleted (see comment on Section 1-301(d)). Modification of the last sentence is required since these procedures are internal to an agency and must, in any event, conform to the requirements of the new Executive order and implementing directives.

Change Section 4-101 to read as follows:

> 4-101. A person is eligible for access to Restricted information only when such access is essential to the accomplishment of authorized and lawful Government purposes. A person is eligible for access to [classified] Top Secret, Secret, or Confidential information only after a [formal] favorable determination of trustworthiness, based on investigation, as appropriate, has been reached by agency heads or designated [senior] subordinate officials and provided that such access is essential to the accomplishment of authorized and lawful Government purposes. In the course of collecting background data on individuals pursuant to Executive Orders 10450, and 12036, or other authority in order to make this determination, agencies are authorized to collect criminal history record information.

*This part of the change appears also in Attachment 1 together with supporting rationale.

RATIONALE: The added sentence regarding criminal history record information is an esential modification of the draft. The prerequisite investigative process leading to a security clearance is being hampered severely in some jurisdictions by the refusal to furnish criminal history record information concerning an applicant for a clearance. This situation will be mitigated to some extent by inclusion of the added sentence. Some jurisdictions have indicated that they would provide

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needed criminal history information if the President authorized its collection by, e.g., the Department of Defense. This Department recognizes that not all jurisdictions will cooperate. Nonetheless, some improvement in the current situation can be realized with inclusion of this sentence. It should be noted that the Department of Justice now supports this position. Addition of the clause "based on investigation, as appropriate," strengthens the nexus between the clearance process and collection of criminal justice information. Substitution of "favorable" for "formal" is required as "formal" implies that as long as the determination of trustworthiness is made in a structured environment, investigation is not necessary. Such an interpretation could have a potentially serious impact on personnel security functions. Substitution of "subordinate" for "senior" officials is essential as the typical person within this Department who authorizes access to classified information normally is not "senior" when viewed from the perspective of the seat of government.

Change Section 4-104 to read as follows:

> 4-104. Except as provided by directives issued by the President through the National Security Council, 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. For purposes of this Section, the Department of Defense is considered to be one agency.

RATIONALE: The added sentence will enable the Department of Defense to function as one agency, as it must, in the internal dissemination of classified information. It should be noted that a similar problem may exist for other agencies such as the Justice Department (and the Federal Bureau of Investigation) and the Treasury Department (and the Secret Service).

Change Section 4-201 to read as follows:

> 4-201. Agency heads designated pursuant to Section 1-201 may create special access programs to control access, distribution, and protection of particularly sensitive information classified pursuant to this Order or predecessor orders. Such programs may be created or continued only at the written direction of these agency heads. For special access programs pertaining to [intelligence activities (including special activities), or] intelligence sources or methods, this function will be exercised by the Director of Central Intelligence. For special access programs pertaining to cryptology, this function will be exercised by the Secretary of Defense.

RATIONALE: The language proposed for deletion must be eliminated as the Director of Central Intelligence should approve only those special access programs dealing with intelligence sources and methods. "Intelligence activities" could be construed to include those strategic and tactical programs that are exclusively the prerogative of the military

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commander within the Department of Defense.

Change Section 4-202 to read as follows:

> 4-202. Each agency shall establish and maintain a system of accounting for special access programs. The Director of the Information Security Oversight Office, consistent with the provisions of Section 5-202(d), shall have non-delegable access to all such accountings.

RATIONALE: Section 5-202(d) provides the conditions for agency head denial of access to the Director, Information Security Oversight Office. The language added to Section 4-202 takes this into account and avoids a conflict in the provisions of the draft.

Change Section 5-102 to read as follows:

> 5-102. The Administrator of General Services shall be responsible for implementing and monitoring the program established pursuant to this Order. [This responsibility shall be delegated] The Administrator shall delegate the implementation functions of this program to the Director of the Information Security Oversight Office.

RATIONALE: This change avoids stating that responsibility will be delegated, a non sequitur. The Administrator of General Services remains responsible for the program implementation as stated in the first sentence of this Section.

Change Section 5-202(d) to read as follows:

> (d) [have the authority to conduct on-site reviews of the information security program of each agency that creates or handles classified information and to] require of each agency that creates or handles classification information those narrative reports, information, and other cooperation which may be necessary to fulfill the Director's responsibilities. If these reports[, inspections,] or access to specific categories of classified information would pose an exceptional national security risk, the affected agency head or the senior official designated under Section 5-301(a) may deny access. The Director may appeal denials to the National Security Council. The denial of access shall remain in effect until the appeal is decided;

RATIONALE: It is sufficient in Section 5-102 for the President to place responsibility for implementing and monitoring the Information Security Program. However, the details of how program monitorship is to be accomplished are more appropriately addressed in implementing directives that are developed in consultation with the affected agencies. Further, these directives should minimize the operational impact on the agencies concerned. Our experience has been that the Information Security Oversight Office inspections are unnecessarily redundant

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to the active DoD oversight efforts and monitorship of its Program. In fiscal year 1981 the Department of Defense conducted 29,532 internal inspections to assure compliance with the Order. In view of the active DoD oversight and monitorship of its Program required by Section 5-301(a), additional Information Security Oversight Office on-site inspections are difficult to justify in terms of cost versus benefit. The addition of the word "narrative" is intended to eliminate the further and costly collection of meaningless statistical data such as the number of documents classified at various levels.

Change Section 5-202(g) to read as follows:

> (g) [have the authority to prescribe] develop in consultation with affected agencies standard forms which will promote the implementation of the information security program;

RATIONALE: This change is needed in order to avoid the possibility of being directed to use a standard form that is not adequate for the particular needs of an Executive Branch agency.

Delete Section 5-202(h) that reads as follows:

> [(h) exercise case-by-case classification authority in accordance with Section 1-205;]

RATIONALE: See comment on Section 1-205 (1-204).

Change Section 5-301(c) to read as follows:

> (c) establish procedures to prevent unnecessary access to classified information, including procedures which (i) require that a demonstrable need for access to classified informtion is established before initiating administrative clearance procedures, and (ii) ensure that the number of persons granted access to classified information is [reduced to and maintained at] limited to the minimum number that is consistent with operational and security requirements and needs.

RATIONALE: This change eliminates the implication that there are now too many cleared personnel.

Add new Section 5-301(d) to read as follows:

> (d) ensure development of emergency destruction plans for Top Secret or other particularly sensitive information such as that maintained within special access programs when such information is used in or near hostile or potentially hostile areas.

RATIONALE: This added requirement will help assure adequate methods of emergency destruction are available in foreign areas. NOTE: Adoption

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of this change will require deleting the final word "and" from Section 5-301(b) and adding it to end of Section 5-301(c).

Change Section 5-402(a) to read as follows:

> (a) knowingly, willfully or negligently disclose [without authorization] to unauthorized persons information properly classified under this Order or predecessor orders;

RATIONALE: The recommended change clarifies the point that the disclosure must be to a person not authorized access to the information.

Change Section 5-404 to read as follows:

> 5-404. Each agency head or the senior official designated under Section 5-301(a) shall ensure that appropriate and prompt corrective action is taken whenever a violation under Section 5-402 occurs. [Each shall ensure that the Director of the Information Security Oversight Office is promptly notified whenever a violation under Section 5-402(a) or (b) occurs.]

RATIONALE: Past experience has shown that the reporting of violations to the Oversight Office serves no useful purpose.

Change Section 6-104(a) to read as follows:

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

RATIONALE: The change provides a clearer and more complete statement of the policy.

Change Section 6-106 to read as follows:

> 6-106. "Confidential source" means any individual or organization which has provided, or which may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation, expressed or implied, that the [information or relationship, or both, be held in confidence] identity of the individual or organization will not be revealed.

RATIONALE: This change corrects the definition to provide for the protection of the source of the information rather than the information itself. The information provided by a "confidential source" may or may not be classified.

Add new Section 6-107 to read as follows:

Approved For Release 2006/01/12 : CIA-RDP87B01034R000200050039-7

Approved For Release 2006/01/12 : CIA-RDP87B01034R000200050039-7

6-107. "Original classification" means an initial determination that information requires, in the interest of national security, a specific degree of protection against unauthorized disclosure together with a classification designation signifying the level of protection required.

RATIONALE: The draft order provides a definition of "derivative classification" (see comments on Section 2-101) but fails to provide for the corollary and important definition of "original classification."

Add new Section 6-108 to read as follows:

6-108. "Derivative classification" means a determination that information is in substance the same as information that is currently classified together with a classification designation signifying the level of protection required.

RATIONALE: This change is a companion to the one involving Section 2-101 and incorporates the essence of the first sentence of that Section.

Comment concerning Section 6-1:

Consideration should be given to listing the definitions contained in this Section in alphabetical order.

Comment concerning Section 6-204:

The Department of Defense will require a minimum of three months after signing of the order in which to prepare necessary changes to numerous implementing regulations. This assumes that necessary implementing directives of the Information Security Oversight Office are in place at the time the order is signed. Every effort will be made to implement the new order as rapidly as possible but there is no need to impose an unrealistically short effective date in the order.

Approved For Release 2006/01/12 : CIA-RDP87B01034R000200050039-7