

(Security Class. EO)

DRAFT

EXECUTIVE ORDER

NATIONAL SECURITY INFORMATION AND MATERIAL

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in order to balance the public interest in access to official information with the legitimate need to protect information which should be kept secret in the interest of national security, it is hereby ordered as follows:

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Section 1. Definitions.

(a) "Official information or material" means that information or material which is owned by, produced for or by, or under the control of the United States Government.

(b) "National security" means the foreign policy or national defense interests of the United States.

(c) "Agency" means any independent entity, including the Military Departments, within the Executive Branch.

(d) "Intelligence source" means a person, organization, or technical means which provides foreign intelligence or foreign counterintelligence and which, if its identity or capability is disclosed, is vulnerable to counteraction that could nullify or significantly reduce its effectiveness in providing foreign intelligence or foreign counterintelligence to the United States. An "intelligence source" also means a person or organization which provides foreign intelligence or foreign counterintelligence to the United States only on the condition that its identity remains undisclosed.

(e) "Intelligence method" means the method which is used to provide support to an intelligence source or operation, and which, if disclosed, is vulnerable to counteraction that could nullify or significantly reduce its effectiveness in supporting the foreign intelligence or foreign counterintelligence activities of the United States, or which would, if disclosed, reasonably lead to the disclosure of an intelligence source or operation.

(f) "Classified information" is official information which has been determined by proper authority to require a degree of protection against unauthorized disclosure

in the interest of national security and has been designated, dependent upon its significance to the national security, with one of the three following authorized classification designations:

(1) "Top Secret" is the designation which shall be applied to official information or material the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security.

(2) "Secret" is the designation which shall be applied to official information or material the unauthorized disclosure of which could reasonably be expected to cause serious damage to the national security.

(3) "Confidential" is the designation which shall be applied to official information or material the unauthorized disclosure of which could reasonably be expected to cause significant damage to the national security.

Sec. 2. Original Classification.

(a) Classification Requirements. Official information or material, hereinafter referred to as information, shall not be classified unless an original classification authority determines:

(1) That the information meets one or more of the criteria set forth in subsection (b) below; and

(2) The disclosure of such information could reasonably be expected to cause at least significant damage to the national security. In the case of information provided

in confidence by a foreign government or international organization, it is reasonable to expect that the breach of that confidence could cause significant damage to the national security.

(b) Classification Criteria. The following, which apply equally to all three authorized classification designations, describe information which is classifiable if its disclosure could reasonably be expected to:

(1) Make the United States or its allies vulnerable to attack by a foreign power, or weaken the ability of the United States or its allies to conduct armed operations or defend themselves, or diminish the effectiveness of the United States' armed forces; or

(2) Lead to hostile political, economic, or military action against the United States or its allies by a foreign power; or

(3) Disclose, or provide a foreign nation with an insight into, the defense plans or posture of the United States or its allies; provide a foreign nation with information upon which to develop effective countermeasures to such plans or posture; weaken or nullify the effectiveness of a United States military, foreign intelligence, or foreign counterintelligence, plan, operation, project, or activity; or

(4) Aid a foreign nation to develop, improve, or refine its military potential; or

(5) Reveal, jeopardize, or compromise an intelligence source or method, an analytical technique for the interpretation of intelligence data, or a cryptographic device or system; or

(6) Disclose to other nations or foreign groups that the United States has, or is capable of obtaining, certain information or material concerning those nations or groups without their knowledge or consent; or

(7) Deprive the United States of a scientific, engineering, technical, economic, or intelligence advantage directly related to national security; or

(8) Create or increase international tensions; or otherwise significantly impair our foreign relations; or

(9) Disclose or weaken the position of the United States or its allies in the discussion, avoidance, or peaceful resolution of existing or potential international differences; or

(10) Disclose plans prepared by, or under discussion by, officials of the United States to meet contingencies or situations arising in the course of our foreign relations or national defense; or

(11) Cause political or economic instability or civil disorder in a foreign country; or

(12) Disclose the identity of a confidential source of a United States diplomatic or consular post; or

(13) Disclose information or material provided to the United States in confidence by a foreign government or international organization.

c. Prohibitions. Classification of information is subject to the following prohibitions:

(1) Where there is doubt as to whether certain information requires any security protection, the classifying official will strike the balance in favor of public access to official information and the information shall not be classified.

(2) No information may be classified in order to conceal violations of law, inefficiency, or administrative error, to prevent embarrassment to a person, organization, or agency, to restrain competition or independent initiative, or to prevent or delay for any other reason the release of information which does not require, in the interest of national security, the protection authorized by this Order.

(3) Basic scientific research information may not be classified, except for Restricted Data within the meaning of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014(y)), and except for such information that is directly related to the national security.

(4) Information or material which is not official information or material may not be classified; thus, information resulting from independent or nongovernmental research and development shall not be classified unless it incorporates or reveals classified information to which the researcher or developer was given prior access or unless the Government first acquires a proprietary interest therein.

(5) References to classified documents may not be a basis for classification unless the reference, standing alone, would disclose classified information.

(6) Classification shall not be used solely for the purpose of limiting dissemination of information which is not classifiable under the provisions of this Order.

(7) Where there is doubt whether information should be classified Secret or Top Secret, it shall be classified Secret. Where there is doubt whether information classified should be classified Confidential or Secret, it shall be classified Confidential.

d. Classification Authority.

(1) The authority to originally classify information "Top Secret" may be exercised only by such officials as the President by publication in the Federal Register may designate in writing and, subject to the restriction in paragraph (4) by the heads of the following agencies:

- (i) Department of State
- (ii) Department of the Treasury
- (iii) Department of Defense
- (iv) Department of the Army

- (v) Department of the Navy
- (vi) Department of the Air Force
- (vii) Department of Justice
- (viii) Department of Energy
- (ix) U.S. Arms Control and Disarmament Agency
- (x) Central Intelligence Agency
- (xi) National Aeronautics and Space Administration
- (xii) General Services Administration

(2) The authority to originally classify information "Secret" may be exercised, subject to the restrictions in paragraph (4) only by officials who have Top Secret classification authority and by the heads of the following agencies:

- (i) Department of Commerce
- (ii) Department of Transportation
- (iii) Agency for International Development
- (iv) Office of the Special Representative for Trade Negotiations
- (v) United States Information Agency
- (vi) Nuclear Regulatory Commission

(3) The authority to originally classify information "Confidential" may be exercised, subject to the restrictions in paragraph (4), only by officials who have "Top Secret" or "Secret" classification authority and the heads of the following agencies:

- (i) Department of Labor
- (ii) Export-Import Bank of the United States
- (iii) Overseas Private Investment Corporation

(4) The heads of agencies specifically named in paragraphs (1), (2) and (3) may delegate their authority to originally classify information. Such delegation may provide for redelegation, except for Top Secret original classification authority. Officials to whom such authority is redelegated may not further redelegate it. All delegations shall be in writing, and shall be granted only to officials by name or title of position held. The number of officials to whom original classification authority is delegated shall be restricted to those officials whose duties and responsibilities necessitate the origination of classified information on a regular and recurring basis.

(5) The head of any agency not specifically granted original classification authority herein may not originally classify information under this Order, unless specifically authorized in writing by the President. Requests for such authority shall be directed to the Security Information Oversight Office, established herein, and shall identify the positions requiring the authority, the classification level required and justification for the granting of such authority.

(e) Exceptional Cases. In an exceptional case when a person or agency not authorized to originally classify originates information which is believed to require classification, such person or agency shall protect that information in the manner prescribed by this Order and implementing directives. The information shall be promptly transmitted under appropriate safeguards to the agency having primary interest in the subject matter, or where such agency cannot be identified, to the Director of the Security Information Oversight Office, with a request that a determination be made as to classification.

(f) Limitation on Authority to Provide for the Duration of Classification.

(1) All original classification authorities, except as permitted in paragraph (2) shall, at the time of the original classification determination, set a specific date or event for automatic declassification of the information. The date or event shall be as early as the national security interest will permit; but, in no case shall the date or event exceed six years from the date of origin of the information that is classified.

(2) In those cases where there is a need, directly related to the national security, to continue classification beyond six years, only Top Secret classification authorities or the heads of agencies specifically designated in Sec. 2(d) of this Order may set a later date or event for automatic declassification. Alternatively, these authorities may,

where declassification guidelines issued by heads of agencies prescribe a need for review of specified information upon its 20th anniversary, set a date for review of such information consistent with such guidelines. In either case, these dates or events shall be as early as the national security interest will permit but in no case shall exceed 20 years from date of origin of the information involved. Additionally, for foreign originated information, as defined in Section 4(f), those officials may set dates or events for declassification or review which shall not exceed thirty years. Official who authorize the extension beyond six years must record on the originator's file copy the reasons for such extension and their identity. The reasons must be specific and must explain why the classification will continue to meet the requirements set forth in subsection 2(a) above.

(g) Identification and Markings.

(1) Each classified document shall show on its face:

(i) the identification of the original classification authority; (ii) the office of origination; (iii) the date of origination; (iv) the date or event for declassification or review; and (v) one of the three classification designations defined herein. No other designations, e.g., "For Official Use Only," "Limited Official Use," shall be used to identify information requiring protection in the interest of national security, except as otherwise expressly provided by statute.

(2) Each classified document shall, by marking or other means, clearly indicate which portions are classified, at what level, and which portions are not classified, in order to facilitate excerpting and other uses. Heads of agencies may, for good cause, seek a waiver of this marking requirement from the Director of the Security Information Oversight Office for certain classes of material.

(3) Classified information or material furnished to the United States by a foreign government or international organization shall either retain its original classification or be assigned a United States classification. In either case, the classification shall assure a degree of protection equivalent to that required by the government or international organization which furnished the information or material.

(4) Classified documents which contain or reveal information which the originator has determined should be subject to special dissemination and reproduction limitations shall be clearly annotated to place the recipient on notice to restrict dissemination and reproduction. In such case, the following statement shall be included in the document or on its cover sheet as a special notation separate and apart from the security classification marking:

"Reproduction of this document or portions thereof is prohibited without authorization of the originating office. Its further dissemination shall be restricted to those authorized by the addressee."

Sec. 3. Derivative Application of Markings. Persons who only reproduce, extract, summarize, or otherwise use classified information shall not be given original classification authority for the purpose of placing or directing the placement of derivative classification markings on new material if the classification is based solely on such previously classified source information. Persons who apply derivative classification markings shall respect classifications assigned by originators, and shall, to the maximum extent practicable, verify the current need for and level of classification of the information or material prior to applying such markings. They shall also carry forward to any newly created documents or material the dates or events assigned by the originator to the source material for declassification or review.

Sec. 4. Declassification. Declassification of classified information shall be given emphasis comparable to that accorded to classification. The determination to declassify information shall not be made on the basis of the level of classification assigned, but rather on the expected perishability and loss of ^{the} sensitivity of the information with the passage of time, and with due regard for the public interest in access to official information. At the time of review, any determination not to declassify shall be based on a determination that release of the

information would be demonstrably harmful to the national security. Declassification shall be accomplished in accordance with the following:

(a) Guidelines. Within 180 days after the effective date of this Order, heads of agencies specifically named in Section 2(d) of this Order shall, in consultation with the Archivist of the United States, issue declassification guidelines which shall be applicable to 20-year old information classified under their respective jurisdictions and for which a prior automatic declassification date has not been established. These guidelines shall specifically identify those items or categories of information which, because of their probable continuing sensitivity and importance to the national security interest, cannot be automatically declassified but must be reviewed to determine whether there is a need for continued protection beyond 20 years. Information not identified in the guidelines as requiring review is and shall be automatically declassified at the end of 20 full calendar years from its date of origin. These guidelines shall be authorized for use by the Archivist of the United States and agencies having custody of the information covered therein.

(b) New Material. Information, except as provided in subsection (f), which is classified on or after the effective date of this Order, shall be declassified or reviewed for declassification in accordance with the dates

or events specified by original classification authorities pursuant to Section 2(f) of this Order. Information which is not marked with a date or event for declassification or review is automatically declassified six years after its origination. Information whose classification is derived from source material/prior to the effective date of this Order shall carry forward dates or events for declassification or review shown on the source material and shall be declassified or reviewed in accordance with subsection (c).

(c) Old Material. Information, except as provided in subsection (f), which was classified before the effective date of this Order and already marked with a date or event which directs declassification in 20 years or less from the date of its origin shall be declassified in accordance with such date or event unless, upon review by officials authorized under Section 4(g) of this Order, an earlier date for declassification is determined. Such classified information not so marked is and shall be, on and after January 1, 1979, automatically declassified 20 years from the date of its origin unless identified in the guidelines issued by the heads of agencies under subsection (a) as requiring review.

(d) Systematic Review. To conserve Government resources devoted to the systematic review of 20-year old information and to achieve more effective declassification, only that information constituting the

permanently valuable records of the Government in accordance with 44 U.S.C. 2103 shall be so reviewed. Heads of agencies shall order the review of all security classified records 20 years old or older which are held in storage areas by the agency or in Federal Records Centers for possible disposal. Records which are found to be unscheduled for some definite future disposition shall be scheduled immediately. Permanently valuable records of the Government shall be systematically reviewed as they become 20 years old. In the conduct of this review the declassification guidelines issued by heads of agencies under subsection (a) shall be applied. Only the head of an agency designated in Section 2(d) hereof may authorize the continued classification of information beyond 20 years. In these cases, a declassification date shall be determined; or, a date shall be set, not more than ten years later, for subsequent review in accord with these procedures established for 20 year old information. The head of an agency or the Director of Central Intelligence may seek a waiver of this ten year limit.

(e) Mandatory Review. (1) All information classified under this or prior Orders shall be subject to declassification review by the originating or responsible agency upon request of an agency or member of the public, provided the request describes the material sufficiently to enable the agency having custody to locate it with a reasonable amount of effort. The head of each agency shall designate an office to which requests for mandatory review for declassification may be directed. After review,

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the record or any reasonably segregable portion thereof which no longer requires protection under this Order shall be declassified, and released unless withholding is otherwise determined to be required under applicable statutes.

(2) Procedural instructions for processing such requests from the public shall be issued by the Security Information Oversight Office.

(3) Requests for declassification review submitted to an agency by employees thereof, shall be considered in accord with procedures which shall be established by agency heads. Denials of such requests may be referred to an agency committee for reconsideration.

(4) Material originated by a President or a President's White House staff, or material in the possession and control of the Administrator of General Services pursuant to Section 2107 or 2107 note of title 44, U.S.C., is exempted from this review if such material is less than ten years old.

(f) Foreign Originated Information. Classified information furnished to the United States by a foreign government, international organization or an official or representative thereof, or produced by the United States

jointly with a foreign government or international organization, with the understanding that such information will be kept in confidence, shall be exempt from the declassification provisions of Section 4 of this Order. Such information shall, unless downgraded or declassified earlier, be reviewed for downgrading and declassification 30 years from date of origin and shall be downgraded and declassified in accordance with guidelines developed by heads of agencies in consultation with the Archivist of the United States and, where appropriate, with the foreign government or international organization concerned.

(g) Declassification Authority. The authority to downgrade and declassify information classified under this or prior Executive orders shall be exercised as follows:

(1) Classified information may be downgraded or declassified by the official who authorized the original classification, by a successor in interest or capacity, or by a supervisory official of either.

(2) Heads of agencies specifically named in Section 2(d) shall designate additional officials at the lowest practical echelons of command and supervision to exercise downgrading and declassification authority, particularly with respect to information within their areas of responsibility. These officials should also be authorized by the head of the agency to resolve conflicts or doubts regarding classification.

(3) The Director of the Security Information Oversight Office may downgrade or declassify information considered by the Oversight Office in the exercise of its appellate functions pursuant to Section 7 hereof, and may downgrade or declassify information in any instance wherein the Director determines that the continued classification would be in violation of this Order. These downgrading or declassification decisions shall take effect ten working days after they are made, unless during which time the head of the affected agency appeals the decision to the President through the National Security Council.

(4) In the case of classified information transferred by or pursuant to statute or Executive order in conjunction with a transfer of function and not merely for storage purposes, the receiving agency shall be deemed to be the originating agency for all purposes under this Order, including downgrading and declassification.

(5) In the case of classified information not transferred in accordance with paragraph (4) of this subsection, but originated in an agency which has since ceased to exist, each agency in possession shall be deemed to be the originating agency for all purposes under this Order. Such information may be downgraded or declassified by the agency in possession after consulting with any other agency having an interest in the subject matter.

(6) Classified information transferred to the General Services Administration for accession into the Archives of the United States shall be downgraded and declassified by the Archivist of the United States in accordance with this Order, directives issued by Security Information Oversight Office, and pertinent regulations and declassification guidelines of the agencies.

(7) After the termination of a Presidential administration, the Archivist of the United States shall have the authority to review, downgrade and declassify information which was classified by the President, his White House staff, special committees or commissions appointed by him or others acting in his behalf when this information is not part of the records of an agency subject to Federal records statutes. This authority shall be exercised only after consultation with the agencies having primary subject matter interest.

(8) The provisions of this Order relating to the declassification of national security information shall apply to agencies which, under the terms of this Order, do not have current authority to originally classify information, but which formerly had such authority under prior Executive orders.

Sec. 5. Downgrading. Information classified under prior orders and marked for automatic downgrading is automatically downgraded accordingly. Information

classified under this or prior orders shall, after review by the originator or other official authorized to downgrade or declassify information under this Order, be assigned a lower degree of protection against unauthorized disclosure than currently provided when such downgrading will serve a useful purpose. Downgrading action will be reflected by changing the classification, to a lower level coupled with a notice of such action to holders of the information.

Sec. 6. Safeguarding.

(a) Policy Directives. The Director of the Security Information Oversight Office shall, with the approval of the National Security Council, issue directives which shall be binding on all agencies for the protection of classified information from loss or compromise. Such directives shall conform to the following policies:

(1) No person shall be given access to classified information unless such person has been determined to be trustworthy and unless access to such information is necessary for the performance of official duties.

(2) All classified information shall be appropriately and conspicuously marked to put all persons on clear notice of its classified contents.

(3) Classified information shall be used, processed, and stored only under conditions which will prevent access by unauthorized persons.

(4) Appropriate controls for classified information shall be established and maintained and such information shall be protected adequately during all transmissions.

(5) Classified information no longer needed in current working files or for reference or record purposes shall be destroyed or disposed of in accordance with the records disposal provisions contained in Chapters 21 and 33 of Title 44 of the United States Code and other applicable statutes.

(6) All classified information disseminated outside the Executive Branch shall be given appropriate protection.

(b) Secrecy Agreements. Heads of agencies may require the signing of a secrecy agreement as a precondition of access to classified information. The Security Information Office shall, in coordination with appropriate agencies, develop a uniform secrecy agreement which the heads of agencies may adopt. Secrecy agreements currently in force need not be reexecuted.

(c) Special Access.

(1) The head of an agency specifically named in Section 2(d)(1), or the Director of Central Intelligence, may impose, in conformity with the provisions of this Order, special requirements with respect to access, distribution, and protection of classified information.

Special access programs may only be created

or continued by the head of an agency specifically named in Section 2(d)(1), or, for matters pertaining to intelligence sources and methods, by the Director of Central Intelligence, personally and in writing. Such special access programs shall be created or continued only on the specific showing that:

(i) Normal safeguarding procedures are not sufficient to limit need-to-know or access;

(ii) the number of persons who will need access will be reasonably small and commensurate with the objective of providing extra protection for the information involved; and

(iii) the special access controls balance the need to protect the information against the full spectrum of needs to use the information.

(2) All such special access programs shall automatically terminate every three years unless renewed in accordance with the procedures in this Section.

(3) Heads of agencies, or the Director of Central Intelligence as applicable, shall within 180 days after the effective date of this Order, review all existing special access programs under their jurisdiction and continue them only subject to the procedures in this section. They shall also establish and maintain for their areas of responsibility central listings of all special access programs continued or created by them. Heads of agencies, the Director of Central Intelligence, and the Director of the

Security Information Oversight Office shall have access to all such lists of special access programs; however, such right of access may not be delegated.

(d) Historical Researchers and Former Officials.

The requirement in Section 6(a)(1) that access to classified information be granted only as is necessary for the performance of one's duties shall not apply to persons outside the Executive Branch who are engaged in historical research projects or who have previously occupied policy-making positions to which they were appointed by the President; provided, however, that in each case the head of the agency:

(1) Determines in writing that access is consistent with the interests of national security;

(2) Takes reasonable action to ensure that properly classified information is not subject to unauthorized disclosure; and

(3) With respect to access granted a person by reason of his having previously occupied a policy-making position, such access shall be limited to those papers which the former official originated, reviewed, signed or received, while in public office.

(e) Controls on Reproduction and Distribution.

(1) Subject to directives issued by the Director of the Security Information Oversight Office, the heads of agencies shall ensure that:

(i) Top Secret documents are not reproduced without the consent of the originating office.

(ii) Secret documents are not reproduced except in accordance with procedures approved by an appropriate official who has been designated for that purpose by the agency having custody of the document.

(iii) No classified document is reproduced if such reproduction is prohibited by the originator and the document is so annotated.

(iv) Reproduced copies of classified documents are subject to the same accountability and controls as the original.

(v) Records are maintained by the reproducing office to show the number and distribution of reproduced copies of Secret and Top Secret documents and those marked in accord with Section 2(g)(4) restricting reproduction and dissemination.

(2) All classified information shall be appropriately and conspicuously marked to put all persons on clear notice of its classified contents, and, if appropriate, marked to show its particular dissemination and reproduction restrictions.

Sec. 7. Implementation and Review. Overall responsibility for policy direction of the program established pursuant to this Order shall rest with the National Security Council.

(a) Oversight Office.

(1) The Administrator of General Services, subject to the direction of the President and the National Security Council, shall be responsible for the implementation and monitoring of the program established pursuant to this Order. Such responsibility shall be performed through a Security Information Oversight Office headed by a full-time Director authorized to maintain a permanent staff. The Oversight Office shall:

(i) In accordance with procedures to be established by its Director, oversee agency actions to ensure compliance with the provisions of this Order and implementing directives.

(ii) Consider and take action on complaints and suggestions from persons within and without the Government with respect to the general administration of the Order, including appeals from agency denials of requests for declassification of those classified records defined in Section 4(e)(4) which are ten or more years old.

(iii) Develop, in consultation with affected agencies, directives required for the effective implementation of this Order.

(iv) Report annually to the President through the National Security Council on Executive Branch implementation of the Executive order.

(v) Have the authority to require of each agency with original classification authority such reports, information, and other cooperation as necessary to fulfill the above responsibilities.

(2) There is also established an Interagency Security Information Advisory Committee which shall be chaired by the Director of the Oversight Office and shall be comprised of representatives of the Departments of State, Defense, Justice, and Energy, the Director of Central Intelligence, the National Security Council staff, and the National Archives and Records Service. The Interdepartmental Committee shall meet at the call of the Chairman and shall act in an advisory capacity to him in all matters related to effective implementation of this Order and implementing directives.

(b) Agencies. To promote the basic purposes of this Order, the head of each agency originating or handling classified information shall:

(1) Prior to the effective date of this Order, submit to the Security Information Oversight Office for approval a copy of the regulations it proposes to adopt pursuant to this Order and implementing directives. Subsequent changes to agency regulations shall also be forwarded to the Oversight Office for approval.

(2) Publish in the Federal Register those regulations or changes thereto which are approved by the Director of the Security Information Oversight Office and which are issued in implementation of this Order to the extent that they affect the general public.

(3) Designate a senior member of the agency staff who shall conduct an active oversight program and shall ensure effective compliance with and implementation of this Order.

(4) Designate a subordinate who shall chair an agency committee which shall have authority to act on all suggestions and complaints with respect to the agency's administration of this Order. This committee also may be authorized to act upon appeals from denials of declassification requests made pursuant to subsection 4(e).

(5) Establish a continuing program to familiarize agency personnel and others authorized access to classified information with the provisions of this Order and implementing directives. There shall also be established and maintained an active security orientation and education program for such personnel in order to impress upon each individual his or her responsibility for exercising vigilance and care in complying with the provisions of this Order.

(6) Ensure the preparation and promulgation of security classification guidance adequate to facilitate the identification and uniform classification of

information requiring protection under the provisions of this Order.

(7) Develop and promulgate declassification guidelines in accordance with Section 4(a) hereof.

(8) Take necessary action to ensure that:

(i) a demonstrable need for access to classified information is established prior to the initiation of administrative clearance procedures, and

(ii) the number of people granted access to classified information is reduced to and maintained at the minimum, consistent with operational requirements and needs.

(9) Cause a continuing review of safeguarding practices and procedures; and, eliminate those which are found to be duplicative and unnecessary.

(10) Submit to the Security Information Oversight Office such information or reports as the Director of the Security Information Oversight Office may find necessary to carry out the Oversight Office's responsibilities.

Sec. 8. Administrative Sanctions.

(a) Any officer or employee of the United States who knowingly and willfully classifies or continues the classification of information in violation of this Order or any implementing directive; or knowingly and willfully and without authorization, discloses classified information; or compromises classified information through gross negligence; or knowingly and willfully violates any other provision

of this Order or implementing directive which the head of an agency determines to be a serious violation, shall be subject to appropriate administrative sanctions. In any case in which the Oversight Office finds that unnecessary classification or overclassification has occurred it shall make a report to the head of the agency concerned so that corrective steps may be taken.

(b) Sanctions may include, but are not limited to, reprimand, suspension without pay, removal, or other sanction in accordance with applicable law and agency regulations.

(c) The head of each agency shall ensure that appropriate and prompt corrective administrative action is taken whenever a violation under paragraph (a) occurs. Additionally, heads of agencies shall immediately inform the Department of Justice of any case in which a violation of the criminal law may be involved.

Sec. 9. Atomic Energy Material. Nothing in this Order shall supersede any requirements related to "Restricted Data" and material designated as "Formerly Restricted Data" pursuant to the Atomic Energy Act of August 30, 1954, as amended, or the regulations of the Department of Energy.

Sec. 10. Revocation of Prior Orders. Executive Order No. 11652 of March 8, 1972, as amended by

Executive Orders No. 11714 of April 24, 1973 and No. 11862 of June 11, 1975, and all implementing directives issued pursuant to Executive Order No. 11652, including the Directive of May 17, 1972 (3 C.F.R. 1085(1971-75 Comp.)) are revoked.

Sec. 11. Effective Date. This Order shall become effective on March 1, 1978, except that the functions of the Security Information Oversight Office shall be effective immediately and shall be performed in the interim by the Interagency Classification Review Committee.

THE WHITE HOUSE

, 1977

INTELLIGENCE COMMUNITY STAFF COMMENTS ON THE PROPOSED EXECUTIVE ORDER ON
"NATIONAL SECURITY INFORMATION AND MATERIAL"

1. Page 2, Table of Contents. Add under the caption for section 6 a new sub-caption reading "(e) Controls on Reproduction and Distribution."
REASON: Consistency with the text of the draft Order.

2. Page 3, subsection 1(d). Change to read: "'Intelligence source' means a person, organization, or technical means which provides or is expected to provide foreign intelligence or foreign counterintelligence and which, if its existence, identity or capability is disclosed,... An 'intelligence source' also means a person or organization which ~~provides~~ has provided, is providing, or has agreed to provide foreign intelligence...only on the condition that its identity remains undisclosed." REASON: To clarify the definition so that in case of litigation or dispute it will be clear that sources under development may be protected by classification; that certain technical sources which could be lost if their existence was compromised can be protected; and that sources who cooperate on the basis of confidentiality may be protected after they have become inactive and before they have started to report, in addition to while they are active.

3. Page 3, subsection 1(e). Change to read: "'Intelligence method' means ~~the any method which is used to~~ provide support to an intelligence source or operation,...United States, or which ~~would~~ could, if disclosed, reasonably be expected to lead to...." REASON: To ensure that support is understood as encompassing any and all means, not just material ones; to recognize the potential, not the certainty, of consequences of disclosure; and to provide for the application of judgment to such consequences.

4. Page 4, subsection 2(a)(2). Change the first sentence to read: "The unauthorized disclosure of such information could reasonably be expected to cause at least significant damage to the national security." REASON: Consistency with the definitions of the three classification levels.

5. Page 5, subsection 2(a)(2). Change the second sentence to read: "In the case of information provided in confidence by a foreign government or international organization, and of information specifically bearing on

intelligence sources or intelligence methods, it is reasonable to expect that the breach of that confidence, or the disclosure in whole or in part of those sources or methods, could cause at least significant damage to the national security." REASON: (1) The language in the present draft reflects decisions that information provided in confidence by a foreign government, etc., should be treated as classified information, not just classifiable dependent upon a separate finding that its disclosure would cause a requisite degree of damage to the national security. Intelligence sources and intelligence methods are at least as sensitive as foreign governmental confidences. Some intelligence sources are foreign governments. The draft Order defines such sources and methods as being inherently sensitive. As such, information satisfying those definitions should not have to undergo a separate test, subject to litigation under the Freedom of Information Act, of damage to the national security if disclosed. The Order should therefore assert that both classes of information are classified. (2) The qualifier "at least" before "significant damage" is needed to allow whatever classification designation is appropriate to be applied to the information involved. As written, the classification would be limited to Confidential (v. section 1(f)(3)).

6. Page 5, subsection 2(b)(3). Change lines 3-5 to read: "Provide a foreign nation with information upon which it could use to develop ~~effective~~ countermeasures to such plans or posture;" REASON: (1) Grammatical; (2) The qualifier "effective" adds a judgmental consideration essentially irrelevant to the application of this classification criterion.

7. Page 7, subsection 2(c)(1). Change the opening clause to read: "Where there is reasonable doubt as to whether certain information requires any security protection,". REASON: To temper this test so as to avoid the extreme interpretation that any degree of doubt, no matter how small or un-reasoned, would preclude classification.

8. Page 8, subsection 2(c)(7). Change to read: "Where there is reasonable doubt whether information should be classified Secret or Top Secret, it shall not be classified Top Secret. Where there is reasonable doubt whether information ~~classified~~ should be classified Confidential or Secret, it shall not

be classified Secret Confidential." REASON: To provide for the exercise of reasonable judgment in determining classification; and to be consistent with the prohibitory language in the other parts of subsection 2(c).

9. Page 8, subsection 2(d)(1). Change to read: "The authority to originally classify information 'Top Secret' may be exercised only by such officials as the President by publication in the Federal Register may designate in writing, ~~and, subject to the restriction in paragraph (4)~~ by the heads of the following agencies, and, subject to the restrictions in subsection (4), by such persons as they may designate in writing:" REASON: (1) To make clear that persons designated in writing by those officials named by the President or by agency heads also have proper authority to classify information. (2) To show that the restriction in subsection (4) applies to the designation of classifying authorities, not to classifying actions by heads of agencies.

10. Page 8, subsection 2(d)(1). The language of this subsection, in order to be consistent with the thrust of the Order in essentially limiting classifying authority to named departments and agencies, vests specific classifying authority in the heads of agencies. CIA is one of the agencies the head of which is granted Top Secret classifying authority. While the DCI is the statutory head of CIA, it is by no means clear that the language of this Order would empower him to delegate classifying authority to new organizations (e.g., NITC) which may be set up under the DCI's control and direction but administratively separate from CIA. The problem being potential, no change to the proposed Order is offered; but it should be considered by the DCI in planning for organizations which support his Community responsibilities.

11. Page 9, subsection 2(d)(2). Change to read: "The authority to originally classify information 'Secret' may be exercised, ~~subject to the restrictions in paragraph (4)~~ only by such officials as the President may designate in writing, by officials who have Top Secret classification authority, and by the heads of the following agencies, and, subject to the restrictions in subsection (4), by such persons as they may designate in writing:"

REASON: (1) To correct the anomaly of not providing for Secret classifying authority to be exercised by an official designated by the President; (2) For the same reason given under change 9 above.

12. Page 9, subsection 2(d)(3). Make the same change as in 11 above, substituting "Confidential" for "Secret." REASON: Same as in change 11 above.

13. Page 10, subsection 2(d)(4).

a. Change the first sentence to read: "The heads of agencies specifically named in subsections (1), (2), and (3), and officials designated by the President, may delegate their authority to originally classify information." REASON: To permit officials designated by the President (e.g., Dr. Brzezinski) to delegate classifying authority to their subordinates.

b. Delete the third sentence. REASON: The restriction expressed in the sentence on redelegation of "Secret" and "Confidential" classifying authority would place an unreasonable administrative burden on large organizations, especially those with a number of field components having valid reasons for original classification authority. PRM-29 deliberations surfaced no instances of abuse of delegation or redelegation of classification authority. An unsupported assumption that such redelegation might be abused in the future should not justify prohibitory language in the Order. The possibility of such abuse should instead be addressed through inspections and monitoring by the Oversight Office established by the Order.

14. Page 11, subsection 2(f)(1). Replace with the following: "All original classification authorities shall, at the time of original classification determinations, set a specific date or event for automatic declassification of the information which shall be as early as the national security interest will permit but shall not exceed six years from the date of origin of the information that is classified; except" REASON: To state clearly the obligations of original classification authorities regarding the duration of classifications, and to express these in a manner which clearly shows that the following subsection provides for modification. As written in the draft Order, this subsection does not clearly provide for the extension of classifications beyond six years because the exception clause applies only to the first sentence, which speaks only the setting of a "specific date or event for automatic declassification."

15. Pages 11-12, subsection 2(f)(2). Revise to read: "In those cases where there is a need, directly related to the national security, to continue classification beyond six years, only Top Secret classification authorities.

or the heads of agencies specifically designated in section 2(d) of this Order may set a later date or event for automatic declassification. ~~Alternatively, these authorities may, where declassification guidelines issued by heads of agencies prescribe a need for review of specified information upon its 20th anniversary, set a date for review of such information consistent with such guidelines.~~ In either case, These dates or events shall be as early as the national security interest will permit but in no case shall not exceed 20 twenty years from date of origin of the information involved. Additionally, for foreign originated information, as defined in section 4(f), these officials may set dates or events for declassification or review which shall not exceed thirty years. When those authorities determine that declassification at or before twenty years from date of origin would be demonstrably harmful to the national security, they may instead specify a declassification review at or before the twentieth anniversary of the information when it falls within the ambit of declassification guides issued by heads of agencies under section 4(a) hereof. Officials who authorize the extension of classification beyond six years must record on the originator's file copy the reasons for such extension and their identity. The reasons must be specific and must explain why the classification will continue to meet the requirements set forth in subsection 2(a) above. And except" REASON: (1) To place immediately after the language permitting extended classification the language which states the limits of such extensions. (2) To delete from this section for later separate expression in the interests of clarity and completeness the language necessary to reflect the decision that foreign originated classified information may retain its classification for thirty years. (3) To state clearly the sequence of determinations and conditions that need to be met for classifying officials to specify review for declassification vice declassification itself. Further, to include the Attorney General's test of "demonstrable harm" as an initial judgment determination in such cases. The language in the present draft on this matter would invite unthinking specification of a review vice declassification date whenever the information fell within the ambit of declassification guides which may well be relatively general in nature. (4) To link together

the existing two subsections and a new subsection (3) on foreign originated information.

16. Page 12, add a new subsection 2(f)(3) reading: "(3) In the case of classified information furnished to the United States by a foreign government, international organization, or an official or representative thereof, or produced by the United States pursuant to joint arrangement with a foreign government or international organization, with the understanding that such information will be kept in confidence, Top Secret classification authorities or the heads of agencies specifically designated in section 2(d) of this Order may continue the classification of such information for thirty years from date of origin unless the foreign government or international organization involved specifies or agrees to earlier declassification. Officials who authorize the extension of classification of foreign originated information must record on the originator's file copy of the information their identity, the specific foreign source involved, and reference to this section of this Order as the reason for extended classification." REASON: (1) To define foreign originated classified information where the term is first used (moving the definition from section 4(f) of the present draft), and to modify that definition to accommodate a problem NSA would face if the present language was retained (i.e., "jointly" implies that both parties work in tandem to produce the information, a situation not always the case). (2) In the interests of clarity, to state, in a subsection separate from the one bearing on the extended classification of U.S. originated classified information, the different rules applicable to foreign originated information (e.g., lack of need to specify alternative of declassification review, as section 4(f) of the Order exempts foreign information from automatic declassification).

17. Page 14, section 3. Delete the last sentence. REASON: The sentence pertains to declassification, which is properly covered in section 4. Further, this sentence is essentially duplicative of the last sentence in section 4(b).

18. Page 15, subsection 4(a). Change the second sentence to read: "These guidelines shall specifically identify those items or categories of information which...~~cannot~~ may not be automatically declassified...." REASON: Editorial.

19. Pages 15-16. Change the second lines of subsections 4(b) and (c) to make the reference read: "...subsection (f) below...." REASON: To avoid confusion as to which subsection (f) is meant.

20. Page 17, subsection 4(d).

a. Change the second sentence to read: "Heads of agencies shall order the review for possible disposal of all security classified records ~~20~~ twenty years old or older which are held in storage areas by the agency or in Federal Records Centers ~~for possible disposal~~." REASON: To remove an ambiguity.

b. Change the fourth sentence to read: "Permanently valuable classified records of the Government shall be systematically reviewed as they become ~~20~~ twenty years old." REASON: To clarify the intent of this requirement, and to ensure that it is not misunderstood as a requirement to review all agency records for archival value.

c. Replace the last two sentences (all after the words "in these cases") with the following: "When the head of an agency authorizes continued classification, a specific declassification date for the information shall be stated. When the future sensitivity of the information cannot reasonably be predicted during the twenty-year review, a date not more than ten years later may be set for a second review in accordance with the procedures applicable for twenty-year-old information. A specific declassification date must be set after the second review. The head of an agency or the Director of Central Intelligence may, for good cause, seek from the Director of the Security Information Oversight Office a waiver of the ten-year limit for second reviews." REASON: (1) To clarify an ambiguous antecedent in the present language. (2) To state the conditions which would justify and accompany a second review, and to avoid confusion, to express such separately from the requirement stated for the twenty-year review. (3) To state from whom waivers of the ten-year time limit may be sought.

21. Page 17, subsection 4(e)(1). Revise the first sentence to read: "All information classified under this or prior Orders, except as noted in subsection (4) below, shall be subject to...." REASON: To make clear at the outset of this subsection that there is an exception to its application.

22. Page 18, subsection 4(e)(1). Change the last sentence to read: "After review, the record...shall be declassified, and released unless withholding is otherwise determined to be ~~required~~ sanctioned under applicable statutes." REASON: Accuracy. Applicable statutes (e.g., Freedom of Information Act) do not require the withholding of information; they sanction such under certain circumstances.

23. Page 18, subsection 4(e)(2). Change to read: "Procedural instructions for processing such requests ~~from the public~~ shall be issued by the Security Information Oversight Office." REASON: Accuracy and brevity. "Such requests" refers to those from both government agencies and the public.

24. Page 18, subsection 4(f). Replace the first sentence with the following: "Foreign originated classified information, as defined in subsection 2(f)(3) above, is exempt from the declassification provisions of section 4 of this Order." REASON: To delete the definitional language which would be moved to subsection 2(f) of the Order by change No. 13 above.

25. Page 20, subsection 4(g)(3).

a. Add a new second sentence reading: "The Director shall promptly notify the head of the agency affected by any such determinations." REASON: To correct the omission of a requirement for the Director of the Security Information Oversight Office to notify an agency head whenever he overrides an agency classification judgment.

b. Change the former second sentence (now the third) to read: "These downgrading or declassification decisions shall take effect ~~ten~~ working thirty days after they are made, unless...." REASON: To provide sufficient time for the orderly processing of an appeal to the President.

26. Page 20, subsection 4(g)(5). Change the first sentence to read: "In the case of classified information not transferred in accordance with ~~paragraph-(4)-of-this~~ subsection (4) above,...." REASON: Clarity.

27. Page 22, subsection 6(a)(2). Change to read: "All classified information shall be appropriately and conspicuously marked to put all persons on clear notice of its classified contents, and, if appropriate, marked to show its particular dissemination and reproduction restrictions." REASON: To bring together in one place similar requirements now expressed in two places in the proposed Order. This change would subsume the requirement expressed

in subsection 6(e)(2) on page 26, which should then be deleted.

28. Pages 24-25, subsection 6(c)(3). Delete the last sentence.
REASON: The requirement therein for heads of all agencies, the DCI, and the Director of the Security Information Oversight Office to have access to one another's listings of special access programs authorized by them serves no clear purpose and violates fundamental "need-to-know" principles.

29. Page 25, subsection 6(d). Change the last part of the lead-in language to read: "...provided, however, that in each case the head of the agency having jurisdiction over the information to which access has been requested." REASON: To limit authority to grant access to historical researchers to those agencies with functional jurisdiction over the information involved, and thereby obviate the possibility of another agency with custody over copies of that information granting the requested access on its own.

30. Pages 25-26, subsection 6(e).

a. Delete subsection 6(e)(2). REASON: Stated under change No. 27 above.

b. Renumber the remaining subsections so as to have a lead-in sentence and five numbered (i.e., (1), etc.) subsections following.

c. Change the new subsection 6(e)(1)--the old 6(e)(1)(i)--to read: "Top Secret documents are not reproduced without the consent of the originating office or higher authority." REASON: To provide for a more realistic balance in the approval mechanism for such reproduction.

d. Change the new subsection 6(e)(5)--the old 6(e)(1)(v)--to read: "Records are maintained by the reproducing office to show the number and distribution of reproduced copies of ~~Secret~~ and Top Secret documents and those documents marked...." REASON: The imposition of a requirement to keep records on copies of Secret documents would create a staggering administrative burden for the Intelligence Community, which needs to reproduce and disseminate quantities of documentation at that classification level to satisfy the minimum needs of consumers and producers. Since there has been no showing that the absence of such a record keeping requirement has contributed to classification abuses, there is no justification for imposing this burden.

31. Page 27, subsection 7(a)(1). Change the first sentence to read: "The Administrator of General Services, subject to the direction of the President and the National Security Council, shall be responsible for monitoring the implementation ~~and monitoring~~ of the program established pursuant to this Order." REASON: Since implementation of the Order's provisions is both tasked to the agencies and inherent in their missions, the Oversight Office can only monitor agency compliance.

32. Page 28, subsection 7(a)(1)(v). Change to read: "Have the authority to require of each agency ~~with original classification authority~~ which classifies or uses classified information such reports...." REASON: To provide the Oversight Office with authority to obtain data and cooperation from agencies which use classified information as well as generate it.

33. Page 28, subsection 7(b)(1). Change to read: "Prior to the effective date of this Order, submit to the Security Information Oversight Office ~~for approval~~ a copy of the regulations it ~~proposes to adopt~~ issues pursuant to this Order and implementing directives. Subsequent changes to agency regulations shall also be forwarded to the Oversight Office ~~for approval~~." REASON: Given the guidance in the Order and its implementing directive, approval by an agency head of his agency's implementing regulations should be quite sufficient to ensure consistency and compliance. Further, since the functions of the Oversight Office during the period between the signing of the Order and its effective date are to be performed by the Interagency Classification Review Committee, it is unrealistic to expect that such committee will have the time to make meaningful reviews of any proposed regulations it might be asked to approve.

34. Page 29, subsection 7(b)(2). Change to read: "Publish in the Federal Register those regulations or changes thereto ~~which are approved by the Director of the Security Information Oversight Office and~~ which are issued in implementation of this Order to the extent that they affect the general public." REASON: Same as the first reason stated under change No. 33 above.

35. Page 29, subsection 7(b)(3). Revise to read: "Designate a subordinate ~~senior member of the agency staff~~ who shall conduct an active

agency oversight program..." REASON: Conciseness and consistency with the usage of subsection (4) following.

36. Page 31, subsection 8(c). Change to read: "The head of each agency shall make provision to ensure that appropriate and prompt corrective administrative action is taken whenever a violation under paragraph (a) occurs. Additionally, ~~heads of agencies shall immediately inform~~ and that the Department of Justice is notified immediately of any case in which a violation of the criminal law may be involved." REASON: To obviate the need for heads of large agencies to become personally involved in the actions required, by permitting them to approve procedures which would delegate the responsibility.

37. Page 31, section 9. Change to read: "Sec. 9. ~~Atomic Energy Material~~ Statutory Requirements. Nothing in this Order shall supersede any:

a. Requirements related to 'Restricted Data' and material designated as 'Formerly Restricted Data' pursuant to the Atomic Energy Act of August 30, 1954, as amended, or the regulations of the Department of Energy.

b. Responsibilities placed on the Director of Central Intelligence by the National Security Act of July 26, 1947, as amended, for protecting intelligence sources and methods from unauthorized disclosure."

REASON: The same rationale that supports reference to the Atomic Energy Act to avoid confusion in the minds of users of this Order as to what authority takes precedence is equally applicable to a reference to the DCI's statutory responsibility to protect sources and methods. Since protective measures in support of that responsibility are considerably broader than security classifications, it is necessary to include reference to the statutory provision involved to ensure that users of this Order, and persons litigating under the Freedom of Information Act, are aware that the President recognized the continuing responsibility of the DCI in this regard.

38. Page 32, section 10. Change to read: "Executive Order No. 11652... and all implementing directives...are revoked upon the effective date of this Order. REASON: To make clear that the revocation of the existing Order takes effect when the new Order does, not when the new Order is signed.

39. Page 32, section 11. Replace with the following: "This Order shall become effective on March 1, 1978, except that the provisions of section 6(a) are effective immediately and the functions assigned therein to the Security Information Oversight Office shall be performed in the interim by the Interagency Classification Review Committee." REASON: The only functions of the Oversight Office which the Interagency Classification Review Committee can reasonably carry out in the interim period are those in section 6(a) relative to the development and issuance of implementing directives for the Order. The assignment of responsibility should be limited accordingly.