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MEMORANDUM FOR THE RECORD

29 OCTOBER 1981

STAT FROM:

[redacted]
Policy and Plans Group
Office of Security

SUBJECT: Proposed Revision of E.O. 12065

REFERENCE: Memo of 10 October 1981 to DCI from D/ISSO

STAT 1. On 22 October 1981, the C/PPG and the undersigned met with [redacted] of OGC to discuss provisions of Subject in terms of objection/clarification. The specific provisions discussed and the results of discussion are identified and presented below.

STAT a. 1-204(b) contains an addition that gives the D/OIS and his counterparts in other agencies the authority to delegate Top Secret classification authority. Delegation, within CIA, is a line function and it was not considered appropriate that the official charged with implementation and internal oversight of the proposed order should have the cited authority. [redacted] opined that the authority, if granted, would be a pro forma function; i.e., listing of those given authority by others.

STAT b. 1-401 calls for setting a specific date or event for declassification when the information is originally classified. No provision is made for a date for review to determine if declassification is appropriate. [redacted] advised that the Agency is not precluded from continued use of an established date for review.

STAT c. 1-402 provides that declassification determinations under predecessor orders will remain valid unless extended by an authorized official of the originating agency. This raised the question as to whether the Agency can extend some or all categories of information. [redacted] stated that the order

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permits extension of all categories. This, of course, permits the discretion to change any previously assigned dates for declassification or review.

d. 1-5 appeared to simplify the justification for original classification and to eliminate the need to mark portions. [] confirmed that both interpretations were correct.

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e. Section 1-602 is a new provision that permits reclassification of information upon a determination it requires protection in the interest of national security and if "the information may reasonably be recovered." The latter condition was not believed to make sense in terms of the likelihood that information released into the public domain can be recovered. However, as explained by [] reclassification can be accomplished without positive assurance of recovery; all that is needed is a "reasonable" assumption released information can be recovered. This may cause problems but, as a legal determination, is not ours to criticize.

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f. Section 2-201 gives a definition of derivative classification as "the determination that information is in substance the same as information currently classified, and the application of the same classification markings." This is confusing in that new information may be related but is seldom the same as that on hand either in content or substance. [] agreed with this approach and stated the passage should be reworded. A revision will figure in OS comments/suggestions on Subject.

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g. Section 2-201 was changed to state classification guides "shall" be instead of "may" be prepared. Use of the imperative appears to be inconsistent with a new Section 2-203 that permits agency heads, "for good cause, to grant or revoke waivers of the requirement to prepare classification guides for specified classes of documents or information." [] did not perceive any obvious inconsistency, presumably on an application of logic that a qualified mandate is still a mandate.

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h. Section 3-301 deals with guidelines intended to establish when systematic review is permissive. Clarification by [] established that review is permissive except when classified records have

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been accessioned by the Archivist. In the latter situation there is a measure of agency-head control through submission of systematic review guidelines or, in the case of foreign government information, consultation with the D/ISSO in preparation of guidelines. The significant provision of the section involves the authority of the DCI to establish "special procedures" for systematic review for declassification, which translates into authority to effectively eliminate any restriction on the duration of classification. This is not an innovation, the same provision was included in the final draft of the interagency working group's proposed revision of E.O. 12065.

i. Section 4-102 drops the sentence "Originating agencies may place restrictions on the reproduction of classified documents and establish other accountability controls in conformity with this policy of protecting". Presumably, deletion represented an attempt to simplify the order by dropping mention or reference to markings that limit distribution or reproduction. This issue was not raised with Mr.

STAT [] because it is of primary concern to the DO, as the component that limits dissemination, and NFAC, responsible for ensuring the DO restrictions. Further, it was not discussed because the implementing directive is the vehicle for providing detailed guidance on matters considered implicit to the broad provisions of an Executive Order. PPG interest concerns a probable revision of []

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j. Section 4-201 was revised to add provisions that (1) special access programs pertaining to cryptology may be created and continued only at the written direction of the Secretary of Defense and (2) special access programs pertaining to intelligence activities (including special activities), or intelligence sources and methods may be created and approved by the DCI. The question was directed to [] if this would permit NSA to consider COMINT as "pertaining to cryptology," and the answer was in the affirmative.

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In the PPG view, the above additions limited the authority of the DCI and removed him from a role in COMINT compartmentation. This approach is supported by deletion of the sentence "For special access programs pertaining to intelligence activities (including special activities), or intelligence sources and methods, this function will be exercised by the Director of Central Intelligence, who shall ensure the establishment of common security, access, dissemination and control standards for such programs."

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It was pointed out to [] that COMINT information most certainly involved intelligence sources and methods and to permit any interpretation to the contrary could be in conflict with the National Security Act of 1947, especially the provision that "the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods." [] was noncommittal on this point and left the impression that Subject was a fait accompli. He also was noncommittal regarding an expressed opinion that Agency acceptance of denegation of the DCI's authority was ill-advised.

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k. Section 4-202, an addition, states that each agency head has accounting responsibility for special access programs and that the D/ISSO will have non-delegatable access to all such accountings. The meaning of this was not apparent to PPG and to the undersigned it could be interpreted as a substitute for the deletion in Section 4-201 mentioned above. To [], "accounting" involved control to ensure justification of a special access program. This may have been the intent, but such intent is not expressed in the language. Another interpretation of "accounting" could involve "common security, access, dissemination and control standards," in which case the new Section would transfer the DCI responsibility to protect intelligence sources and methods to the D/ISSO.

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l. Section 5-404 contains an addition that each agency head shall ensure that the D/ISSO is promptly notified whenever (1) officers and employees of the U.S. Government "knowingly, willfully or negligently disclose without authorization properly classified under this Order or predecessor orders," and (2) "knowingly and willfully classify or continue the classification of information in violation of this Order or any implementing directive." There is no objection to the second reporting requirement, however, OS cannot accept the first. Many or most instances of unauthorized disclosure are developed during polygraph examinations and it is not considered appropriate that an extraordinary security tool should figure in a reporting requirement not specified in the ISSO charter (Section 5-2). There are legal considerations associated with polygraph derived information and, as written, a possible cover problem, if the D/ISSO wants

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offenders identified and intends to get into the act regarding imposition of an appropriate penalty. Finally, handling violations is an internal matter governed by internal policy and regulations. This is the business of OS and Agency line management and it is enough that we observe prescribed sanctions set forth in the Order. [] agreed with this position and it will be presented in the OS response.

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2. During discussion, it was determined that the Agency, in setting up a derivative classification system that includes classification guides, is authorized to limit the basis for classification to the same categories applicable to original classification. Such a system is favored by the C/PPG.

[] advised any such logical approach will have to be presented "when we can get to it" and not within the tasking of the instant exercise.

3. The OS response to DIS will be limited to the two areas wherein [] agreed change was in order.



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