

DoD Suggested Changes to Executive Order 12065

The following proposals serve to strengthen the basis for classifying information in the interests of national security.

Proposal to Modify Section 1-101: Modify this section to require that, when there is reasonable doubt concerning classification, information shall be classified at a level deemed appropriate until such time as the reasonable doubt is resolved.

PRO: This change should allay foreign apprehensions about the ability and intent of the United States to protect adequately information provided to the United States.

CON: The change may be perceived by the public as retrogressive.

Proposal to Modify Section 1-104: Modify this section to eliminate the word "identifiable."

PRO: This change will provide a broader basis for classification at the Confidential level and may not be as vulnerable to challenge in Freedom of Information Act litigation.

CON: The change may be perceived by the public as retrogressive.

Proposal to Modify Section 1-301: This section should be expanded to include cryptologic activities, sources, methods, and materials as a specific category of classifiable information.

PRO: Addition of the recommended category protects information concerning communications security which is presently not clearly identified in the Order.

CON: None perceived.

Proposal to Modify Section 1-303: Alter this section to include intelligence sources and methods.

PRO: This change will clearly establish that unauthorized disclosure of intelligence sources and methods information can be expected to cause damage to the national security. It will also help to allay foreign apprehensions concerning U.S. ability to protect such information.

CON: In the absence of a clear definition of intelligence sources and methods this change could lead to unnecessary classification in the intelligence community.

**No Referral - On file OSD release instructions apply.**

Proposal to Delete Section 3-303: The "balancing test" should be deleted from the Order.

PRO: Deletion of this section will serve to eliminate difficulties that have been encountered in Freedom of Information Act litigation. Further, some foreign governments have expressed concern regarding the "balancing test" and have been reluctant to share some information with the United States. Deletion of the section will help to restore foreign confidence in the U.S. classification system.

CON: This change will certainly meet with strong opposition by certain sectors of the public.

The following proposals address the systematic declassification review requirement.

Proposal to Delete Section 3-4: The concept of systematic declassification review should be deleted from the Order, restricted to that material which has been accessioned by the National Archives and Records Service, or be conducted at 30 years for all information.

PRO: The initial financial and personnel savings to be derived from complete elimination of systematic declassification review are considerable. It has been estimated that \$88 million will be expended on systematic declassification review by the principal agencies involved during 1981 through 1988. The alternative to complete elimination of systematic review, i.e., conduct it at the National Archives and Records Service, would still result in significant but undetermined savings in the agencies involved. The last alternative, i.e., review at 30 years, would also result in a significant but undetermined savings principally as a result of the elimination of subsequent review, i.e., experience shows an Office of the Secretary of Defense initial declassification rate at the 25/30 year mark of approximately 97% as opposed to a rate of just over 85% at the 20 year mark.

CON: The cost avoidance resulting from complete elimination of the systematic declassification review requirement is actually only a deferral of part of the current estimated cost. For example, there is no reason to believe that British efforts to continue declassification programs will cease, therefore, cost for necessary concurrent U.S. effort will remain. If declassification action is not accomplished in the principal agencies now involved, then the National Archives and Records Service will have the responsibility. This would probably involve increased expenditures by the National Archives and Records Service and possibly follow-on expenditures by the agencies in their necessary support of the National Archives and Records Service declassification efforts. The sensitivity of some of the information involved would make the agencies reluctant to delegate complete responsibility for declassification.

Proposal to Modify Section 3-403: Change this section so as to add a provision that the Director of Central Intelligence may establish special procedures for systematic review and declassification of other intelligence sources and methods information.

PRO: This change, if systematic declassification review is not eliminated, will help to alleviate foreign apprehensions with respect to declassification of certain intelligence information. It can also be expected that it would lead to more efficient utilization of systematic review resources.

CON: None perceived.

Proposal to Modify Section 3-404: Modify this section to exempt information that pertains to intelligence sources and methods from automatic declassification and 20-year systematic declassification review.

PRO: This change will help allay foreign apprehensions about the ability and intent of the United States to protect intelligence information.

CON: This change may be perceived as retrogressive.

The following proposals would be affected by the direction chosen with regard to the systematic declassification review requirement. These proposals should be considered as independent alternatives, but in relation to systematic declassification review.

Proposal to Modify Section 1-402: Modify this section to eliminate the present limitation on duration of classification and eliminate the concept of setting dates for declassification review.

PRO: This change would accompany elimination of the costly systematic declassification review program (an earlier proposal). Elimination of the systematic declassification review program would necessitate providing for indefinite classification. Documents could bear a marking such as "Declassify upon notification of the originator."

CON: Some will see this change as being retrogressive.

Alternate Proposal to Modify Section 1-402: Include intelligence sources and methods in the exception to the 20-year duration limitation that is presently provided for foreign government information.

PRO: This change will allow original Top Secret classification authorities to set a 30-year classification duration for intelligence sources and methods information that is not also foreign government information. There is ample evidence that the original classification period of 20 years for such information is not adequate. The change will also convey to foreign intelligence services the U.S. intention to provide better and longer protection for such information.

CON: To the extent that this change may be viewed as allowing longer periods of classification, it will be viewed as retrogressive.

Proposal to Add Section 1-403: Add a new section to the Order which would exclude foreign intelligence information revealing intelligence sources and methods and cryptologic information from the periods of classification duration presently set by the Order. Such a section should require that the Director of Central Intelligence and Secretary of Defense issue classification guidelines dealing with such information that would prescribe classification duration only as long as may be necessary.

PRO: This addition to the Order would allay foreign apprehensions with respect to the intent and ability of the United States to protect such information.

CON: Some will perceive this addition as being retrogressive.

The following proposals are designed to simplify the implementation of the Order.

Proposal to Delete Section 1-501(a): Delete from the Order the requirement to provide separate and distinctive identification of the classifier.

PRO: This change would eliminate the redundant requirement to identify separately the classifier of the information. The person who signs or approves a document is responsible for informational content and its classification. That person is the one to whom any question concerning the classification should be directed. The deletion of this requirement will simplify the implementation of the Order and can be expected to result in some cost avoidance.

CON: Some will see this change as weakening the accountability of classifiers.

Proposal to Delete Section 1-502: This section of the Order should be deleted in its entirety. Its elimination accompanies the first proposal to modify section 1-402 and the proposal to delete section 1-501(a).

PRO: Elimination of this section will simplify the implementation of the Order and some cost avoidance should be realized.

CON: Some will see this change as weakening the accountability of classifiers.

Proposal to Delete Section 1-506: This section of the Order should be deleted in its entirety.

PRO: Deletion of the section will simplify the Order to some extent by eliminating a provision that says little. It could be included in a revised Information Security Oversight Office directive.

CON: None perceived.

Proposal to Modify Section 2-201: This section should be altered to delineate clearly the principal requirements for security classification guides, i.e., specific identification of information to be protected, level of classification to be applied, and the duration of such classification. The "how to" language should be deleted.

PRO: This change will eliminate the present ambiguity of the section and promote better classification guides.

CON: None perceived.

Proposal to Modify Section 2-202: Change this section to provide for approval of classification guides by any appropriate original classification authority.

PRO: This change will permit more efficient information classification management of classified programs when Top Secret information is not involved and when classification durations do not exceed six years.

CON: None perceived.

Proposal to Delete Section 4-4: This section of the Order should be deleted and placed in the Information Security Oversight Office directive that implements the Order.

PRO: Relocation of this section to the directive will serve to eliminate this non-Presidential policy information from the Executive Order.

CON: None perceived.

Proposal Concerning Agency Head Authorities: The Order presently reserves to agency heads a number of authorities such as the authority to designate officials to exercise Top Secret classification authority. The Order should be amended to provide that the "senior agency official" designated pursuant to section 5-404(a) may be delegated these authorities.

PRO: These changes will relieve agency heads such as the Secretary of Defense of the need to deal with purely administrative security matters.

CON: These changes may be perceived as retrogressive.

The following observations also may warrant consideration.

It may be appropriate in any revision of the Order to address the persistent problem of "leaks." Concern has been expressed that it is presently impossible to determine whether or not a public disclosure of sensitive information was officially authorized, and pre-disclosure measures taken to assess the full effects of such disclosure. Adding a section that would require consultation with the agency that originated the information prior to the disclosure of the information may assist in dealing with this problem.

Section 4-101 requires a determination of trustworthiness prior to granting access to classified information. State and local criminal justice authorities frequently refuse to provide information needed to make this determination because of the lack of statutory or Presidential authority. Consideration could be given to including Presidential authority in the Executive Order thereby allowing Government investigators greater access to criminal justice records to determine the trustworthiness of individuals having access to classified information.