

NLWJC - Kagan

Counsel - Box 033 - Folder 003

OSTP/NASA Dispute [2]

National Security Act of 1947, Pub. L. No. 80-253,
61 Stat. 495-510 provides:

[CHAPTER 343]

AN ACT

To promote the national security by providing for a Secretary of Defense; for a National Military Establishment; for a Department of the Army, a Department of the Navy, and a Department of the Air Force; and for the coordination of the activities of the National Military Establishment with other departments and agencies of the Government concerned with the national security.

July 26, 1947
(S. 728)
[Public Law 253]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

That this Act may be cited as the "National Security Act of 1947".

TABLE OF CONTENTS

Sec. 2. Declaration of policy.

TITLE I—COORDINATION FOR NATIONAL SECURITY

Pub. L. 80.

Sec. 101. National Security Council.
Sec. 102. Central Intelligence Agency.
Sec. 103. National Security Resources Board.

TITLE II—THE NATIONAL MILITARY ESTABLISHMENT

Pub. L. 80.

Sec. 201. National Military Establishment.
Sec. 202. Secretary of Defense.
Sec. 203. Military Assistants to the Secretary.
Sec. 204. Civilian personnel.
Sec. 205. Department of the Army.
Sec. 206. Department of the Navy.
Sec. 207. Department of the Air Force.
Sec. 208. United States Air Force.
Sec. 209. Effective date of transfers.

- Sec. 210. War Council.
 Sec. 211. Joint Chiefs of Staff.
 Sec. 212. Joint staff.
 Sec. 213. Munitions Board.
 Sec. 214. Research and Development Board.

Post, p. 507.

TITLE III—MISCELLANEOUS

- Sec. 301. Compensation of Secretaries.
 Sec. 302. Under Secretaries and Assistant Secretaries.
 Sec. 303. Advisory committees and personnel.
 Sec. 304. Status of transferred civilian personnel.
 Sec. 305. Saving provisions.
 Sec. 306. Transfer of funds.
 Sec. 307. Authorization for appropriations.
 Sec. 308. Definitions.
 Sec. 309. Separability.
 Sec. 310. Effective date.
 Sec. 311. Succession to the Presidency.

DECLARATION OF POLICY

SEC. 2. In enacting this legislation, it is the intent of Congress to provide a comprehensive program for the future security of the United States; to provide for the establishment of integrated policies and procedures for the departments, agencies, and functions of the Government relating to the national security; to provide three military departments for the operation and administration of the Army, the Navy (including naval aviation and the United States Marine Corps), and the Air Force, with their assigned combat and service components; to provide for their authoritative coordination and unified direction under civilian control but not to merge them; to provide for the effective strategic direction of the armed forces and for their operation under unified control and for their integration into an efficient team of land, naval, and air forces.

TITLE I—COORDINATION FOR NATIONAL SECURITY

NATIONAL SECURITY COUNCIL

Sec. 101. (a) There is hereby established a council to be known as the National Security Council (hereinafter in this section referred to as the "Council").

The President of the United States shall preside over meetings of the Council: *Provided*, That in his absence he may designate a member of the Council to preside in his place.

Function.

The function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security.

Composition.

Post, p. 500.

Post, p. 501.

Post, p. 502.

Post, p. 503.

Post, p. 504.

Post, p. 505.

The Council shall be composed of the President; the Secretary of State; the Secretary of Defense, appointed under section 202; the Secretary of the Army, referred to in section 205; the Secretary of the Navy; the Secretary of the Air Force, appointed under section 207; the Chairman of the National Security Resources Board, appointed under section 103; and such of the following named officers as the President may designate from time to time: The Secretaries of the executive departments, the Chairman of the Munitions Board appointed under section 213, and the Chairman of the Research and Development Board appointed under section 214; but no such additional member shall be designated until the advice and consent of the Senate has been given to his appointment to the office the holding of which authorizes his designation as a member of the Council.

(b) In addition to performing such other functions as the President may direct, for the purpose of more effectively coordinating the policies and functions of the departments and agencies of the Government relating to the national security, it shall, subject to the direction of the President, be the duty of the Council—

Duties.

(1) to assess and appraise the objectives, commitments, and risks of the United States in relation to our actual and potential military power, in the interest of national security, for the purpose of making recommendations to the President in connection therewith; and

(2) to consider policies on matters of common interest to the departments and agencies of the Government concerned with the national security, and to make recommendations to the President in connection therewith.

(c) The Council shall have a staff to be headed by a civilian executive secretary who shall be appointed by the President, and who shall receive compensation at the rate of \$10,000 a year. The executive secretary, subject to the direction of the Council, is hereby authorized, subject to the civil-service laws and the Classification Act of 1923, as amended, to appoint and fix the compensation of such personnel as may be necessary to perform such duties as may be prescribed by the Council in connection with the performance of its functions.

Executive secretary.

62 Stat. 1468.
5 U. S. C. § 661-674.

(d) The Council shall, from time to time, make such recommendations, and such other reports to the President as it deems appropriate or as the President may require.

Recommendations and reports.

CENTRAL INTELLIGENCE AGENCY

SEC. 102. (a) There is hereby established under the National Security Council a Central Intelligence Agency with a Director of Central Intelligence, who shall be the head thereof. The Director shall be appointed by the President, by and with the advice and consent of the Senate, from among the commissioned officers of the armed services or from among individuals in civilian life. The Director shall receive compensation at the rate of \$14,000 a year.

Director.

(b) (1) If a commissioned officer of the armed services is appointed as Director then—

Appointment of commissioned officer as Director.

(A) in the performance of his duties as Director, he shall be subject to no supervision, control, restriction, or prohibition (military or otherwise) other than would be operative with respect to him if he were a civilian in no way connected with the Department of the Army, the Department of the Navy, the Department of the Air Force, or the armed services or any component thereof; and

(B) he shall not possess or exercise any supervision, control, powers, or functions (other than such as he possesses, or is authorized or directed to exercise, as Director) with respect to the armed services or any component thereof, the Department of the Army, the Department of the Navy, or the Department of the Air Force, or any branch, bureau, unit or division thereof, or with respect to any of the personnel (military or civilian) of any of the foregoing.

(2) Except as provided in paragraph (1), the appointment to the office of Director of a commissioned officer of the armed services, and his acceptance of and service in such office, shall in no way affect any status, office, rank, or grade he may occupy or hold in the armed services, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade. Any such commissioned officer shall, while serving in the office of Director, receive the military pay and allowances (active or retired, as the case

Status in armed services, etc.

may be) payable to a commissioned officer of his grade and length of service and shall be paid, from any funds available to defray the expenses of the Agency, annual compensation at a rate equal to the amount by which \$14,000 exceeds the amount of his annual military pay and allowances.

Authority to terminate employment, etc.
§ U. S. C. § 632.

(c) Notwithstanding the provisions of section 6 of the Act of August 24, 1912 (37 Stat. 355), or the provisions of any other law, the Director of Central Intelligence may, in his discretion, terminate the employment of any officer or employee of the Agency whenever he shall deem such termination necessary or advisable in the interests of the United States, but such termination shall not affect the right of such officer or employee to seek or accept employment in any other department or agency of the Government if declared eligible for such employment by the United States Civil Service Commission.

Coordination of intelligence activities.

(d) For the purpose of coordinating the intelligence activities of the several Government departments and agencies in the interest of national security, it shall be the duty of the Agency, under the direction of the National Security Council—

(1) to advise the National Security Council in matters concerning such intelligence activities of the Government departments and agencies as relate to national security;

(2) to make recommendations to the National Security Council for the coordination of such intelligence activities of the departments and agencies of the Government as relate to the national security;

(3) to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities: *Provided*, That the Agency shall have no police, subpoena, law-enforcement powers, or internal-security functions: *Provided further*, That the departments and other agencies of the Government shall continue to collect, evaluate, correlate, and disseminate departmental intelligence: *And provided further*, That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;

Police, etc., powers.

Continuance of activities by other agencies.

Protection of sources.

(4) to perform, for the benefit of the existing intelligence agencies, such additional services of common concern as the National Security Council determines can be more efficiently accomplished centrally;

(5) to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct.

Intelligence relating to national security.

(e) To the extent recommended by the National Security Council and approved by the President, such intelligence of the departments and agencies of the Government, except as hereinafter provided, relating to the national security shall be open to the inspection of the Director of Central Intelligence, and such intelligence as relates to the national security and is possessed by such departments and other agencies of the Government, except as hereinafter provided, shall be made available to the Director of Central Intelligence for correlation, evaluation, and dissemination: *Provided, however*, That upon the written request of the Director of Central Intelligence, the Director of the Federal Bureau of Investigation shall make available to the Director of Central Intelligence such information for correlation, evaluation, and dissemination as may be essential to the national security.

Information of FBI.

(f) Effective when the Director first appointed under subsection (a) has taken office—

(1) the National Intelligence Authority (11 Fed. Reg. 1337, 1339, February 5, 1946) shall cease to exist; and

(2) the personnel, property, and records of the Central Intelligence Group are transferred to the Central Intelligence Agency, and such Group shall cease to exist. Any unexpended balances of appropriations, allocations, or other funds available or authorized to be made available for such Group shall be available and shall be authorized to be made available in like manner for expenditure by the Agency.

Termination of
NIA.

Termination of
Central Intelligence
Group, etc.

NATIONAL SECURITY RESOURCES BOARD

SEC. 103. (a) There is hereby established a National Security Resources Board (hereinafter in this section referred to as the "Board") to be composed of the Chairman of the Board and such heads or representatives of the various executive departments and independent agencies as may from time to time be designated by the President to be members of the Board. The Chairman of the Board shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of \$14,000 a year.

Composition.

(b) The Chairman of the Board, subject to the direction of the President, is authorized, subject to the civil-service laws and the Classification Act of 1923, as amended, to appoint and fix the compensation of such personnel as may be necessary to assist the Board in carrying out its functions.

Appointment of
Chairman.

Compensation of
personnel.

42 Stat. 1488.
5 U. S. C. §§ 661-674.

(c) It shall be the function of the Board to advise the President concerning the coordination of military, industrial, and civilian mobilization, including—

Function.

(1) policies concerning industrial and civilian mobilization in order to assure the most effective mobilization and maximum utilization of the Nation's manpower in the event of war;

(2) programs for the effective use in time of war of the Nation's natural and industrial resources for military and civilian needs, for the maintenance and stabilization of the civilian economy in time of war, and for the adjustment of such economy to war needs and conditions;

(3) policies for unifying, in time of war, the activities of Federal agencies and departments engaged in or concerned with production, procurement, distribution, or transportation of military or civilian supplies, materials, and products;

(4) the relationship between potential supplies of, and potential requirements for, manpower, resources, and productive facilities in time of war;

(5) policies for establishing adequate reserves of strategic and critical material, and for the conservation of these reserves;

(6) the strategic relocation of industries, services, government, and economic activities, the continuous operation of which is essential to the Nation's security.

(d) In performing its functions, the Board shall utilize to the maximum extent the facilities and resources of the departments and agencies of the Government.

Utilization of de-
partmental facilities.

TITLE II—THE NATIONAL MILITARY ESTABLISHMENT

ESTABLISHMENT OF THE NATIONAL MILITARY ESTABLISHMENT

SEC. 201. (a) There is hereby established the National Military Establishment, and the Secretary of Defense shall be the head thereof.

(b) The National Military Establishment shall consist of the Department of the Army, the Department of the Navy, and the Department of the Air Force, together with all other agencies created under title II of this Act.

SECRETARY OF DEFENSE

Noneligibility for appointment.

Duties.

SEC. 202. (a) There shall be a Secretary of Defense, who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate: *Provided*, That a person who has within ten years been on active duty as a commissioned officer in a Regular component of the armed services shall not be eligible for appointment as Secretary of Defense. The Secretary of Defense shall be the principal assistant to the President in all matters relating to the national security. Under the direction of the President and subject to the provisions of this Act he shall perform the following duties:

(1) Establish general policies and programs for the National Military Establishment and for all of the departments and agencies therein;

(2) Exercise general direction, authority, and control over such departments and agencies;

(3) Take appropriate steps to eliminate unnecessary duplication or overlapping in the fields of procurement, supply, transportation, storage, health, and research;

(4) Supervise and coordinate the preparation of the budget estimates of the departments and agencies comprising the National Military Establishment; formulate and determine the budget estimates for submittal to the Bureau of the Budget; and supervise the budget programs of such departments and agencies under the applicable appropriation Act:

Reports, etc., of Secretaries of Army, Navy, and Air Force.

Administration of Departments of Army, Navy, and Air Force.

Reports to President and Congress.

Seal.

Provided, That nothing herein contained shall prevent the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force from presenting to the President or to the Director of the Budget, after first so informing the Secretary of Defense, any report or recommendation relating to his department which he may deem necessary: *And provided further*, That the Department of the Army, the Department of the Navy, and the Department of the Air Force shall be administered as individual executive departments by their respective Secretaries and all powers and duties relating to such departments not specifically conferred upon the Secretary of Defense by this Act shall be retained by each of their respective Secretaries.

(b) The Secretary of Defense shall submit annual written reports to the President and the Congress covering expenditures, work, and accomplishments of the National Military Establishment, together with such recommendations as he shall deem appropriate.

(c) The Secretary of Defense shall cause a seal of office to be made for the National Military Establishment, of such design as the President shall approve, and judicial notice shall be taken thereof.

MILITARY ASSISTANTS TO THE SECRETARY

SEC. 203. Officers of the armed services may be detailed to duty as assistants and personal aides to the Secretary of Defense, but he shall not establish a military staff.

CIVILIAN PERSONNEL

Special assistants.

SEC. 204. (a) The Secretary of Defense is authorized to appoint from civilian life not to exceed three special assistants to advise and

assist him in the performance of his duties. Each such special assistant shall receive compensation at the rate of \$10,000 a year.

(b) The Secretary of Defense is authorized, subject to the civil-service laws and the Classification Act of 1923, as amended, to appoint and fix the compensation of such other civilian personnel as may be necessary for the performance of the functions of the National Military Establishment other than those of the Departments of the Army, Navy, and Air Force.

42 Stat. 1488.
5 U. S. C. §§ 661-674.

DEPARTMENT OF THE ARMY

SEC. 205. (a) The Department of War shall hereafter be designated the Department of the Army, and the title of the Secretary of War shall be changed to Secretary of the Army. Changes shall be made in the titles of other officers and activities of the Department of the Army as the Secretary of the Army may determine.

Change in designation; titles.

(b) All laws, orders, regulations, and other actions relating to the Department of War or to any officer or activity whose title is changed under this section shall, insofar as they are not inconsistent with the provisions of this Act, be deemed to relate to the Department of the Army within the National Military Establishment or to such officer or activity designated by his or its new title.

(c) The term "Department of the Army" as used in this Act shall be construed to mean the Department of the Army at the seat of government and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Department of the Army.

"Department of the Army."

(d) The Secretary of the Army shall cause a seal of office to be made for the Department of the Army, of such design as the President may approve, and judicial notice shall be taken thereof.

Seal.

(e) In general the United States Army, within the Department of the Army, shall include land combat and service forces and such aviation and water transport as may be organic therein. It shall be organized, trained, and equipped primarily for prompt and sustained combat incident to operations on land. It shall be responsible for the preparation of land forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated joint mobilization plans, for the expansion of peacetime components of the Army to meet the needs of war.

U. S. Army.

DEPARTMENT OF THE NAVY

SEC. 206. (a) The term "Department of the Navy" as used in this Act shall be construed to mean the Department of the Navy at the seat of government; the headquarters, United States Marine Corps; the entire operating forces of the United States Navy, including naval aviation, and of the United States Marine Corps, including the reserve components of such forces; all field activities, headquarters, forces, bases, installations, activities, and functions under the control or supervision of the Department of the Navy; and the United States Coast Guard when operating as a part of the Navy pursuant to law.

"Department of the Navy."

(b) In general the United States Navy, within the Department of the Navy, shall include naval combat and services forces and such aviation as may be organic therein. It shall be organized, trained, and equipped primarily for prompt and sustained combat incident to operations at sea. It shall be responsible for the preparation of naval forces necessary for the effective prosecution of war except as otherwise assigned, and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Navy to meet the needs of war.

U. S. Navy.

Naval aviation.

All naval aviation shall be integrated with the naval service as part thereof within the Department of the Navy. Naval aviation shall consist of combat and service and training forces, and shall include land-based naval aviation, air transport essential for naval operations, all air weapons and air techniques involved in the operations and activities of the United States Navy, and the entire remainder of the aeronautical organization of the United States Navy, together with the personnel necessary therefor.

Responsibility of Navy.

The Navy shall be generally responsible for naval reconnaissance, antisubmarine warfare, and protection of shipping.

The Navy shall develop aircraft, weapons, tactics, technique, organization and equipment of naval combat and service elements; matters of joint concern as to these functions shall be coordinated between the Army, the Air Force, and the Navy.

U. S. Marine Corps.

(c) The United States Marine Corps, within the Department of the Navy, shall include land combat and service forces and such aviation as may be organic therein. The Marine Corps shall be organized, trained, and equipped to provide fleet marine forces of combined arms, together with supporting air components, for service with the fleet in the seizure or defense of advanced naval bases and for the conduct of such land operations as may be essential to the prosecution of a naval campaign. It shall be the duty of the Marine Corps to develop, in coordination with the Army and the Air Force, those phases of amphibious operations which pertain to the tactics, technique, and equipment employed by landing forces. In addition, the Marine Corps shall provide detachments and organizations for service on armed vessels of the Navy, shall provide security detachments for the protection of naval property at naval stations and bases, and shall perform such other duties as the President may direct: *Provided*, That such additional duties shall not detract from or interfere with the operations for which the Marine Corps is primarily organized. The Marine Corps shall be responsible, in accordance with integrated joint mobilization plans, for the expansion of peacetime components of the Marine Corps to meet the needs of war.

Additional duties.**Restriction.****DEPARTMENT OF THE AIR FORCE****Secretary of the Air Force.**

SEC. 207. (a) Within the National Military Establishment there is hereby established an executive department to be known as the Department of the Air Force, and a Secretary of the Air Force, who shall be the head thereof. The Secretary of the Air Force shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

§ U. S. C. § 1.

(b) Section 158 of the Revised Statutes is amended to include the Department of the Air Force and the provisions of so much of title IV of the Revised Statutes as now or hereafter amended as is not inconsistent with this Act shall be applicable to the Department of the Air Force.

"Department of the Air Force."

(c) The term "Department of the Air Force" as used in this Act shall be construed to mean the Department of the Air Force at the seat of government and all field headquarters, forces, reserve components, installations, activities, and functions under the control or supervision of the Department of the Air Force.

Under Secretary; Assistant Secretaries.

(d) There shall be in the Department of the Air Force an Under Secretary of the Air Force and two Assistant Secretaries of the Air Force, who shall be appointed from civilian life by the President by and with the advice and consent of the Senate.

(e) The several officers of the Department of the Air Force shall perform such functions as the Secretary of the Air Force may prescribe.

(f) So much of the functions of the Secretary of the Army and of the Department of the Army, including those of any officer of such Department, as are assigned to or under the control of the Commanding General, Army Air Forces, or as are deemed by the Secretary of Defense to be necessary or desirable for the operations of the Department of the Air Force or the United States Air Force, shall be transferred to and vested in the Secretary of the Air Force and the Department of the Air Force: *Provided*, That the National Guard Bureau shall, in addition to the functions and duties performed by it for the Department of the Army, be charged with similar functions and duties for the Department of the Air Force, and shall be the channel of communication between the Department of the Air Force and the several States on all matters pertaining to the Air National Guard: *And provided further*, That, in order to permit an orderly transfer, the Secretary of Defense may, during the transfer period hereinafter prescribed, direct that the Department of the Army shall continue for appropriate periods to exercise any of such functions, insofar as they relate to the Department of the Air Force, or the United States Air Force or their property and personnel. Such of the property, personnel, and records of the Department of the Army used in the exercise of functions transferred under this subsection as the Secretary of Defense shall determine shall be transferred or assigned to the Department of the Air Force.

Transfer of functions.

National Guard Bureau.

Transfer of property, etc.

(g) The Secretary of the Air Force shall cause a seal of office to be made for the Department of the Air Force, of such device as the President shall approve, and judicial notice shall be taken thereof.

Seal.

UNITED STATES AIR FORCE

SEC. 208. (a) The United States Air Force is hereby established under the Department of the Air Force. The Army Air Forces, the Air Corps, United States Army, and the General Headquarters Air Force (Air Force Combat Command), shall be transferred to the United States Air Force.

(b) There shall be a Chief of Staff, United States Air Force, who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years from among the officers of general rank who are assigned to or commissioned in the United States Air Force. Under the direction of the Secretary of the Air Force, the Chief of Staff, United States Air Force, shall exercise command over the United States Air Force and shall be charged with the duty of carrying into execution all lawful orders and directions which may be transmitted to him. The functions of the Commanding General, General Headquarters Air Force (Air Force Combat Command), and of the Chief of the Air Corps and of the Commanding General, Army Air Forces, shall be transferred to the Chief of Staff, United States Air Force. When such transfer becomes effective, the offices of the Chief of the Air Corps, United States Army, and Assistants to the Chief of the Air Corps, United States Army, provided for by the Act of June 4, 1920, as amended (41 Stat. 768), and Commanding General, General Headquarters Air Force, provided for by section 5 of the Act of June 16, 1936 (49 Stat. 1525), shall cease to exist. While holding office as Chief of Staff, United States Air Force, the incumbent shall hold a grade and receive allowances equivalent to those prescribed by law for the Chief of Staff, United States Army. The Chief of Staff, United States Army, the Chief of Naval Operations, and the Chief of Staff, United States Air Force, shall take rank among themselves according to their relative dates of appointment as such, and shall each take rank above all other officers on the active

Chief of Staff.

Transfer of functions.

10 U. S. C. § 291.

10 U. S. C. § 292a-2.

Rank of Chief of Staff, Army, and Chief of Naval Operations.

Transfer of personnel.

Status of personnel.

Transfer of property, records, etc.

U. S. Air Force.

list of the Army, Navy, and Air Force: *Provided*, That nothing in this Act shall have the effect of changing the relative rank of the present Chief of Staff, United States Army, and the present Chief of Naval Operations.

(c) All commissioned officers, warrant officers, and enlisted men, commissioned, holding warrants, or enlisted, in the Air Corps, United States Army, or the Army Air Forces, shall be transferred in branch to the United States Air Force. All other commissioned officers, warrant officers, and enlisted men, who are commissioned, hold warrants, or are enlisted, in any component of the Army of the United States and who are under the authority or command of the Commanding General, Army Air Forces, shall be continued under the authority or command of the Chief of Staff, United States Air Force, and under the jurisdiction of the Department of the Air Force. Personnel whose status is affected by this subsection shall retain their existing commissions, warrants, or enlisted status in existing components of the armed forces unless otherwise altered or terminated in accordance with existing law; and they shall not be deemed to have been appointed to a new or different office or grade, or to have vacated their permanent or temporary appointments in an existing component of the armed forces, solely by virtue of any change in status under this subsection. No such change in status shall alter or prejudice the status of any individual so assigned, so as to deprive him of any right, benefit, or privilege to which he may be entitled under existing law.

(d) Except as otherwise directed by the Secretary of the Air Force, all property, records, installations, agencies, activities, projects, and civilian personnel under the jurisdiction, control, authority, or command of the Commanding General, Army Air Forces, shall be continued to the same extent under the jurisdiction, control, authority, or command, respectively, of the Chief of Staff, United States Air Force, in the Department of the Air Force.

(e) For a period of two years from the date of enactment of this Act, personnel (both military and civilian), property, records, installations, agencies, activities, and projects may be transferred between the Department of the Army and the Department of the Air Force by direction of the Secretary of Defense.

(f) In general the United States Air Force shall include aviation forces both combat and service not otherwise assigned. It shall be organized, trained, and equipped primarily for prompt and sustained offensive and defensive air operations. The Air Force shall be responsible for the preparation of the air forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Air Force to meet the needs of war.

EFFECTIVE DATE OF TRANSFERS

SEC. 209. Each transfer, assignment, or change in status under section 207 or section 208 shall take effect upon such date or dates as may be prescribed by the Secretary of Defense.

WAR COUNCIL

SEC. 210. There shall be within the National Military Establishment a War Council composed of the Secretary of Defense, as Chairman, who shall have power of decision; the Secretary of the Army; the Secretary of the Navy; the Secretary of the Air Force; the Chief of Staff, United States Army; the Chief of Naval Operations; and the

Chief of Staff, United States Air Force. The War Council shall advise the Secretary of Defense on matters of broad policy relating to the armed forces, and shall consider and report on such other matters as the Secretary of Defense may direct.

JOINT CHIEFS OF STAFF

SEC. 211. (a) There is hereby established within the National Military Establishment the Joint Chiefs of Staff, which shall consist of the Chief of Staff, United States Army; the Chief of Naval Operations; the Chief of Staff, United States Air Force; and the Chief of Staff to the Commander in Chief, if there be one.

(b) Subject to the authority and direction of the President and the Secretary of Defense, it shall be the duty of the Joint Chiefs of Staff—

(1) to prepare strategic plans and to provide for the strategic direction of the military forces;

(2) to prepare joint logistic plans and to assign to the military services logistic responsibilities in accordance with such plans;

(3) to establish unified commands in strategic areas when such unified commands are in the interest of national security;

(4) to formulate policies for joint training of the military forces;

(5) to formulate policies for coordinating the education of members of the military forces;

(6) to review major material and personnel requirements of the military forces, in accordance with strategic and logistic plans; and

(7) to provide United States representation on the Military Staff Committee of the United Nations in accordance with the provisions of the Charter of the United Nations.

(c) The Joint Chiefs of Staff shall act as the principal military advisers to the President and the Secretary of Defense and shall perform such other duties as the President and the Secretary of Defense may direct or as may be prescribed by law.

Duties.

Military advisers.

JOINT STAFF

SEC. 212. There shall be, under the Joint Chiefs of Staff, a Joint Staff to consist of not to exceed one hundred officers and to be composed of approximately equal numbers of officers from each of the three armed services. The Joint Staff, operating under a Director thereof appointed by the Joint Chiefs of Staff, shall perform such duties as may be directed by the Joint Chiefs of Staff. The Director shall be an officer junior in grade to all members of the Joint Chiefs of Staff.

MUNITIONS BOARD

SEC. 213. (a) There is hereby established in the National Military Establishment a Munitions Board (hereinafter in this section referred to as the "Board").

(b) The Board shall be composed of a Chairman, who shall be the head thereof, and an Under Secretary or Assistant Secretary from each of the three military departments, to be designated in each case by the Secretaries of their respective departments. The Chairman shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of \$14,000 a year.

Composition.

Chairman.

Duties.

(c) It shall be the duty of the Board under the direction of the Secretary of Defense and in support of strategic and logistic plans prepared by the Joint Chiefs of Staff—

(1) to coordinate the appropriate activities within the National Military Establishment with regard to industrial matters, including the procurement, production, and distribution plans of the departments and agencies comprising the Establishment;

(2) to plan for the military aspects of industrial mobilization;

(3) to recommend assignment of procurement responsibilities among the several military services and to plan for standardization of specifications and for the greatest practicable allocation of purchase authority of technical equipment and common use items on the basis of single procurement;

(4) to prepare estimates of potential production, procurement, and personnel for use in evaluation of the logistic feasibility of strategic operations;

(5) to determine relative priorities of the various segments of the military procurement programs;

(6) to supervise such subordinate agencies as are or may be created to consider the subjects falling within the scope of the Board's responsibilities;

(7) to make recommendations to regroup, combine, or dissolve existing interservice agencies operating in the fields of procurement, production, and distribution in such manner as to promote efficiency and economy;

(8) to maintain liaison with other departments and agencies for the proper correlation of military requirements with the civilian economy, particularly in regard to the procurement or disposition of strategic and critical material and the maintenance of adequate reserves of such material, and to make recommendations as to policies in connection therewith;

(9) to assemble and review material and personnel requirements presented by the Joint Chiefs of Staff and those presented by the production, procurement, and distribution agencies assigned to meet military needs, and to make recommendations thereon to the Secretary of Defense; and

(10) to perform such other duties as the Secretary of Defense may direct.

Termination of Joint Army and Navy Munitions Board.

(d) When the Chairman of the Board first appointed has taken office, the Joint Army and Navy Munitions Board shall cease to exist and all its records and personnel shall be transferred to the Munitions Board.

Personnel and facilities.

(e) The Secretary of Defense shall provide the Board with such personnel and facilities as the Secretary may determine to be required by the Board for the performance of its functions.

RESEARCH AND DEVELOPMENT BOARD**Composition.**

SEC. 214. (a) There is hereby established in the National Military Establishment a Research and Development Board (hereinafter in this section referred to as the "Board"). The Board shall be composed of a Chairman, who shall be the head thereof, and two representatives from each of the Departments of the Army, Navy, and Air Force, to be designated by the Secretaries of their respective Departments. The Chairman shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of \$14,000 a year. The purpose of the Board shall be to advise the Secretary of Defense as to the status of scientific research relative to the national security,

Chairman.**Purpose.**

and to assist him in assuring adequate provision for research and development on scientific problems relating to the national security.

(b) It shall be the duty of the Board, under the direction of the Secretary of Defense—

Duties.

(1) to prepare a complete and integrated program of research and development for military purposes;

(2) to advise with regard to trends in scientific research relating to national security and the measures necessary to assure continued and increasing progress;

(3) to recommend measures of coordination of research and development among the military departments, and allocation among them of responsibilities for specific programs of joint interest;

(4) to formulate policy for the National Military Establishment in connection with research and development matters involving agencies outside the National Military Establishment;

(5) to consider the interaction of research and development and strategy, and to advise the Joint Chiefs of Staff in connection therewith; and

(6) to perform such other duties as the Secretary of Defense may direct.

(c) When the Chairman of the Board first appointed has taken office, the Joint Research and Development Board shall cease to exist and all its records and personnel shall be transferred to the Research and Development Board.

Termination of
Joint Research and
Development Board.

(d) The Secretary of Defense shall provide the Board with such personnel and facilities as the Secretary may determine to be required by the Board for the performance of its functions.

TITLE III—MISCELLANEOUS

COMPENSATION OF SECRETARIES

SEC. 301. (a) The Secretary of Defense shall receive the compensation prescribed by law for heads of executive departments.

(b) The Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force shall each receive the compensation prescribed by law for heads of executive departments.

UNDER SECRETARIES AND ASSISTANT SECRETARIES

SEC. 302. The Under Secretaries and Assistant Secretaries of the Army, the Navy, and the Air Force shall each receive compensation at the rate of \$10,000 a year and shall perform such duties as the Secretaries of their respective departments may prescribe.

Compensation;
duties.

ADVISORY COMMITTEES AND PERSONNEL

SEC. 303. (a) The Secretary of Defense, the Chairman of the National Security Resources Board, and the Director of Central Intelligence are authorized to appoint such advisory committees and to employ, consistent with other provisions of this Act, such part-time advisory personnel as they may deem necessary in carrying out their respective functions and the functions of agencies under their control. Persons holding other offices or positions under the United States for which they receive compensation while serving as members of such committees shall receive no additional compensation for such service. Other members of such committees and other part-time advisory personnel so employed may serve without compensation or

Compensation.

may receive compensation at a rate not to exceed \$35 for each day of service, as determined by the appointing authority.

Service of an individual.

(b) Service of an individual as a member of any such advisory committee, or in any other part-time capacity for a department or agency hereunder, shall not be considered as service bringing such individual within the provisions of section 109 or 113 of the Criminal Code (U. S. C., 1940 edition, title 18, secs. 198 and 203), or section 19 (e) of the Contract Settlement Act of 1944, unless the act of such individual, which by such section is made unlawful when performed by an individual referred to in such section, is with respect to any particular matter which directly involves a department or agency which such person is advising or in which such department or agency is directly interested.

35 Stat. 1107, 1109.

35 Stat. 658.
41 U. S. C. § 119.

STATUS OF TRANSFERRED CIVILIAN PERSONNEL

SEC. 304. All transfers of civilian personnel under this Act shall be without change in classification or compensation, but the head of any department or agency to which such a transfer is made is authorized to make such changes in the titles and designations and prescribe such changes in the duties of such personnel commensurate with their classification as he may deem necessary and appropriate.

SAVING PROVISIONS

Orders applicable to transferred functions, etc.

SEC. 305. (a) All laws, orders, regulations, and other actions applicable with respect to any function, activity, personnel, property, records, or other thing transferred under this Act, or with respect to any officer, department, or agency, from which such transfer is made, shall, except to the extent rescinded, modified, superseded, terminated, or made inapplicable by or under authority of law, have the same effect as if such transfer had not been made; but, after any such transfer, any such law, order, regulation, or other action which vested functions in or otherwise related to any officer, department, or agency from which such transfer was made shall, insofar as applicable with respect to the function, activity, personnel, property, records or other thing transferred and to the extent not inconsistent with other provisions of this Act, be deemed to have vested such function in or relate to the officer, department, or agency to which the transfer was made.

Nonabatement of suits, etc.

(b) No suit, action, or other proceeding lawfully commenced by or against the head of any department or agency or other officer of the United States, in his official capacity or in relation to the discharge of his official duties, shall abate by reason of the taking effect of any transfer or change in title under the provisions of this Act; and, in the case of any such transfer, such suit, action, or other proceeding may be maintained by or against the successor of such head or other officer under the transfer, but only if the court shall allow the same to be maintained on motion or supplemental petition filed within twelve months after such transfer takes effect, showing a necessity for the survival of such suit, action, or other proceeding to obtain settlement of the questions involved.

35 Stat. 220.
20 U. S. C. app. § 604.
20 U. S. C. app. § 601 note.
20 U. S. C. app. § 601 note.

8 U. S. C. § 411 note.

(c) Notwithstanding the provisions of the second paragraph of section 5 of title I of the First War Powers Act, 1941, the existing organization of the War Department under the provisions of Executive Order Numbered 9082 of February 23, 1942, as modified by Executive Order Numbered 9722 of May 13, 1946, and the existing organization of the Department of the Navy under the provisions of Executive Order Numbered 9635 of September 29, 1945, including the assignment of functions to organizational units within the War and Navy Departments, may, to the extent determined by the Secretary of Defense,

continue in force for two years following the date of enactment of this Act except to the extent modified by the provisions of this Act or under the authority of law.

TRANSFER OF FUNDS

SEC. 306. All unexpended balances of appropriations, allocations, nonappropriated funds, or other funds available or hereafter made available for use by or on behalf of the Army Air Forces or officers thereof, shall be transferred to the Department of the Air Force for use in connection with the exercise of its functions. Such other unexpended balances of appropriations, allocations, nonappropriated funds, or other funds available or hereafter made available for use by the Department of War or the Department of the Army in exercise of functions transferred to the Department of the Air Force under this Act, as the Secretary of Defense shall determine, shall be transferred to the Department of the Air Force for use in connection with the exercise of its functions. Unexpended balances transferred under this section may be used for the purposes for which the appropriations, allocations, or other funds were originally made available, or for new expenditures occasioned by the enactment of this Act. The transfers herein authorized may be made with or without warrant action as may be appropriate from time to time from any appropriation covered by this section to any other such appropriation or to such new accounts established on the books of the Treasury as may be determined to be necessary to carry into effect provisions of this Act.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 307. There are hereby authorized to be appropriated such sums as may be necessary and appropriate to carry out the provisions and purposes of this Act.

DEFINITIONS

SEC. 308. (a) As used in this Act, the term "function" includes functions, powers, and duties.

"Function."

(b) As used in this Act, the term "budget program" refers to recommendations as to the apportionment, to the allocation and to the review of allotments of appropriated funds.

"Budget program."

SEPARABILITY

SEC. 309. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

EFFECTIVE DATE

SEC. 310. (a) The first sentence of section 202 (a) and sections 1, 2, 307, 308, 309, and 310 shall take effect immediately upon the enactment of this Act.

484, pp. 500, 495, 496.

(b) Except as provided in subsection (a), the provisions of this Act shall take effect on whichever of the following days is the earlier: The day after the day upon which the Secretary of Defense first appointed takes office, or the sixtieth day after the date of the enactment of this Act.

SUCCESSION TO THE PRESIDENCY

SEC. 311. Paragraph (1) of subsection (d) of section 1 of the Act entitled "An Act to provide for the performance of the duties of the office of President in case of the removal, resignation, death, or inability both of the President and Vice President", approved July 18,

Act, p. 330.

1947, is amended by striking out "Secretary of War" and inserting in lieu thereof "Secretary of Defense", and by striking out "Secretary of the Navy,".

Approved July 26, 1947.

National Security Act Amendments of 1949,
Pub. L. No. 81-216, 63 Stat. 578-592 provides:

[CHAPTER 412]

August 10, 1949
{H. R. 3632}
{Public Law 216}

National Security
Act Amendments of
1949.

AN ACT

To reorganize fiscal management in the National Military Establishment to promote economy and efficiency, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "National Security Act Amendments of 1949".

SEC. 2. Section 2 of the National Security Act of 1947 is amended to read as follows:

61 Stat. 498.
50 U. S. C., Supp.
II, § 401.
Declaration of
policy

"SEC. 2. In enacting this legislation, it is the intent of Congress to provide a comprehensive program for the future security of the United States; to provide for the establishment of integrated policies and procedures for the departments, agencies, and functions of the Government relating to the national security; to provide three military departments, separately administered, for the operation and administration of the Army, the Navy (including naval aviation and the United States Marine Corps), and the Air Force, with their assigned combat and service components; to provide for their authoritative coordination and unified direction under civilian control of the Secretary of Defense but not to merge them; to provide for the effective strategic direction of the armed forces and for their operation under unified control and for their integration into an efficient team of land, naval, and air forces but not to establish a single Chief of Staff over the armed forces nor an armed forces general staff (but this is not to be interpreted as applying to the Joint Chiefs of Staff or Joint Staff)."

CHANGE IN COMPOSITION OF THE NATIONAL SECURITY COUNCIL

SEC. 3. The fourth paragraph of section 101 (a) of the National Security Act of 1947 is amended to read as follows:

61 Stat. 498.
50 U. S. C., Supp.
II, § 402 (a).

"The Council shall be composed of—

- "(1) the President;
 - "(2) the Vice President;
 - "(3) the Secretary of State;
 - "(4) the Secretary of Defense;
 - "(5) the Chairman of the National Security Resources Board;
- and

"(6) The Secretaries and Under Secretaries of other executive departments and of the military departments, the Chairman of the Munitions Board, and the Chairman of the Research and Development Board, when appointed by the President by and with the advice and consent of the Senate, to serve at his pleasure."

CONVERSION OF THE NATIONAL MILITARY ESTABLISHMENT INTO AN EXECUTIVE DEPARTMENT

SEC. 4. Section 201 of the National Security Act of 1947 is amended to read as follows:

61 Stat. 499.
50 U. S. C., Supp. II,
§ 171.

"SEC. 201. (a) There is hereby established, as an Executive Department of the Government, the Department of Defense, and the Secretary of Defense shall be the head thereof.

"(b) There shall be within the Department of Defense (1) the Department of the Army, the Department of the Navy, and the Department of the Air Force, and each such department shall on and after the date of enactment of the National Security Act Amendments of 1949 be military departments in lieu of their prior status as Executive Departments, and (2) all other agencies created under title II of this Act.

"(c) Section 158 of the Revised Statutes, as amended, is amended to read as follows:

5 U. S. C. § 1.

"SEC. 158. The provisions of this title shall apply to the following Executive Departments:

Applicability of provisions.

- "First. The Department of State.
- "Second. The Department of Defense.
- "Third. The Department of the Treasury.
- "Fourth. The Department of Justice.

- “Fifth. The Post Office Department.
 “Sixth. The Department of the Interior.
 “Seventh. The Department of Agriculture.
 “Eighth. The Department of Commerce.
 “Ninth. The Department of Labor.”

“(d) Except to the extent inconsistent with the provisions of this Act, the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense.”

THE SECRETARY OF DEFENSE

61 Stat. 500,
 5 U. S. C., Supp. II,
 § 171a.
 Anz., p. 30.

SEC. 5. Section 202 of the National Security Act of 1947, as amended, is further amended to read as follows:

Noneligibility for
 appointment.

“SEC. 202. (a) There shall be a Secretary of Defense, who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate: *Provided*, That a person who has within ten years been on active duty as a commissioned officer in a Regular component of the armed services shall not be eligible for appointment as Secretary of Defense.

Duties.

“(b) The Secretary of Defense shall be the principal assistant to the President in all matters relating to the Department of Defense. Under the direction of the President, and subject to the provisions of this Act, he shall have direction, authority, and control over the Department of Defense.

Combatant func-
 tions.

61 Stat. 501, 502, 504,
 5 U. S. C., Supp. II,
 §§ 181-1 (e), 411a (b),
 (c), 626c (f).

“(c) (1) Notwithstanding any other provision of this Act, the combatant functions assigned to the military services by sections 205 (e), 206 (b), 206 (c), and 208 (f) hereof shall not be transferred, reassigned, abolished, or consolidated.

“(2) Military personnel shall not be so detailed or assigned as to impair such combatant functions.

“(3) The Secretary of Defense shall not direct the use and expenditure of funds of the Department of Defense in such manner as to effect the results prohibited by paragraphs (1) and (2) of this subsection.

Administration of
 Departments.

“(4) The Departments of the Army, Navy, and Air Force shall be separately administered by their respective Secretaries under the direction, authority, and control of the Secretary of Defense.

Transfer, etc., of
 functions.

“(5) Subject to the provisions of paragraph (1) of this subsection no function which has been or is hereafter authorized by law to be performed by the Department of Defense shall be substantially transferred, reassigned, abolished or consolidated until after a report in regard to all pertinent details shall have been made by the Secretary of Defense to the Committees on Armed Services of the Congress.

Recommendations
 to Congress.

“(6) No provision of this Act shall be so construed as to prevent a Secretary of a military department or a member of the Joint Chiefs of Staff from presenting to the Congress, on his own initiative, after first so informing the Secretary of Defense, any recommendation relating to the Department of Defense that he may deem proper.

Reports to Presi-
 dent and Congress.

“(d) The Secretary of Defense shall not less often than semi-annually submit written reports to the President and the Congress covering expenditures, work and accomplishments of the Department of Defense, accompanied by (1) such recommendations as he shall deem appropriate, (2) separate reports from the military departments covering their expenditures, work and accomplishments, and (3) itemized statements showing the savings of public funds and the eliminations of unnecessary duplications and overlappings that have been accomplished pursuant to the provisions of this Act.

Seal.

“(e) The Secretary of Defense shall cause a seal of office to be made for the Department of Defense, of such design as the President shall approve, and judicial notice shall be taken thereof.

“(f) The Secretary of Defense may, without being relieved of his responsibility therefor, and unless prohibited by some specific provision of this Act or other specific provision of law, perform any function vested in him through or with the aid of such officials or organizational entities of the Department of Defense as he may designate.”

DEPUTY SECRETARY OF DEFENSE; ASSISTANT SECRETARIES OF DEFENSE;
MILITARY ASSISTANTS; AND CIVILIAN PERSONNEL

SEC. 6. (a) Section 203 of the National Security Act of 1947 is amended to read as follows:

“SEC. 203. (a) There shall be a Deputy Secretary of Defense, who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate: *Provided*, That a person who has within ten years been on active duty as a commissioned officer in a Regular component of the armed services shall not be eligible for appointment as Deputy Secretary of Defense. The Deputy Secretary shall perform such duties and exercise such powers as the Secretary of Defense may prescribe and shall take precedence in the Department of Defense next after the Secretary of Defense. The Deputy Secretary shall act for, and exercise the powers of, the Secretary of Defense during his absence or disability.

“(b) There shall be three Assistant Secretaries of Defense, who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate. The Assistant Secretaries shall perform such duties and exercise such powers as the Secretary of Defense may prescribe and shall take precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force.

“(c) Officers of the armed services may be detailed to duty as assistants and personal aides to the Secretary of Defense, but he shall not establish a military staff other than that provided for by section 211 (a) of this Act.”

(b) Section 204 of the National Security Act of 1947 is amended to read as follows:

“SEC. 204. The Secretary of Defense is authorized, subject to the civil-service laws and the Classification Act of 1923, as amended, to appoint and fix the compensation of such civilian personnel as may be necessary for the performance of the functions of the Department of Defense other than those of the Departments of the Army, Navy, and Air Force.”

CREATING THE POSITION OF CHAIRMAN OF THE JOINT CHIEFS OF STAFF AND
PRESCRIBING HIS POWERS AND DUTIES

SEC. 7. (a) Section 210 of the National Security Act of 1947 is amended to read as follows:

“SEC. 210. There shall be within the Department of Defense an Armed Forces Policy Council composed of the Secretary of Defense, as Chairman, who shall have power of decision; the Deputy Secretary of Defense; the Secretary of the Army; the Secretary of the Navy; the Secretary of the Air Force; the Chairman of the Joint Chiefs of Staff; the Chief of Staff, United States Army; the Chief of Naval Operations; and the Chief of Staff, United States Air Force. The Armed Forces Policy Council shall advise the Secretary of Defense on matters of broad policy relating to the armed forces and shall consider and report on such other matters as the Secretary of Defense may direct.”

(b) Section 211 of the National Security Act of 1947 is amended to read as follows:

Authority of Secretary.

61 Stat. 500,
5 U. S. C., Supp. II,
§ 171c.
Deputy Secretary.

Noneligibility for appointment.

Duties.

Assistant Secretaries.

Duties.

Military assistants.

61 Stat. 505,
5 U. S. C., Supp. II,
§ 171f (a).
Infra.
61 Stat. 500,
5 U. S. C., Supp. II,
§ 171d.

42 Stat. 1488,
5 U. S. C. § 661-674;
Supp. II, § 662 *et seq.*
Foot. p. 972.

61 Stat. 504,
5 U. S. C., Supp. II,
§ 171e.
Armed Forces Policy Council.

Duties.

61 Stat. 505,
5 U. S. C., Supp. II,
§ 171f.

- Joint Chiefs of Staff.** "Sec. 211. (a) There is hereby established within the Department of Defense the Joint Chiefs of Staff, which shall consist of the Chairman, who shall be the presiding officer thereof but who shall have no vote; the Chief of Staff, United States Army, the Chief of Naval Operations; and the Chief of Staff, United States Air Force. The Joint Chiefs of Staff shall be the principal military advisers to the President, the National Security Council, and the Secretary of Defense.
- Military advisers.**
- Duties.** "(b) Subject to the authority and direction of the President and the Secretary of Defense, the Joint Chiefs of Staff shall perform the following duties, in addition to such other duties as the President or the Secretary of Defense may direct:
- "(1) preparation of strategic plans and provision for the strategic direction of the military forces;
 - "(2) preparation of joint logistic plans and assignment to the military services of logistic responsibilities in accordance with such plans;
 - "(3) establishment of unified commands in strategic areas;
 - "(4) review of major material and personnel requirements of the military forces in accordance with strategic and logistic plans;
 - "(5) formulation of policies for joint training of the military forces;
 - "(6) formulation of policies for coordinating the military education of members of the military forces; and
 - "(7) providing United States representation on the Military Staff Committee of the United Nations in accordance with the provisions of the Charter of the United Nations.
- Chairman; term.** "(c) The Chairman of the Joint Chiefs of Staff (hereinafter referred to as the 'Chairman') shall be appointed by the President, by and with the advice and consent of the Senate, from among the Regular officers of the armed services to serve at the pleasure of the President for a term of two years and shall be eligible for one reappointment, by and with the advice and consent of the Senate, except in time of war hereafter declared by the Congress when there shall be no limitation on the number of such reappointments. The Chairman shall receive the basic pay and basic and personal money allowances prescribed by law for the Chief of Staff, United States Army, and such special pays and hazardous duty pays to which he may be entitled under other provisions of law.
- Pay and allowances.** "(d) The Chairman, if in the grade of general, shall be additional to the number of officers in the grade of general provided in the third proviso of section 504 (b) of the Officer Personnel Act of 1947 (Public Law 381, Eightieth Congress) or, if in the rank of admiral, shall be additional to the number of officers having the rank of admiral provided in section 413 (a) of such Act. While holding such office he shall take precedence over all other officers of the armed services: *Provided*, That the Chairman shall not exercise military command over the Joint Chiefs of Staff or over any of the military services.
- Additional duties of Chairman.** "(e) In addition to participating as a member of the Joint Chiefs of Staff in the performance of the duties assigned in subsection (b) of this section, the Chairman shall, subject to the authority and direction of the President and the Secretary of Defense, perform the following duties:
- "(1) serve as the presiding officer of the Joint Chiefs of Staff;
 - "(2) provide agenda for meetings of the Joint Chiefs of Staff and assist the Joint Chiefs of Staff to prosecute their business as promptly as practicable; and
 - "(3) inform the Secretary of Defense and, when appropriate as determined by the President or the Secretary of Defense, the

61 Stat. 896,
10 U. S. C., Supp.
II, § 506b (b).

61 Stat. 875,
34 U. S. C., Supp.
II, § 211d (a).

President, of those issues upon which agreement among the Joint Chiefs of Staff has not been reached.”

(c) Section 212 of the National Security Act of 1947 is amended to read as follows:

“Sec. 212. There shall be, under the Joint Chiefs of Staff, a Joint Staff to consist of not to exceed two hundred and ten officers and to be composed of approximately equal numbers of officers appointed by the Joint Chiefs of Staff from each of the three armed services. The Joint Staff, operating under a Director thereof appointed by the Joint Chiefs of Staff, shall perform such duties as may be directed by the Joint Chiefs of Staff. The Director shall be an officer junior in grade to all members of the Joint Chiefs of Staff.”

61 Stat. 585,
5 U. S. C., Supp. II,
§ 171g.
Joint Staff.

CHANGING THE RELATIONSHIP OF THE SECRETARY OF DEFENSE TO THE
MUNITIONS BOARD

SEC. 8. Section 213 of the National Security Act of 1947 is amended to read as follows:

“Sec. 213. (a) There is hereby established in the Department of Defense a Munitions Board (hereinafter in this section referred to as the ‘Board’).

61 Stat. 585,
5 U. S. C., Supp. II,
§ 171h.
Munitions Board.

“(b) The Board shall be composed of a Chairman, who shall be the head thereof and who shall, subject to the authority of the Secretary of Defense and in respect to such matters authorized by him, have the power of decision upon matters falling within the jurisdiction of the Board, and an Under Secretary or Assistant Secretary from each of the three military departments, to be designated in each case by the Secretaries of their respective departments. The Chairman shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of \$14,000 a year.

Composition.

Chairman.

“(c) Subject to the authority and direction of the Secretary of Defense, the Board shall perform the following duties in support of strategic and logistic plans and in consonance with guidance in those fields provided by the Joint Chiefs of Staff, and such other duties as the Secretary of Defense may prescribe:

Duties of Board.

“(1) coordination of the appropriate activities with regard to industrial matters, including the procurement, production, and distribution plans of the Department of Defense;

“(2) planning for the military aspects of industrial mobilization;

“(3) assignment of procurement responsibilities among the several military departments and planning for standardization of specifications and for the greatest practicable allocation of purchase authority of technical equipment and common use items on the basis of single procurement;

“(4) preparation of estimates of potential production, procurement, and personnel for use in evaluation of the logistic feasibility of strategic operations;

“(5) determination of relative priorities of the various segments of the military procurement programs;

“(6) supervision of such subordinate agencies as are or may be created to consider the subjects falling within the scope of the Board’s responsibilities;

“(7) regrouping, combining, or dissolving of existing inter-service agencies operating in the fields of procurement, production, and distribution in such manner as to promote efficiency and economy;

“(8) maintenance of liaison with other departments and agencies for the proper correlation of military requirements with the

civilian economy, particularly in regard to the procurement or disposition of strategic and critical material and the maintenance of adequate reserves of such material, and making of recommendations as to policies in connection therewith; and

“(9) assembly and review of material and personnel requirements presented by the Joint Chiefs of Staff and by the production, procurement, and distribution agencies assigned to meet military needs, and making of recommendations thereon to the Secretary of Defense.

Termination of Joint Army and Navy Munitions Board.

“(d) When the Chairman of the Board first appointed has taken office, the Joint Army and Navy Munitions Board shall cease to exist and all its records and personnel shall be transferred to the Munitions Board.

Personnel and facilities.

“(e) The Secretary of Defense shall provide the Board with such personnel and facilities as the Secretary may determine to be required by the Board for the performance of its functions.”

CHANGING THE RELATIONSHIP OF THE SECRETARY OF DEFENSE TO THE RESEARCH AND DEVELOPMENT BOARD

61 Stat. 506.
5 U. S. C., Supp. II,
§ 1711.
Research and Development Board.

SEC. 9. Section 214 of the National Security Act of 1947 is amended to read as follows:

Composition.

“SEC. 214. (a) There is hereby established in the Department of Defense a Research and Development Board (hereinafter in this section referred to as the ‘Board’). The Board shall be composed of a Chairman, who shall be the head thereof and who shall, subject to the authority of the Secretary of Defense and in respect to such matters authorized by him, have the power of decision on matters falling within the jurisdiction of the Board, and two representatives from each of the Departments of the Army, Navy, and Air Force, to be designated by the Secretaries of their respective Departments. The Chairman shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of \$14,000 a year. The purpose of the Board shall be to advise the Secretary of Defense as to the status of scientific research relative to the national security, and to assist him in assuring adequate provision for research and development on scientific problems relating to the national security.

Chairman.

Purpose.

Duties.

“(b) Subject to the authority and direction of the Secretary of Defense, the Board shall perform the following duties and such other duties as the Secretary of Defense may prescribe:

“(1) preparation of a complete and integrated program of research and development for military purposes;

“(2) advising with regard to trends in scientific research relating to national security and the measures necessary to assure continued and increasing progress;

“(3) coordination of research and development among the military departments, and allocation among them of responsibilities for specific programs;

“(4) formulation of policy for the Department of Defense in connection with research and development matters involving agencies outside the Department of Defense; and

“(5) consideration of the interaction of research and development and strategy, and advising the Joint Chiefs of Staff in connection therewith.

Termination of Joint Research and Development Board.

“(c) When the Chairman of the Board first appointed has taken office, the Joint Research and Development Board shall cease to exist and all its records and personnel shall be transferred to the Research and Development Board.

and authorized programs shall be administered, in such form and manner as the Secretary of Defense, subject to the authority and direction of the President, may determine, so as to account for, and report, the cost of performance of readily identifiable functional programs and activities, with segregation of operating and capital programs. So far as practicable, the budget estimates and authorized programs of the military departments shall be set forth in readily comparable form and shall follow a uniform pattern.

“(b) In order to expedite the conversion from present budget and accounting methods to the cost-of-performance method prescribed in this title, the Secretary of each military department, with the approval of the President and the Secretary of Defense, is authorized and directed, until the end of the second year following the date of enactment of this Act, to make such transfers and adjustments within the military department of which he is the head between appropriations available for obligation by such department in such manner as he deems necessary to cause the obligation and administration of funds and the reports of expenditures to reflect the cost of performance of such programs and activities. Reports of transfers and adjustments made pursuant to the authority of this subsection shall be made currently by the Secretary of Defense to the President and the Congress.

Transfers and adjustments.

Reports to President and Congress.

“OBLIGATION OF APPROPRIATIONS

“SEC. 404. In order to prevent overdrafts and deficiencies in any fiscal year for which appropriations are made, on and after the beginning of the next fiscal year following the date of enactment of this Act appropriations made to the Department of Defense or to the military departments, and reimbursements thereto, shall be available for obligation and expenditure only after the Secretary of Defense shall approve scheduled rates of obligation, or modifications thereof: *Provided*, That nothing in this section shall affect the right of the Department of Defense to incur such deficiencies as may be now or hereafter authorized by law to be incurred.

Deficiencies.

“WORKING-CAPITAL FUNDS

“SEC. 405. (a) In order more effectively to control and account for the cost of programs and work performed in the Department of Defense, the Secretary of Defense is authorized to require the establishment of working-capital funds in the Department of Defense for the purpose of—

Purpose.

“(1) financing inventories of such stores, supplies, materials, and equipment as he may designate; and

“(2) providing working capital for such industrial-type activities, and for such commercial-type activities as provide common services within or among the departments and agencies of the Department of Defense, as he may designate.

“(b) The Secretary of the Treasury is authorized and directed to establish on the books of the Treasury Department at the request of the Secretary of Defense the working-capital funds established pursuant to the authority of this section.

“(c) Such funds shall be—

“(1) charged, when appropriate, with the cost of stores, supplies, materials, and equipment procured or otherwise acquired, manufactured, repaired, issued, and consumed and of services rendered or work performed, including applicable administrative expenses; and

"(2) reimbursed from available appropriations or otherwise credited for the cost of stores, supplies, materials, or equipment furnished and of services rendered or work performed, including applicable administrative expenses.

Reports.	Reports of the condition and operations of such funds shall be made annually to the President and to the Congress.
Sources of capital.	"(d) The Secretary of Defense is authorized to provide capital for such working-capital funds by capitalizing inventories on hand and, with the approval of the President, by transfer, until December 31, 1954, from unexpended balances of any appropriations of the military departments not carried to the surplus fund of the Treasury: <i>Provided</i> , That no deficiency shall be incurred in any such appropriation as a result of any such transfer. To the extent that such methods do not, in the determination of the Secretary of Defense, provide adequate amounts of working capital, there is hereby authorized to be appropriated, out of any moneys in the Treasury not appropriated for other purposes, such sums as may be necessary to provide adequate working capital.
Appropriation authorized.	
Allocation of responsibility.	"(e) Subject to the authority and direction of the Secretary of Defense, the Secretaries of the military departments shall allocate responsibility within their respective military departments for the execution of functions which each military department is authorized by law to perform in such a manner as to effect the most economical and efficient organization and operation of the activities and use of the inventories for which working-capital funds are authorized by this section.
Cost limitation.	"(f) No greater cost shall be incurred by the requisitioning agency for stores, supplies, materials, or equipment drawn from inventories, and for services rendered or work performed by the industrial-type or commercial-type activities for which working-capital funds are authorized by this section, than the amount of appropriations or funds available for such purposes.
Regulations.	"(g) The Secretary of Defense is authorized to issue regulations to govern the operation of activities and use of inventories authorized by this section, which regulations may, whenever he determines the measures set forth in this subsection to be required by the needs of the Department of Defense, and when such measures are authorized by law, permit stores, supplies, materials, and equipment to be sold to, and services to be rendered or work performed for, purchasers or users outside the Department of Defense. In such cases, the working-capital funds involved may be reimbursed by charges against appropriate appropriations or by payments received in cash.
Credit for returned supplies, etc.	"(h) The appraised value of all stores, supplies, materials, and equipment returned to such working-capital funds from any department, activity, or agency, may be charged to the working-capital fund concerned and the proceeds thereof shall be credited to the current appropriations concerned; the amounts so credited shall be available for expenditures for the same purposes as the appropriations credited: <i>Provided</i> , That the provisions of this subsection shall not permit credits to appropriations as the result of capitalization of inventories authorized by subsection (d) of this section.
Supra.	

"MANAGEMENT FUNDS

31 U. S. C. § 644,
644a, 645a and note;
34 U. S. C. § 528a and
note.

"Sec. 406. The Act of July 3, 1942 (56 Stat. 645, c. 484), as amended, is hereby further amended to read as follows:

"(a) For the purpose of facilitating the economical and efficient conduct of operations in the Department of Defense which are financed by two or more appropriations where the costs of the operations are

not susceptible of immediate distribution as charges to such appropriations, there are hereby established the Navy Management Fund, the Army Management Fund, and the Air Force Management Fund, each within, and under the direction of the respective Secretaries of, the Departments of the Navy, Army, or Air Force, as the case may be. There are authorized to be appropriated from time to time such funds as may be necessary to accomplish the purposes of the funds.

Appropriations au-
thorized.

“(b) The corpus of the Navy Management Fund shall consist of the sum of \$1,000,000 heretofore transferred to the Naval Procurement Fund from the Naval Emergency Fund (17X0300), which amount, and all balances in, and obligations against, any accounts in the Naval Procurement Fund, are hereby transferred to the Navy Management Fund; the corpus of the Army Management Fund shall consist of the sum of \$1,000,000, which shall be transferred thereto from any unobligated balance of any appropriation available to the Department of the Army; the corpus of the Air Force Management Fund shall consist of the sum of \$1,000,000, which shall be transferred thereto from any unobligated balance of any appropriation available to the Department of the Air Force; in each case together with such additional funds as may from time to time be appropriated to any of said funds. Accounts for the individual operations to be financed under the respective management funds shall be established only upon approval by the Secretary of Defense.

“(c) Expenditures may be made from said management funds from time to time for material (other than material for stock) and for personal and contractual services under such regulations as may be prescribed by the Secretary of Defense: *Provided*, (1) That no obligation shall be incurred against any such fund which is not properly chargeable to available funds under an appropriation of the department within which the fund is established or, whenever necessary to effectuate purposes authorized by this Act to funds of another department or agency within the Department of Defense, and (2) that each fund shall be promptly reimbursed from the appropriate appropriations of such department for all expenditures properly chargeable thereto. Nothing herein or in any other provision of law shall be construed to prevent advances by check or warrant, or reimbursements to any of said management funds from appropriations of said departments on the basis of the estimated cost of a project, such estimated cost to be revised and necessary appropriation adjustments made when adequate data become available.

Expenditures.

Restriction.

Reimbursement.

Advances of funds.

“(d) Except as otherwise provided by law, amounts advanced to the management funds under the provisions of this Act shall be available for obligation only during the fiscal year in which they are advanced: *Provided*, That nothing contained in this Act shall alter or limit the authorized period of availability of the funds from which such advances are made. Final adjustments of advances in accordance with actual costs shall be effected with the appropriate funds for the fiscal year in which such funds are advanced.

Period of avail-
ability.

“(e) The portion of the Naval Appropriation Act, 1945 (58 Stat. 301, 310), relating to the Naval Procurement Fund is hereby repealed.”

31 U. S. C. § 645a
note.

“ADJUSTMENT OF ACCOUNTS

“SEC. 407. (a) When under authority of law a function or an activity is transferred or assigned from one department or agency within the Department of Defense to another such department or agency, the balances of appropriations which are determined by the Secretary of Defense to be available and necessary to finance or discharge the function or activity so transferred or assigned may, with the approval of

the President, be transferred to, and be available for use by, the department or agency to which said function or activity is transferred or assigned for any purpose for which said funds were originally available. Balances so transferred shall be credited to any applicable existing appropriation account or accounts, or to any new appropriation account or accounts, which are hereby authorized to be established on the books of the Treasury Department, of the department or organization to which such function or activity is transferred, and shall be merged with funds in the applicable existing or newly established appropriation account or accounts and thereafter accounted for as one fund. Balances transferred to existing accounts shall be subject only to such limitations as are specifically applicable to such accounts and those transferred to new accounts shall be subject only to such limitations as are applicable to the appropriations from which they are transferred.

Transfer of personnel.

“(b) The number of employees which in the opinion of the Secretary of Defense is required for such transferred functions or activities may, with the approval of the Director of the Bureau of the Budget, be deducted from any personnel maximum or limitation of the department or agency within the Department of Defense from which such function or activity is transferred, and added to any such personnel maximum or limitation of the department or agency to which such function or activity is transferred.

“AVAILABILITY OF REIMBURSEMENTS

47 Stat. 417.

“SEC. 408. To carry out the purposes of this Act, reimbursements made under the authority of the Economy Act (31 U. S. C. 686), and sums paid by or on behalf of personnel of any department or organization for services rendered or supplies furnished, may be credited to authorize replacing or other accounts. Funds credited to such accounts shall remain available for obligation for the same period as the funds in the account so credited and each such account shall constitute one fund on the books of the Treasury Department.

“COMMON USE OF DISBURSING FACILITIES

“SEC. 409. To the extent authorized by the Secretary of Defense, disbursing officers of the Departments of the Army, Navy, and Air Force may, out of accounts of advances available to them, make disbursements covering obligations arising in connection with any function or activity of any other department or organization within the Department of Defense and charge upon vouchers the proper appropriation or appropriations of the other department or organization: *Provided*, That all said expenditures shall subsequently be adjusted in settlement of disbursing officers' accounts.

“REPORTS OF PROPERTY

“SEC. 410. The Secretary of Defense shall cause property records to be maintained in the three military departments, so far as practicable, on both a quantitative and monetary basis, under regulations which he shall prescribe. Such property records shall include the fixed property, installations, and major items of equipment as well as the supplies, materials, and equipment held in store by the armed services. The Secretary shall report annually thereon to the President and to the Congress.

“REPEALING AND SAVING PROVISIONS

“SEC. 411. All laws, orders, and regulations inconsistent with the provisions of this title are repealed insofar as they are inconsistent

with the powers, duties, and responsibilities enacted hereby: *Provided*, That the powers, duties, and responsibilities of the Secretary of Defense under this title shall be administered in conformance with the policy and requirements for administration of budgetary and fiscal matters in the Government generally, including accounting and financial reporting, and that nothing in this title shall be construed as eliminating or modifying the powers, duties, and responsibilities of any other department, agency, or officer of the Government in connection with such matters, but no such department, agency, or officer shall exercise any such powers, duties, or responsibilities in a manner that will render ineffective the provisions of this title."

Administration of powers, duties, etc.

MISCELLANEOUS AND TECHNICAL AMENDMENTS AND SAVING PROVISIONS

SEC. 12. (a) The National Security Act of 1947 is amended by striking out the term "National Military Establishment", wherever it appears in such Act, and inserting in lieu thereof "Department of Defense".

61 Stat. 495,
5 U. S. C., Supp. II,
§ 171 note.

(b) Section 207 (a) of the National Security Act of 1947 is amended to read as follows:

61 Stat. 502,
5 U. S. C., Supp. II,
§ 625 (a).

"SEC. 207. (a) Within the Department of Defense there is hereby established a military department to be known as the Department of the Air Force, and the Secretary of the Air Force who shall be the head thereof. The Secretary of the Air Force shall be appointed from civilian life by the President by and with the advice and consent of the Senate."

Department of the Air Force.

Appointment of Secretary.

(c) Section 207 (b) of the National Security Act of 1947 is repealed.

61 Stat. 502,
5 U. S. C., Supp. II,
§ 1, 625 (b).

(d) The first sentence of section 208 (a) of the National Security Act of 1947 is amended by striking out the word "under" and inserting in lieu thereof the word "within".

61 Stat. 503,
5 U. S. C., Supp. II,
§ 625c (a).

(e) Section 308 (b) of the National Security Act of 1947 is amended to read as follows:

61 Stat. 509,
5 U. S. C., Supp. II,
§ 171a (b).

"(b) As used in this Act, the term 'Department of Defense' shall be deemed to include the military departments of the Army, the Navy, and the Air Force, and all agencies created under title II of this Act."

"Department of Defense."

(f) The titles of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Under Secretaries and the Assistant Secretaries of the Departments of the Army, Navy, and Air Force, the Chairman of the Munitions Board, and the Chairman of the Research and Development Board, shall not be changed by virtue of this Act, and the reappointment of the officials holding such titles on the effective date of this Act shall not be required. It is hereby declared to be the intention of Congress that section 203 (a) of the National Security Act of 1947, as amended by section 6 of this Act, shall not be deemed to have created a new office of Deputy Secretary of Defense but shall be deemed to have continued in existence, under a new title, the Office of Under Secretary of Defense which was established by the Act entitled "An Act to amend the National Security Act of 1947 to provide for an Under Secretary of Defense", approved April 2, 1949 (Public Law 36, Eighty-first Congress). The title of the official holding the Office of Under Secretary of Defense on the effective date of this Act shall be changed to Deputy Secretary of Defense and the reappointment of such official shall not be required.

Titles of Secretaries, etc.

61 Stat. 509,
5 U. S. C., Supp. II,
§ 171c.
Act, p. 551.

Act, p. 30.
Deputy Secretary of Defense.

(g) All laws, orders, regulations, and other actions relating to the National Military Establishment, the Departments of the Army, the Navy, or the Air Force, or to any officer or activity of such establishment or such departments, shall, except to the extent inconsistent with the provisions of this Act, have the same effect as if this Act had not been enacted; but, after the effective date of this Act, any such law,

Effective laws, orders, etc.

Succeeding departments.

61 Stat. 204.
5 U. S. C., Supp. II,
§ 626c (e).
Reorganization Plan
No. 8 of 1949.

Act, p. 205.

order, regulation, or other action which vested functions in or otherwise related to any officer, department, or establishment, shall be deemed to have vested such function in or relate to the officer or department, executive or military, succeeding the officer, department, or establishment in which such function was vested. For purposes of this subsection the Department of Defense shall be deemed the department succeeding the National Military Establishment, and the military departments of Army, Navy, and Air Force shall be deemed the departments succeeding the Executive Departments of Army, Navy, and Air Force.

(h) Section 208 (e) of the National Security Act of 1947 is amended by substituting the word "three" for the word "two" appearing therein.

(i) Reorganization Plan Numbered 8 of 1949, which was transmitted to the Congress by the President on July 18, 1949, pursuant to the provisions of the Reorganization Act of 1949, shall not take effect, notwithstanding the provisions of section 6 of such Reorganization Act of 1949.

Approved August 10, 1949.

106 STAT. 3188

PUBLIC LAW 102-496—OCT. 24, 1992

Intelligence
Organization
Act of 1992.

TITLE VII—INTELLIGENCE ORGANIZATION

50 USC 401 note. SEC. 701. SHORT TITLE

This title may be cited as the "Intelligence Organization Act of 1992".

50 USC 401a. SEC. 702. DEFINITIONS.

The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by inserting after section 2 the following new section:

"DEFINITIONS

"SEC. 3. As used in this Act:

"(1) The term 'intelligence' includes foreign intelligence and counterintelligence.

"(2) The term 'foreign intelligence' means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons.

"(3) The term 'counterintelligence' means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.

"(4) The term 'intelligence community' includes—

"(A) the Office of the Director of Central Intelligence, which shall include the Office of the Deputy Director of Central Intelligence, the National Intelligence Council (as provided for in section 105(b)(3)), and such other offices as the Director may designate;

"(B) the Central Intelligence Agency;

"(C) the National Security Agency;

"(D) the Defense Intelligence Agency;

"(E) the central imagery authority within the Department of Defense;

"(F) the National Reconnaissance Office;

"(G) other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;

"(H) the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of the Treasury, and the Department of Energy;

"(I) the Bureau of Intelligence and Research of the Department of State; and

"(J) such other elements of any other department or agency as may be designated by the President, or designated jointly by the Director of Central Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

"(5) The terms 'national intelligence' and 'intelligence related to the national security'—

"(A) each refer to intelligence which pertains to the interests of more than one department or agency of the Government; and

"(B) do not refer to counterintelligence or law enforcement activities conducted by the Federal Bureau of Investigation except to the extent provided for in procedures agreed to by the Director of Central Intelligence and the Attorney General, or otherwise as expressly provided for in this title.

"(6) The term 'National Foreign Intelligence Program' refers to all programs, projects, and activities of the intelligence community, as well as any other programs of the intelligence community designated jointly by the Director of Central Intelligence and the head of a United States department or agency or by the President. Such term does not include programs, projects, or activities of the military departments to acquire intelligence solely for the planning and conduct of tactical military operations by United States Armed Forces."

SEC. 703. PARTICIPATION OF THE DIRECTOR OF CENTRAL INTELLIGENCE IN THE NATIONAL SECURITY COUNCIL.

Section 101 of the National Security Act of 1947 (50 U.S.C. 402) is amended by adding at the end thereof the following new subsection:

"(h) The Director of Central Intelligence (or, in the Director's absence, the Deputy Director of Central Intelligence) may, in the performance of the Director's duties under this Act and subject to the direction of the President, attend and participate in meetings of the National Security Council."

SEC. 704. APPOINTMENT OF THE DIRECTOR AND DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE.

Section 102 of the National Security Act of 1947 (50 U.S.C. 403(a)) is amended—

(1) by inserting "(1)" after "(a)";

(2) in the first sentence of subsection (a)—

(A) by striking out "under the National Security Council"; and

(B) by striking out "with a Director" and all that follows through "disability"; and

(3) by striking out the second sentence of subsection (a) and subsections (b) through (f) and inserting in lieu thereof the following:

"(2) There shall be a Director of Central Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall—

President.

"(A) serve as head of the United States intelligence community;

"(B) act as the principal adviser to the President for intelligence matters related to the national security; and

"(C) serve as head of the Central Intelligence Agency.

"(b) To assist the Director of Central Intelligence in carrying out the Director's responsibilities under this Act, there shall be a Deputy Director of Central Intelligence, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall act for, and exercise the powers of, the Director during the Director's absence or disability.

“(B) to the heads of departments and agencies of the executive branch;

“(C) to the Chairman of the Joint Chiefs of Staff and senior military commanders; and

“(D) where appropriate, to the Senate and House of Representatives and the committees thereof.

“(2) Such national intelligence should be timely, objective, independent of political considerations, and based upon all sources available to the intelligence community.

“(b) NATIONAL INTELLIGENCE COUNCIL.—(1)(A) There is established within the Office of the Director of Central Intelligence the National Intelligence Council (hereafter in this section referred to as the ‘Council’). The Council shall be composed of senior analysts within the intelligence community and substantive experts from the public and private sector, who shall be appointed by, report to, and serve at the pleasure of, the Director of Central Intelligence.

Establishment.

Reports.

“(B) The Director shall prescribe appropriate security requirements for personnel appointed from the private sector as a condition of service on the Council to ensure the protection of intelligence sources and methods while avoiding, wherever possible, unduly intrusive requirements which the Director considers to be unnecessary for this purpose.

“(2) The Council shall—

“(A) produce national intelligence estimates for the Government, including, whenever the Council considers appropriate, alternative views held by elements of the intelligence community; and

“(B) otherwise assist the Director in carrying out the responsibilities described in subsection (a).

“(3) Within their respective areas of expertise and under the direction of the Director, the members of the Council shall constitute the senior intelligence advisers of the intelligence community for purposes of representing the views of the intelligence community within the Government.

“(4) The Director shall make available to the Council such staff as may be necessary to permit the Council to carry out its responsibilities under this subsection and shall take appropriate measures to ensure that the Council and its staff satisfy the needs of policymaking officials and other consumers of intelligence.

“(5) The heads of elements within the intelligence community shall, as appropriate, furnish such support to the Council, including the preparation of intelligence analyses, as may be required by the Director.

“(c) HEAD OF THE INTELLIGENCE COMMUNITY.—In the Director’s capacity as head of the intelligence community, the Director shall—

“(1) develop and present to the President an annual budget for the National Foreign Intelligence Program of the United States;

“(2) establish the requirements and priorities to govern the collection of national intelligence by elements of the intelligence community;

“(3) promote and evaluate the utility of national intelligence to consumers within the Government;

“(4) eliminate waste and unnecessary duplication within the intelligence community;

“(5) protect intelligence sources and methods from unauthorized disclosure; and

"(6) perform such other functions as the President or the National Security Council may direct.

"(d) HEAD OF THE CENTRAL INTELLIGENCE AGENCY.—In the Director's capacity as head of the Central Intelligence Agency, the Director shall—

"(1) collect intelligence through human sources and by other appropriate means, except that the Agency shall have no police, subpoena, or law enforcement powers or internal security functions;

"(2) provide overall direction for the collection of national intelligence through human sources by elements of the intelligence community authorized to undertake such collection and, in coordination with other agencies of the Government which are authorized to undertake such collection, ensure that the most effective use is made of resources and that the risks to the United States and those involved in such collection are minimized;

"(3) correlate and evaluate intelligence related to the national security and providing appropriate dissemination of such intelligence;

"(4) perform such additional services as are of common concern to the elements of the intelligence community, which services the Director of Central Intelligence determines can be more efficiently accomplished centrally; and

"(5) perform such other functions and duties related to intelligence affecting the national security as the President or the National Security Council may direct.

"AUTHORITIES OF THE DIRECTOR OF CENTRAL INTELLIGENCE

50 USC 403-4.

"SEC. 104. (a) ACCESS TO INTELLIGENCE.—To the extent recommended by the National Security Council and approved by the President, the Director of Central Intelligence shall have access to all intelligence related to the national security which is collected by any department, agency, or other entity of the United States.

"(b) APPROVAL OF BUDGETS.—The Director of Central Intelligence shall provide guidance to elements of the intelligence community for the preparation of their annual budgets and shall approve such budgets before their incorporation in the National Foreign Intelligence Program.

"(c) ROLE OF DCI IN REPROGRAMMING.—No funds made available under the National Foreign Intelligence Program may be reprogrammed by any element of the intelligence community without the prior approval of the Director of Central Intelligence except in accordance with procedures issued by the Director.

"(d) TRANSFER OF FUNDS OR PERSONNEL WITHIN THE NATIONAL FOREIGN INTELLIGENCE PROGRAM.—(1) In addition to any other authorities available under law for such purposes, the Director of Central Intelligence, with the approval of the Director of the Office of Management and Budget, may transfer funds appropriated for a program within the National Foreign Intelligence Program to another such program and, in accordance with procedures to be developed by the Director and the heads of affected departments and agencies, may transfer personnel authorized for an element of the intelligence community to another such element for periods up to a year.

"(2) A transfer of funds or personnel may be made under this subsection only if—

"(A) the funds or personnel are being transferred to an activity that is a higher priority intelligence activity;

"(B) the need for funds or personnel for such activity is based on unforeseen requirements;

"(C) the transfer does not involve a transfer of funds to the Reserve for Contingencies of the Central Intelligence Agency;

"(D) the transfer does not involve a transfer of funds or personnel from the Federal Bureau of Investigation; and

"(E) the Secretary or head of the department which contains the affected element or elements of the intelligence community does not object to such transfer.

"(3) Funds transferred under this subsection shall remain available for the same period as the appropriations account to which transferred.

"(4) Any transfer of funds under this subsection shall be carried out in accordance with existing procedures applicable to reprogramming notifications for the appropriate congressional committees. Any proposed transfer for which notice is given to the appropriate congressional committees shall be accompanied by a report explaining the nature of the proposed transfer and how it satisfies the requirements of this subsection. In addition, the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives shall be promptly notified of any transfer of funds made pursuant to this subsection in any case in which the transfer would not have otherwise required reprogramming notification under procedures in effect as of the date of the enactment of this section.

"(5) The Director shall promptly submit to the Select Committee on Intelligence of the Senate and to the Permanent Select Committee on Intelligence of the House of Representatives and, in the case of the transfer of personnel to or from the Department of Defense, the Committees on Armed Services of the Senate and House of Representatives, a report on any transfer of personnel made pursuant to this subsection. The Director shall include in any such report an explanation of the nature of the transfer and how it satisfies the requirements of this subsection.

Reports.

"(e) COORDINATION WITH FOREIGN GOVERNMENTS.—Under the direction of the National Security Council and in a manner consistent with section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927), the Director shall coordinate the relationships between elements of the intelligence community and the intelligence or security services of foreign governments on all matters involving intelligence related to the national security or involving intelligence acquired through clandestine means.

"(f) USE OF PERSONNEL.—The Director shall, in coordination with the heads of departments and agencies with elements in the intelligence community, institute policies and programs within the intelligence community—

"(1) to provide for the rotation of personnel between the elements of the intelligence community, where appropriate, and to make such rotated service a factor to be considered for promotion to senior positions; and

"(2) to consolidate, wherever possible, personnel, administrative, and security programs to reduce the overall costs of these activities within the intelligence community.

"(g) TERMINATION OF EMPLOYMENT OF CIA EMPLOYEES.—Notwithstanding the provisions of any other law, the Director may, in the Director's discretion, terminate the employment of any officer or employee of the Central Intelligence Agency whenever the Director shall deem such termination necessary or advisable in the interests of the United States. Any such termination shall not affect the right of the officer or employee terminated to seek or accept employment in any other department or agency of the Government if declared eligible for such employment by the Office of Personnel Management."

(b) AMENDMENT TO TABLE OF CONTENTS.—The table of contents in the first section of the National Security Act of 1947 is amended by striking out the items relating to sections 102a and 103 and inserting in lieu thereof the following new items:

"Sec. 103. Responsibilities of the Director of Central Intelligence.

"Sec. 104. Authorities of the Director of Central Intelligence.

"Sec. 107. National Security Resources Board.

"Sec. 108. Annual National Security Strategy Report."

SEC. 706. RESPONSIBILITIES OF THE SECRETARY OF DEFENSE PERTAINING TO THE NATIONAL FOREIGN INTELLIGENCE PROGRAM.

(a) IN GENERAL.—The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by inserting after section 104 (as added by section 705) the following new sections:

"RESPONSIBILITIES OF THE SECRETARY OF DEFENSE PERTAINING TO THE NATIONAL FOREIGN INTELLIGENCE PROGRAM

50 USC 403-5.

"SEC. 105. (a) IN GENERAL.—The Secretary of Defense shall—

"(1) ensure that the budgets of the elements of the intelligence community within the Department of Defense are adequate to satisfy the overall intelligence needs of the Department of Defense, including the needs of the chairman of the Joint Chiefs of Staff and the commanders of the unified and specified commands and, wherever such elements are performing governmentwide functions, the needs of other departments and agencies;

"(2) ensure appropriate implementation of the policies and resource decisions of the Director of Central Intelligence by elements of the Department of Defense within the National Foreign Intelligence Program;

"(3) ensure that the tactical intelligence activities of the Department of Defense complement and are compatible with intelligence activities under the National Foreign Intelligence Program;

"(4) ensure that the elements of the intelligence community within the Department of Defense are responsive and timely with respect to satisfying the needs of operational military forces;

"(5) eliminate waste and unnecessary duplication among the intelligence activities of the Department of Defense; and

"(6) ensure that intelligence activities of the Department of Defense are conducted jointly where appropriate.

"(b) RESPONSIBILITY FOR THE PERFORMANCE OF SPECIFIC FUNCTIONS.—Consistent with sections 103 and 104 of this Act, the Secretary of Defense shall ensure—

"(1) through the National Security Agency (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified organization for the conduct of signals intelligence activities and shall ensure that the product is disseminated in a timely manner to authorized recipients;

"(2) through a central imagery authority (except as otherwise directed by the President or the National Security Council), with appropriate representation from the intelligence community, the continued operation of an effective unified organization within the Department of Defense for carrying out tasking of imagery collection, for the coordination of imagery processing and exploitation activities, and for ensuring the dissemination of imagery in a timely manner to authorized recipients;

"(3) through the National Reconnaissance Office (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified organization for the research and development, acquisition, and operation of overhead reconnaissance systems necessary to satisfy the requirements of all elements of the intelligence community;

"(4) through the Defense Intelligence Agency (except as otherwise directed by the President or the National Security Council), the continued operation of an effective unified system within the Department of Defense for the production of timely, objective military and military-related intelligence, based upon all sources available to the intelligence community, and shall ensure the appropriate dissemination of such intelligence to authorized recipients;

"(5) through the Defense Intelligence Agency (except as otherwise directed by the President or the National Security Council), effective management of Department of Defense human intelligence activities, including defense attaches; and

"(6) that the military departments maintain sufficient capabilities to collect and produce intelligence to meet—

"(A) the requirements of the Director of Central Intelligence;

"(B) the requirements of the Secretary of Defense or the Chairman of the Joint Chiefs of Staff;

"(C) the requirements of the unified and specified combatant commands and of joint operations; and

"(D) the specialized requirements of the military departments for intelligence necessary to support tactical commanders, military planners, the research and development process, the acquisition of military equipment, and training and doctrine.

"(c) USE OF ELEMENTS OF DEPARTMENT OF DEFENSE.—The Secretary of Defense, in carrying out the functions described in this section, may use such elements of the Department of Defense as may be appropriate for the execution of those functions, in addition to, or in lieu of, the elements identified in this section.

**"ADMINISTRATIVE PROVISIONS PERTAINING TO DEFENSE ELEMENTS
WITHIN THE INTELLIGENCE COMMUNITY**

"SEC. 106. (a) CONSULTATIONS WITH REGARD TO CERTAIN APPOINTMENTS.—The Secretary of Defense shall undertake appro- 50 USC 403-6.

appropriate consultations with the Director of Central Intelligence before the appointment of any individual as head of the National Security Agency, the National Reconnaissance Office, or the Defense Intelligence Agency.

"(b) APPOINTMENT OF HEAD OF CENTRAL IMAGERY AUTHORITY.—The Secretary shall appoint, upon the recommendation of the Director, the head of the central imagery authority within the Department of Defense."

(b) AMENDMENT TO TABLE OF CONTENTS.—The table of contents in the first section of such Act is amended by inserting after the item relating to section 104 (as added by section 705(b)) the following new items:

"Sec. 105. Responsibilities of the Secretary of Defense pertaining to the National Foreign Intelligence Program.

"Sec. 106. Administrative provisions pertaining to defense elements within the intelligence community."

5 U.S.C. § 552(f) provides:

(f) For purposes of this section, the term "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

**Presidential Records Act Of 1978, 44 U.S.C. §§ 2201-2207
provides:**

§ 2201. Definitions

As used in this chapter—

(1) The term "documentary material" means all books, correspondence, memorandums, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, and motion pictures, including, but not limited to, audio, audiovisual, or other electronic or mechanical recordings.

(2) The term "Presidential records" means documentary materials, or any reasonably segregable portion thereof, created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term—

(A) includes any documentary materials relating to the political activities of the President or members of his staff, but only if such activities relate to or have a direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; but

(B) does not include any documentary materials that are (i) official records of an agency (as defined in section 552(e) of title 5, United States Code); (ii) personal records; (iii) stocks of publications and stationery; or (iv) extra copies of documents produced only for convenience of reference, when such copies are clearly so identified.

(3) The term "personal records" means all documentary materials, or any reasonably segregable portion thereof, of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term includes—

(A) diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal which are not prepared or utilized for, or circulated or communicated in the course of, transacting Government business;

(B) materials relating to private political associations, and having no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; and

(C) materials relating exclusively to the President's own election to the office of the Presidency, and materials directly relating to the election of a particular individual or individuals to Federal, State, or local office, which have no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President.

(4) The term "Archivist" means the Archivist of the United States.

(5) The term "former President", when used with respect to Presidential records, means the former President during whose term or terms of office such Presidential records were created.

§ 2202. Ownership of Presidential records

The United States shall reserve and retain complete ownership, possession, and control of Presidential records; and such records shall be administered in accordance with the provisions of this chapter.

§ 2203. Management and custody of Presidential records

(a) Through the implementation of records management controls and other necessary actions, the President shall take all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of his constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are maintained as Presidential records pursuant to the requirements of this section and other provisions of law.

(b) Documentary materials produced or received by the President, his staff, or units or individuals in the Executive Office of the President the function of which is to advise and assist the President, shall, to the extent practicable, be categorized as Presidential records or personal records upon their creation or receipt and be filed separately.

(c) During his term of office, the President may dispose of those of his Presidential records that no longer have administrative, historical, informational, or evidentiary value if—

(1) the President obtains the views, in writing, of the Archivist concerning the proposed disposal of such Presidential records; and

(2) the Archivist states that he does not intend to take any action under subsection (c) of this section.

(d) In the event the Archivist notifies the President under subsection (c) that he does intend to take action under subsection (c), the President may dispose of such Presidential records if copies of the disposal schedule are submitted to the appropriate Congressional Committee at least 60 calendar days of continuous session of Congress in advance of the proposed disposal date. For the purpose of this section, continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the days in which Congress is in continuous session.

(e) The Archivist shall request the advice of the Committee on Rules and Administration and the Committee on Governmental Affairs of the Senate and the Committee on House Administration and the Committee on Government Operations of the House of Representatives with respect to any proposed disposal of Presidential records whenever he considers that—

(1) these particular records may be of special interest to the Congress; or

(2) consultation with the Congress regarding the disposal of these particular records is in the public interest.

(1) Upon the conclusion of a President's term of office, or if a President serves consecutive terms upon the conclusion of the last term, the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President. The Archivist shall have an affirmative duty to make such records available to the public as rapidly and completely as possible consistent with the provisions of this Act.

(2) The Archivist shall deposit all such Presidential records in a Presidential archival depository or another archival facility operated by the United States. The Archivist is authorized to designate, after consultation with the former President, a director at each depository or facility, who shall be responsible for the care and preservation of such records.

(3) The Archivist is authorized to dispose of such Presidential records which he has appraised and determined to have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation. Notice of such disposal shall be published in the Federal Register at least 60 days in advance of the proposed disposal date. Publication of such notice shall constitute a final agency action for purposes of review under chapter 7 of title 5, United States Code.

§ 2204. Restrictions on access to Presidential records

(a) Prior to the conclusion of his term of office or last consecutive term of office, as the case may be, the President shall specify durations, not to exceed 12 years, for which access shall be restricted with respect to information, in a Presidential record, within one or more of the following categories:

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

(2) relating to appointments to Federal office;

(3) specifically exempted from disclosure by statute (other than sections 552 and 552b of title 5, United States Code), provided that such statute (A) requires that the material be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of material to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) confidential communications requesting or submitting advice, between the President and his advisers, or between such advisers; or

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(b)(1) Any Presidential record or reasonably segregable portion thereof containing information within a category restricted by the President under subsection (a) shall be so designated by the Archivist and access thereto shall be restricted until the earlier of—

(A)(i) the date on which the former President waives the restriction on disclosure of such record, or

(ii) the expiration of the duration specified under subsection (a) for the category of information on the basis of which access to such record has been restricted; or

(B) upon a determination by the Archivist that such record or reasonably segregable portion thereof, or of any significant element or aspect of the information contained in such record or reasonably segregable portion thereof, has been placed in the public domain through publication by the former President, or his agents.

(2) Any such record which does not contain information within a category restricted by the President under subsection (a), or contains information within such a category for which the duration of restricted access has expired, shall be exempt from the provisions of subsection (c) until the earlier of—

(A) the date which is 5 years after the date on which the Archivist obtains custody of such record pursuant to section 2203(d)(1); or

(B) the date on which the Archivist completes the processing and organization of such records or integral file segment thereof.

(3) During the period of restricted access specified pursuant to subsection (b)(1), the determination whether access to a Presidential record or reasonably segregable portion thereof shall be restricted shall be made by the Archivist, in his discretion, after consultation with the former President, and, during such period, such determinations shall not be subject to judicial review, except as provided in subsection (e) of this section. The Archivist shall establish procedures whereby any person denied access to a Presidential record because such record is restricted pursuant to a determination made under this paragraph, may file an administrative appeal of such determination. Such procedures shall provide for a written determination by the Archivist or his designee, within 30 working days after receipt of such an appeal, setting forth the basis for such determination.

(c)(1) Subject to the limitations on access imposed pursuant to subsections (a) and (b), Presidential records shall be administered in accordance with section 552 of title 5, United States Code, except that paragraph (b)(5) of that section shall not be available for purposes of withholding any Presidential record, and for the purposes of such section such records shall be deemed to be records of the National Archives and Records Administration. Access to such records shall be granted on nondiscriminatory terms.

(2) Nothing in this Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former President.

(d) Upon the death or disability of a President or former President, any discretion or authority the President or former President may have had under this chapter shall be exercised by the Archivist unless otherwise previously provided by the President or former President in a written notice to the Archivist.

(e) The United States District Court for the District of Columbia shall have jurisdiction over any action initiated by the former President asserting that a determination made by the Archivist violates the former President's rights or privileges.

§ 2205. Exceptions to restricted access

Notwithstanding any restrictions on access imposed pursuant to section 2204—

(1) the Archivist and persons employed by the National Archives and Records Administration who are engaged in the performance of normal archival work shall be permitted access to Presidential records in the custody of the Archivist;

(2) subject to any rights, defenses, or privileges which the United States or any agency or person may invoke, Presidential records shall be made available—

(A) pursuant to subpoena or other judicial process issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;

(B) to an incumbent President if such records contain information that is needed for the conduct of current business of his office and that is not otherwise available; and

(C) to either House of Congress, or, to the extent of matter within its jurisdiction, to any committee or subcommittee thereof if such records contain information that is needed for the conduct of its business and that is not otherwise available; and

(3) the Presidential records of a former President shall be available to such former President or his designated representative.

§ 2206. Regulations

The Archivist shall promulgate in accordance with section 553 of title 5, United States Code, regulations necessary to carry out the provisions of this chapter. Such regulations shall include—

(1) provisions for advance public notice and description of any Presidential records scheduled for disposal pursuant to section 2203(f)(3);

(2) provisions for providing notice to the former President when materials to which access would otherwise be restricted pursuant to section 2204(a) are to be made available in accordance with section 2205(2);

(3) provisions for notice by the Archivist to the former President when the disclosure of particular documents may adversely affect any rights and privileges which the former President may have; and

(4) provisions for establishing procedures for consultation between the Archivist and appropriate Federal agencies regarding materials which may be subject to section 552(b)(7) of title 5, United States Code.

§ 2207. Vice-Presidential records

Vice-Presidential records shall be subject to the provisions of this chapter in the same manner as Presidential records. The duties and responsibilities of the Vice President, with respect to Vice-Presidential records, shall be the same as the duties and responsibilities of the President under this chapter with respect to Presidential records. The authority of the Archivist with respect to Vice-Presidential records shall be the same as the authority of the Archivist under this chapter with respect to Presidential records, except that the Archivist may, when the Archivist determines that it is in the public interest, enter into an agreement for the deposit of Vice-Presidential records in a non-Federal archival depository. Nothing in this chapter shall be construed to authorize the establishment of separate archival depositories for such Vice-Presidential records.

Federal Records Act, 44 U.S.C. §§ 2101-2118, 2901-2910, 3101-3107, and 3301-3324 provides:

Chapter 21, National Archives and Records Administration, 44 U.S.C. §§ 2101-2118 provides:

§ 2101. Definitions

As used in this chapter of this title—

(1) "Presidential archival depository" means an institution operated by the United States to house and preserve the papers and books of a President or former President of the United States, together with other historical materials belonging to a President or former President of the United States, or related to his papers or to the events of his official or personal life, and may include research facilities and museum facilities in accordance with this chapter;

(2) "historical materials" including books, correspondence, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, motion pictures, sound recordings, and other objects or materials having historical or commemorative value;

(3) "Archivist" means the Archivist of the United States appointed under section 2103 of this title; and

(4) "Administration" means the National Archives and Records Administration established under section 2102 of this title.

§ 2102. Establishment

There shall be an independent establishment in the executive branch of the Government to be known as the National Archives and Records Administration. The Administration shall be administered under the supervision and direction of the Archivist.

§ 2103. Officers

(a) The Archivist of the United States shall be appointed by the President by and with the advice and consent of the Senate. The Archivist shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist. The Archivist may be removed from office by the President. The President shall communicate the reasons for any such removal to each House of the Congress.

(b) The Archivist shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5.

(c) There shall be in the Administration a Deputy Archivist of the United States, who shall be appointed by and who shall serve at the pleasure of the Archivist. The Deputy Archivist shall be established as a career reserved position in the Senior Executive Service within the meaning of section 3132(a)(4) of title 5. The Deputy Archivist shall perform such functions as the Archivist shall designate. During any absence or disability of the Archivist, the Deputy Archivist shall act as Archivist. In the event of a vacancy in the office of the Archivist, the Deputy Archivist shall act as Archivist until an Archivist is appointed under subsection (a).

§ 2104. Administrative provisions

(a) The Archivist shall prescribe such regulations as the Archivist deems necessary to effectuate the functions of the Archivist, and the head of each executive agency shall cause to be issued such orders and directives as such agency head deems necessary to carry out such regulations.

(b) Except as otherwise expressly provided by law, the Archivist may delegate any of the functions of the Archivist to such officers and employees of the Administration as the Archivist may designate, and may authorize such successive redelegations of such functions as the Archivist may deem to be necessary or appropriate. A delegation of functions by the Archivist shall not relieve the Archivist of responsibility for the administration of such functions.

(c) The Archivist may organize the Administration as the Archivist finds necessary or appropriate.

(d) The Archivist is authorized to establish, maintain, alter, or discontinue such regional, local, or other field offices as the Archivist finds necessary or appropriate to perform the functions of the Archivist or the Administration.

(e) The Archivist shall cause a seal of office to be made for the Administration of such design as the Archivist shall approve. Judicial notice shall be taken of such seal.

(f) The Archivist may establish advisory committees to provide advice with respect to any function of the Archivist or the Administration. Members of any such committee shall serve without compensation but shall be entitled to transportation expenses and per diem in lieu of subsistence in accordance with section 5703 of title 5.

(g) The Archivist shall advise and consult with interested Federal agencies with a view to obtaining their advice and assistance in carrying out the purposes of this chapter.

(h) If authorized by the Archivist, officers and employees of the Administration having investigatory functions are empowered, while engaged in the performance of their duties in conducting investigations, to administer oaths.

§ 2105. Personnel and services

(a) The Archivist is authorized to select, appoint, employ, and fix the compensation of such officers and employees, pursuant to part III of title 5, as are necessary to perform the functions of the Archivist and the Administration.

(b) The Archivist is authorized to obtain the services of experts and consultants under section 3109 of title 5.

(c) Notwithstanding the provisions of section 973 of title 10 or any other provision of law, the Archivist, in carrying out the functions of the Archivist or the Administration, is authorized to utilize in the Administration the services of officials, officers, and other personnel in other Federal agencies, including personnel of the armed services, with the consent of the head of the agency concerned.

(d) Notwithstanding section 1342 of title 31, United States Code, the Archivist is authorized to accept and utilize voluntary and uncompensated services.

§ 2106. Reports to Congress

The Archivist shall submit to the Congress, in January of each year and at such other times as the Archivist finds appropriate, a report concerning the administration of functions of the Archivist, the Administration, the National Historical Publications and Records Commission, and the National Archives Trust Fund. Such report shall describe—

(1) program administration and expenditures of funds, both appropriated and nonappropriated, by the Administration, the Commission, and the Trust Fund Board;

(2) research projects and publications undertaken by Commission grantees, and by Trust Fund grantees, including detailed information concerning the receipt and use of all appropriated and nonappropriated funds;

(3) by account, the moneys, securities, and other personal property received and held by the National Archives Trust Fund Board, and of its operations, including a listing of the purposes for which funds are transferred to the National Archives and Records Administration for expenditure to other Federal agencies; and

(4) the matters specified in section 2904(c)(8) of this title.

§ 2107. Acceptance of records for historical preservation

When it appears to the Archivist to be in the public interest, he may—

(1) accept for deposit with the National Archives of the United States the records of a Federal agency, the Congress, the Architect of the Capitol, or the Supreme Court determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the United States Government;

(2) direct and effect the transfer to the National Archives of the United States of records of a Federal agency that have been in existence for more than thirty years and determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the United States Government, unless the head of the agency which has custody of them certifies in writing to the Archivist that they must be retained in his custody for use in the conduct of the regular current business of the agency;

(3) direct and effect, with the approval of the head of the originating agency, or if the existence of the agency has been terminated, then with the approval of his successor in function, if any, the transfer of records deposited or approved for deposit with the National Archives of the United States to public or educational institutions or associations: title to the records to remain vested in the United States unless otherwise authorized by Congress; and

(4) transfer materials from private sources authorized to be received by the Archivist by section 2111 of this title.

Historical and Statutory Notes

1984 Amendment. Pub.L. 98-497, § 107(a)(1)(A) substituted "Archivist" for "Administrator of General Services" in the matter preceding par. (1).

Pub.L. 98-497, § 107(a)(1)(C) substituted "Archivist" for "Administrator" wherever appearing.

Par. (1). Pub.L. 98-497, § 107(a)(1)(B) substituted "the Congress, the Archivist of the Capitol, or the Supreme Court" for "or of the Congress".

Par. (4). Pub.L. 98-497, § 107(a)(1)(D) substituted "section 2111 of this title" for "section 2107 of this title".

1978 Amendment. Pub.L. 95-416 substituted in cl. (2) "thirty years" for "fifty years".

1976 Amendment. Pub.L. 94-575 substituted in cl. (4) reference to section "2107" for "3106".

Effective Date of 1984 Amendment. Amendment by Pub.L. 98-497 effective on April 1, 1985, see section 301 of Pub.L. 98-497 set out as a note under section 2102 of this title.

Legislative History. For legislative history and purpose of Pub.L. 94-575, see 1976 U.S. Code Cong. and Adm. News, p. 6150. See also, Pub.L. 95-16, 1978 U.S. Code Cong. and Adm. News, p. 2288; Pub.L. 98-497, 1984 U.S. Code Cong. and Adm. News, p. 3865.

Notes of Decisions

I. Federal agency

The Office of President was a "federal agency". *Nixon v. Sampson*, D.C.D.C. 1975, 389 F.Supp. 107, stay granted 513 F.2d 430, 168 U.S.App.D.C. 172.

§ 2108. Responsibility for custody, use, and withdrawal of records

(a) The Archivist shall be responsible for the custody, use, and withdrawal of records transferred to him. When records, the use of which is subject to statutory limitations and restrictions, are so transferred, the permissive and restrictive statutory provisions with respect to the examination and use of records applicable to the head of the agency from which the records were transferred or to employees of that agency are applicable to the Archivist and to the employees of the National Archives and Records Administration, respectively. Except as provided in subsection (b) of this section, when the head of a Federal agency states, in writing, restrictions that appear to him to be necessary or desirable in the public interest with respect to the use or examination of records being considered for transfer from his custody to the Archivist, the Archivist shall, if he concurs, impose such restrictions on the records so transferred, and may not relax or remove such restrictions without the written concurrence of the head of the agency from which the material was transferred, or of his successor in function, if any. In the event that a Federal agency is terminated and there is no successor in function, the Archivist is authorized to relax, remove, or impose restrictions on such agency's records when he determines that such action is in the public interest. Statutory and other restrictions referred to in this subsection shall remain in force until the records have been in existence for thirty years unless the Archivist by order, having consulted with the head of the transferring Federal agency or his successor in function, determines, with respect to specific bodies of records, that for reasons consistent with standards established in relevant statutory law, such restrictions shall remain in force for a longer period. Restriction on the use or examination of records deposited with the National Archives of the United States imposed by section 3 of the National Archives Act, approved June 19, 1934, shall continue in force regardless of the expiration of the tenure of office of the official who imposed them but may be removed or relaxed by the Archivist with the concurrence in writing of the head of the agency from which material was transferred or of his successor in function, if any.

(b) With regard to the census and survey records of the Bureau of the Census containing data identifying individuals enumerated in population censuses, any release pursuant to this section of such identifying information contained in such records shall be made by the Archivist pursuant to the specifications and agreements set forth in the exchange of correspondence on or about the date of October 10, 1952, between the Director of the Bureau of the Census and the Archivist of the United States, together with all amendments thereto, now or hereafter entered into between the Director of the Bureau of the Census and the Archivist of the United States. Such amendments, if any, shall be published in the Register.

Historical and Statutory Notes

1964 Amendment. Subsec. (a), Pub.L. 98-497, § 107(a)(2)(D) substituted "Archivist" for "Administrator of General Services" in the first sentence.

Pub.L. 98-497, § 107(a)(2)(A) substituted "the Archivist and to the employees of the National Archives and Records Administration" for "the Administrator, the Archivist of the United States, and to the employees of the General Services Administration".

Pub.L. 98-497, § 107(a)(2)(E) substituted "Archivist" for "Administrator" wherever appearing.

Pub.L. 98-497, § 107(a)(2)(B) struck out "and in consultation with the Archivist of the United States" before "impose such restrictions" in the third sentence.

Pub.L. 98-497, § 107(a)(2)(C) struck out "The Archivist and" before "the head of the transferring Federal agency" in the fifth sentence.

Subsec. (b), Pub.L. 98-497, § 107(a)(2)(D), substituted "Archivist" for "Administrator of General Services".

1978 Amendment. Pub.L. 95-416 designated existing provisions as subsec. (a) and, in subsec. (a) as so designated, added provisions permitting the Administrator to relax, remove, or impose restrictions in the public interest of records of agencies which have been terminated and requir-

ing the Administrator with regard to duration of restrictions to consult with the Archivist and the head of the transferring Federal agency or his successor in function, and substituted "thirty years" for "fifty years" and added subsec. (b).

Effective Date of 1964 Amendment. Amendment by Pub.L. 98-497 effective on April 1, 1983, see section 301 of Pub.L. 98-497 set out as a note under section 2102 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-416 see 1978 U.S. Code Cong. and Adm. News, p. 238. See also, Pub.L. 98-497, 1984 U.S. Code Cong. and Adm. News, p. 1845.

Notes of Decisions

Case records 1
Judicial review 2

2. Judicial review

This chapter prescribes times and responsibilities for the General Services Administration and other federal agencies, and failure to perform these duties gives rise to judicial review to redress such abuse of discretion. *American Friends Service Committee v. Weisler*, D.C.D.C. 1980, 494 F.Supp. 903.

§ 2109. Preservation, arrangement, duplication, exhibition of records

The Archivist shall provide for the preservation, arrangement, repair and rehabilitation, duplication and reproduction (including microcopy publications), description, and exhibition of records or other documentary material transferred to him as may be needful or appropriate, including the preparation and publication of inventories, indexes, catalogs, and other finding aids or guides to facilitate their use. He may also prepare guides and other finding aids to Federal records and, when approved by the National Historical Publications and Records Commission, publish such historical works and collections of sources as seem appropriate for printing or otherwise recording at the public expense.

§ 2110. Servicing records

The Archivist shall provide and maintain facilities he considers necessary or desirable for servicing records in his custody that are not exempt from examination by statutory or other restrictions.

§ 2111. Material accepted for deposit

When the Archivist considers it to be in the public interest he may accept for deposit—

(1) the papers and other historical materials of a President or former President of the United States, or other official or former official of the Government, and other papers relating to and contemporary with a President or former President of the United States, subject to restrictions agreeable to the Archivist as to their use; and

(2) documents, including motion-picture films, still pictures, and sound recordings, from private sources that are appropriate for preservation by the Government as evidence of its organization, functions, policies, decisions, procedures, and transactions.

This section shall not apply in the case of any Presidential records which are subject to the provisions of chapter 22 of this title.

§ 2112. Presidential archival depository

(a)(1) When the Archivist considers it to be in the public interest, the Archivist may—

(A)(i) accept, for and in the name of the United States, land, a facility, and equipment offered as a gift to the United States for the purpose of creating a Presidential archival depository;

(ii) take title to the land, facility, and equipment on behalf of the United States; and

(iii) maintain, operate, and protect the land, facility, and equipment as a Presidential archival depository and as part of the national archives system;

(B)(i) make agreements, upon terms and conditions the Archivist considers proper, with a State, political subdivision, university, institution of higher learning, institute, or foundation to use as a Presidential archival depository land, a facility, and equipment of the State, subdivision, university, or other organization, to be made available by it without transfer of title to the United States; and

(ii) maintain, operate, and protect the depository as a part of the national archives system; and

(C) accept, for and in the name of the United States, gifts offered for the purpose of making any physical or material change or addition to a Presidential archival depository.

(2) The Archivist shall promulgate architectural and design standards applicable to Presidential archival depositories in order to ensure that such depositories (A) preserve Presidential records subject to chapter 22 of this title and papers and other historical materials accepted for deposit under section 2111 of this title and (B) contain adequate research facilities.

(3) Prior to accepting and taking title to any land, facility, or equipment under subparagraph (A) of paragraph (1), or prior to entering into any agreement under

subparagraph (B) of such paragraph or any other agreement to accept or establish a Presidential archival depository, the Archivist shall submit a written report on the proposed Presidential archival depository to the President of the Senate and the Speaker of the House of Representatives. The report shall include—

(A) a description of the land, facility, and equipment offered as a gift or to be made available without transfer of title;

(B) a statement specifying the estimated total cost of the proposed depository and the amount of the endowment for the depository required pursuant to subsection (g) of this section;

(C) a statement of the terms of the proposed agreement, if any;

(D) a general description of the types of papers, documents, or other historical materials proposed to be deposited in the depository to be created, and of the terms of the proposed deposit;

(E) a statement of any additional improvements and equipment associated with the development and operation of the depository, an estimate of the costs of such improvements and equipment, and a statement as to the extent to which such costs will be incurred by any Federal or State government agency;

(F) an estimate of the total annual cost to the United States of maintaining, operating, and protecting the depository; and

(G) a certification that such facility and equipment (whether offered as a gift or made available without transfer of title) comply with standards promulgated by the Archivist pursuant to paragraph (2) of this subsection.

(4) Prior to accepting any gift under subparagraph (C) of paragraph (1) for the purpose of making any physical or material change or addition to a Presidential archival depository, or prior to implementing any provision of law requiring the making of such a change or addition, the Archivist shall submit a report in writing on the proposed change or addition to the President of the Senate and the Speaker of the House of Representatives. The report shall include—

(A) a description of such gift;

(B) a statement specifying the estimated total cost of the proposed physical or material change or addition and the amount of the deposit in an endowment for the depository required pursuant to subsection (g) of this section in order to meet the cost of such change or addition;

(C) a statement of the purpose of the proposed change or addition and a general description of any papers, documents, or historical materials proposed to be deposited in the depository as a result of such change or addition;

(D) a statement of any additional improvements or equipment for the depository associated with such change or addition;

(E) an estimate of the increase in the total annual cost to the United States of maintaining, operating, and protecting the depository that will result from such change or addition; and

(F) a certification that the depository, and the equipment therein will, after such change or addition, comply with the standards promulgated by the Archivist pursuant to paragraph (2) of this subsection.

(5) The Archivist may not—

(A) accept or take title to land, a facility, or equipment under subparagraph (A) of paragraph (1) for the purpose of creating a Presidential archival depository;

(B) enter into any agreement under subparagraph (B) of such paragraph or any other agreement to accept or establish a Presidential archival depository; or

(C) accept any gift under subparagraph (C) of such paragraph for the purpose of making any physical or material change to a Presidential archival depository.

until the expiration of a period of 60 days of continuous session of Congress beginning on the date on which the Archivist transmits the report required under paragraph (3) of this subsection with respect to such Presidential archival depository or the report required under paragraph (4) of this subsection with respect to such change or addition, as the case may be.

(b) When the Archivist considers it to be in the public interest, he may deposit in a Presidential archival depository papers, documents, or other historical materials accepted under section 2111 of this title, or Federal records appropriate for preservation.

(c) When the Archivist considers it to be in the public interest, he may exercise, with respect to papers, documents, or other historical materials deposited under this section, or otherwise, in a Presidential archival depository, all the functions and responsibilities otherwise vested in him pertaining to Federal records or other documentary materials in his custody or under his control. The Archivist in negotiating for the deposit of Presidential historical materials, shall take steps to secure to the Government, as far as possible, the right to have continuous and permanent possession of the materials. Papers, documents, or other historical materials accepted and deposited under section 2111 of this title and this section are subject to restrictions as to their availability and use stated in writing by the donors or depositors, including the restriction that they shall be kept in a Presidential archival depository. The restrictions shall be respected for the period stated, or until revoked or terminated by the donors or depositors or by persons legally qualified to act on their behalf. Subject to the restrictions, the Archivist may dispose by sale, exchange, or otherwise, of papers, documents, or other materials which the Archivist determines to have no permanent value or historical interest or to be surplus to the needs of a Presidential archival depository. Only the first two sentences of this subsection shall apply to Presidential records as defined in section 2201(2) of this title.

(d) When the Archivist considers it to be in the public interest, he may cooperate with and assist a university, institution of higher learning, institute, foundation, or other organization or qualified individual to further or to conduct study or research in historical materials deposited in a Presidential archival depository.

(e) When the Archivist considers it to be in the public interest, he may charge and collect reasonable fees for the privilege of visiting and viewing exhibit rooms or museum space in a Presidential archival depository.

(f) When the Archivist considers it to be in the public interest, he may provide reasonable office space in a Presidential archival depository for the personal use of a former President of the United States.

(g)(1) When the Archivist considers it to be in the public interest, the Archivist may solicit and accept gifts or bequests of money or other property for the purpose of maintaining, operating, protecting, or improving a Presidential archival depository. The proceeds of gifts or bequests, together with the proceeds from fees or from sales of historical materials, copies or reproductions, catalogs, or other items, having to do with a Presidential archival depository, shall be paid into an account in the National Archives Trust Fund and shall be held, administered, and expended for the benefit and in the interest of the Presidential archival depository in connection with which they were received, and for the same purposes and objects, including custodial and administrative services for which appropriations for the maintenance, operation, protection, or improvement of Presidential archival depositories might be expended.

(2) The Archivist shall provide for the establishment in such Trust Fund of separate endowments for the maintenance of the land, facility, and equipment of each Presidential archival depository, to which shall be credited any gifts or bequests received under paragraph (1) that are offered for that purpose. Income to each such endowment shall be available to cover the cost of facility operations, but shall not be available for the performance of archival functions under this title.

(3) The Archivist shall not accept or take title to any land, facility, or equipment under subparagraph (A) of subsection (a)(1), or enter into any agreement to use any land, facility, or equipment under subparagraph (B) of such subsection for the purpose of creating a Presidential archival depository, unless the Archivist determines that there is available, by gift or bequest for deposit under paragraph (2) of this subsection in an endowment with respect to such depository, an amount for the purpose of maintaining such land, facility, and equipment equal to—

(A) the product of—

(i) the total cost of acquiring or constructing such facility and of acquiring and installing such equipment, multiplied by

(ii) 20 percent; plus

(B)(i) if title to the land is to be vested in the United States, the product of—

(I) the total cost of acquiring the land upon which such facility is located, or such other measure of the value of such land as is mutually agreed upon by the Archivist and the donor, multiplied by

(II) 20 percent; or

(ii) if title to the land is not to be vested in the United States, the product of—

(I) the total cost to the donor of any improvements to the land upon which such facility is located (other than such facility and equipment), multiplied by

(II) 20 percent; plus

(C) if the Presidential archival depository will exceed 70,000 square feet in area, an amount equal to the product of—

(i) the sum of—

(I) the total cost described in clause (i) of subparagraph (A); plus

(II) the total cost described in subclause (I) or (II) of subparagraph (B)(i), as the case may be, multiplied by

(ii) the percentage obtained by dividing the number of square feet by which such depository will exceed 70,000 square feet by 70,000.

(4) If a proposed physical or material change or addition to a Presidential archival depository would result in an increase in the costs of facility operations, the Archivist may not accept any gift under subparagraph (C) of paragraph (1) for the purpose of making such a change or addition, or may not implement any provision of law requiring the making of such a change or addition, unless the Archivist determines that there is available, by gift or bequest for deposit under paragraph (2) of this subsection in an endowment with respect to such depository, an amount for the purpose of maintaining the land, facility, and equipment of such depository equal to the difference between—

(A) the amount which, pursuant to paragraph (3) of this subsection, would have been required to have been available for deposit in such endowment with respect to such depository if such change or addition had been included in such depository on—

(i) the date on which the Archivist took title to the land, facility, and equipment for such depository under subparagraph (A) of subsection (a)(1); or

(ii) the date on which the Archivist entered into an agreement for the creation of such depository under subparagraph (B) of such paragraph, as the case may be; minus

(B) the amount which, pursuant to paragraph (3) of this subsection, was required to be available for deposit in such endowment with respect to such depository on the date the Archivist took such title or entered into such agreement, as the case may be.

§ 2113. Depository for agreements between States

The Archivist may receive duplicate originals or authenticated copies of agreements or compacts entered into under the Constitution and laws of the United States, between States of the Union, and take necessary actions for their preservation and servicing.

§ 2114. Preservation of motion-picture films, still pictures, and sound recordings

The Archivist may make and preserve motion-picture films, still pictures, and sound recordings pertaining to and illustrative of the historical development of the United States Government and its activities, and provide for preparing, editing, titling, scoring, processing, duplicating, reproducing, exhibiting, and releasing for non-profit educational purposes, motion-picture films, still pictures, and sound recordings in his custody.

§ 2115. Reports: correction of violations

(a) In carrying out their respective duties and responsibilities under chapters 21, 25, 29, 31, and 33 of this title, the Archivist and the Administrator may each obtain reports from any Federal agency on such agency's activities under such chapters.

(b) When either the Archivist or the Administrator finds that a provision of any such chapter has been or is being violated, the Archivist or the Administrator shall (1) inform in writing the head of the agency concerned of the violation and make recommendations for its correction; and (2) unless satisfactory corrective measures are inaugurated within a reasonable time, submit a written report of the matter to the President and the Congress.

§ 2116. Legal status of reproductions; official seal; fees for copies and reproductions

(a) When records that are required by statute to be retained indefinitely have been reproduced by photographic, microphotographic, or other processes, in accordance with standards established by the Archivist the indefinite retention by the photographic, microphotographic, or other reproductions constitutes compliance with the statutory requirement for the indefinite retention of the original records. The reproductions, as well as reproductions made under regulations to carry out chapters 21, 29, 31, and 33 of this title, shall have the same legal status as the originals.

(b) There shall be an official seal for the National Archives of the United States which shall be judicially noticed. When a copy or reproduction, furnished under this section, is authenticated by the official seal and certified by the Archivist, the copy or reproduction shall be admitted in evidence equally with the original from which it was made.

(c) The Archivist may charge a fee set to recover the costs for making or authenticating copies or reproductions of materials transferred to his custody. Such fee shall be fixed by the Archivist at a level which will recover, so far as practicable, all elements of such costs, and may, in the Archivist's discretion, include increments for the estimated replacement cost of equipment. Such fees shall be paid into, administered, and expended as a part of the National Archives Trust Fund. The Archivist may not charge for making or authenticating copies or reproductions of materials for official use by the United States Government unless appropriations available to the Archivist for this purpose are insufficient to cover the cost of performing the work.

§ 2117. Limitation on liability

When letters and other intellectual productions (exclusive of patented material, published works under copyright protection, and unpublished works for which copyright registration has been made) come into the custody or possession of the Archivist, the United States or its agents are not liable for infringement of copyright or analogous rights arising out of use of the materials for display, inspection, research, reproduction, or other purposes.

§ 2118. Records of Congress

The Secretary of the Senate and the Clerk of the House of Representatives, acting jointly, shall obtain at the close of each Congress all the noncurrent records of the Congress and of each congressional committee and transfer them to the National Archives and Records Administration for preservation, subject to the orders of the Senate or the House of Representatives, respectively.

**Chapter 29, Records Management By The Archivist Of The
United States And By The Administrator Of General Services,
44 U.S.C. §§ 2901-2910 provides:**

§ 2901. Definitions

As used in this chapter, and chapters 21, 25, 31, and 33 of this title—

- (1) the term "records" has the meaning given it by section 3301 of this title;
- (2) the term "records management" means the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations;
- (3) the term "records creation" means the production or reproduction of any record;
- (4) the term "records maintenance and use" means any activity involving—
 - (A) location of records of a Federal agency;
 - (B) storage, retrieval, and handling of records kept at office file locations by or for a Federal agency;
 - (C) processing of mail by a Federal agency; or
 - (D) selection and utilization of equipment and supplies associated with records and copying;
- (5) the term "records disposition" means any activity with respect to—
 - (A) disposal of temporary records no longer necessary for the conduct of business by destruction or donation;
 - (B) transfer of records to Federal agency storage facilities or records centers;
 - (C) transfer to the National Archives of the United States of records determined to have sufficient historical or other value to warrant continued preservation; or
 - (D) transfer of records from one Federal agency to any other Federal agency;
- (6) the term "records center" means an establishment maintained and operated by the Archivist or by another Federal agency primarily for the storage, servicing, security, and processing of records which need to be preserved for varying periods of time and need not be retained in office equipment or space;
- (7) the term "records management study" means an investigation and analysis of any Federal agency records, or records management practices or programs (whether manual or automated), with a view toward rendering findings and recommendations with respect thereto;
- (8) the term "inspection" means reviewing any Federal agency's records or records management practices or programs with respect to effectiveness and compliance with records management laws and making necessary recommendations for correction or improvement of records management;
- (9) the term "servicing" means making available for use information in records and other materials in the custody of the Archivist, or in a records center—
 - (A) by furnishing the records or other materials, or information from them, or copies or reproductions thereof, to any Federal agency for official use, or to the public; or
 - (B) by making and furnishing authenticated or unauthenticated copies or reproductions of the records or other materials;
- (10) the term "unauthenticated copies" means exact copies or reproductions of records or other materials that are not certified as such under seal and that need not be legally accepted as evidence;
- (11) the term "National Archives of the United States" means those official records which have been determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the Federal Government, and which have been accepted by the Archivist for deposit in his custody;
- (12) the term "Archivist" means the Archivist of the United States;
- (13) the term "executive agency" shall have the meaning given such term by section 3(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472(a));

(14) the term "Federal agency" means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Supreme Court, the Senate, the House of Representatives, and the Architect of the Capitol) and any activities under the direction of the Architect of the Capitol; and

(15) the term "Administrator" means the Administrator of General Services.

§ 2902. Objectives of records management

It is the purpose of this chapter, and chapters 21, 31, and 33 of this title, to require the establishment of standards and procedures to assure efficient and effective records management. Such records management standards and procedures shall seek to implement the following goals:

- (1) Accurate and complete documentation of the policies and transactions of the Federal Government.
- (2) Control of the quantity and quality of records produced by the Federal Government.
- (3) Establishment and maintenance of mechanisms of control with respect to records creation in order to prevent the creation of unnecessary records and with respect to the effective and economical operations of an agency.
- (4) Simplification of the activities, systems, and processes of records creation and of records maintenance and use.
- (5) Judicious preservation and disposal of records.
- (6) Direction of continuing attention on records from their initial creation to their final disposition, with particular emphasis on the prevention of unnecessary Federal paperwork.
- (7) Establishment and maintenance of such other systems or techniques as the Administrator or the Archivist considers necessary to carry out the purposes of this chapter, and chapters 21, 31, and 33 of this title.

§ 2903. Custody and control of property

The Archivist shall have immediate custody and control of the National Archives Building and its contents, and may design, construct, purchase, lease, maintain, operate, protect, and improve buildings used by him for the storage of records of Federal agencies in the District of Columbia and elsewhere.

§ 2904. General responsibilities for records management

- (a) The Archivist shall provide guidance and assistance to Federal agencies with respect to ensuring adequate and proper documentation of the policies and transactions of the Federal Government and ensuring proper records disposition.
- (b) The Administrator shall provide guidance and assistance to Federal agencies to ensure economical and effective records management by such agencies.
- (c) In carrying out their responsibilities under subsection (a) or (b), respectively, the Archivist and the Administrator shall each have the responsibility—

- (1) to promulgate standards, procedures, and guidelines with respect to records management and the conduct of records management studies;
- (2) to conduct research with respect to the improvement of records management practices and programs;
- (3) to collect and disseminate information on training programs, technological developments, and other activities relating to records management;
- (4) to establish such interagency committees and boards as may be necessary to provide an exchange of information among Federal agencies with respect to records management;
- (5) to direct the continuing attention of Federal agencies and the Congress on the need for adequate policies governing records management;
- (6) to conduct records management studies and, in his discretion, designate the heads of executive agencies to conduct records management studies with respect to establishing systems and techniques designed to save time and effort in records management;
- (7) to conduct inspections or surveys of the records and the records management programs and practices within and between Federal agencies;

(8) to report to the appropriate oversight and appropriations committees of the Congress and to the Director of the Office of Management and Budget in January of each year and at such other times as the Archivist or the Administrator (as the case may be) deems desirable—

(A) on the results of activities conducted pursuant to paragraphs (1) through (7) of this section,

(B) on evaluations of responses by Federal agencies to any recommendations resulting from inspections or studies conducted under paragraphs (6) and (7) of this section, and

(C) to the extent practicable, estimates of costs to the Federal Government resulting from the failure of agencies to implement such recommendations.

(d) In addition, the Administrator, in carrying out subsection (b), shall have the responsibility to promote economy and efficiency in the selection and utilization of space, staff, equipment, and supplies for records management.

§ 2905. Establishment of standards for selective retention of records; security measures

(a) The Archivist shall establish standards for the selective retention of records of continuing value, and assist Federal agencies in applying the standards to records in their custody. He shall notify the head of a Federal agency of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the agency that shall come to his attention, and assist the head of the agency in initiating action through the Attorney General for the recovery of records unlawfully removed and for other redress provided by law. In any case in which the head of the agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.

(b) The Archivist shall assist the Administrator for the Office of Information and Regulatory Affairs in conducting studies and developing standards relating to record retention requirements imposed on the public and on State and local governments by Federal agencies.

§ 2906. Inspection of agency records

(a)(1) In carrying out their respective duties and responsibilities under this chapter, the Administrator of General Services and the Archivist (or the designee of either) may inspect the records or the records management practices and programs of any Federal agency solely for the purpose of rendering recommendations for the improvement of records management practices and programs. Officers and employees of such agencies shall cooperate fully in such inspections, subject to the provisions of paragraphs (2) and (3) of this subsection.

(2) Records, the use of which is restricted by law or for reasons of national security or the public interest, shall be inspected, in accordance with regulations promulgated by the Administrator and the Archivist, subject to the approval of the head of the agency concerned or of the President. The regulations promulgated by the Administrator and the Archivist under this paragraph shall, to the extent practicable, be identical.

(3) If the Administrator or the Archivist (or the designee of either) inspects a record, as provided in this subsection, which is contained in a system of records which is subject to section 552a of title 5, such record shall be—

(A) maintained by the Administrator, the Archivist, or such designee as a record contained in a system of records; or

(B) deemed to be a record contained in a system of records for purposes of subsections (b), (c), and (f) of section 552a of title 5.

(b) In conducting the inspection of agency records provided for in subsection (a) of this section, the Administrator and the Archivist (or the designee of either) shall, in addition to complying with the provisions of law cited in subsection (a)(3), comply with all other Federal laws and be subject to the sanctions provided therein.

§ 2907. Records centers and centralized microfilming services

The Archivist may establish, maintain, and operate records centers and centralized microfilming services for Federal agencies.

§ 2908. Regulations

Subject to applicable law, the Archivist shall promulgate regulations governing the transfer of records from the custody of one executive agency to that of another.

§ 2909. Retention of records

The Archivist may empower a Federal agency, upon the submission of evidence of need, to retain records for a longer period than that specified in disposal schedules; and, in accordance with regulations promulgated by him, may withdraw disposal authorizations covering records listed in disposal schedules.

[§ 2910. Repealed. Pub.L. 94-575, § 2(a)(4), Oct. 21, 1976, 90 Stat. 2726]

**Chapter 31, Records Management By Federal Agencies,
44 U.S.C. §§ 3101-3107**

§ 3101. Records management by agency heads: general duties

The head of each Federal agency shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.

§ 3102. Establishment of program of management

The head of each Federal agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of the agency. The program, among other things, shall provide for

- (1) effective controls over the creation and over the maintenance and use of records in the conduct of current business;
- (2) cooperation with the Administrator of General Services and the Archivist in applying standards, procedures, and techniques designed to improve the management of records, promote the maintenance and security of records deemed appropriate for preservation, and facilitate the segregation and disposal of records of temporary value; and
- (3) compliance with sections 2101-2117, 2501-2507, 2901-2909, and 3101-3107, of this title and the regulations issued under them.

§ 3103. Transfer of records to records centers

When the head of a Federal agency determines that such action may affect substantial economies or increased operating efficiency, he shall provide for the transfer of records to a records center maintained and operated by the Archivist, or, when approved by the Archivist, to a center maintained and operated by the head of the Federal agency.

§ 3104. Certifications and determinations on transferred records

An official of the Government who is authorized to certify to facts on the basis of records in his custody, may certify to facts on the basis of records that have been transferred by him or his predecessors to the Archivist, and may authorize the Archivist to certify to facts and to make administrative determinations on the basis of records transferred to the Archivist, notwithstanding any other law.

§ 3105. Safeguards

The head of each Federal agency shall establish safeguards against the removal or loss of records he determines to be necessary and required by regulations of the Archivist. Safeguards shall include making it known to officials and employees of the agency—

- (1) that records in the custody of the agency are not to be alienated or destroyed except in accordance with sections 3301-3314 of this title, and
- (2) the penalties provided by law for the unlawful removal or destruction of records.

§ 3106. Unlawful removal, destruction of records

The head of each Federal agency shall notify the Archivist of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the agency of which he is the head that shall come to his attention, and with the assistance of the Archivist shall initiate action through the Attorney General for the recovery of records he knows or has reason to believe have been unlawfully removed from his agency, or from another Federal agency whose records have been transferred to his legal custody. In any case in which the head of the agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.

§ 3107. Authority of Comptroller General

Chapters 21, 25, 27, 29, and 31 of this title do not limit the authority of the Comptroller General of the United States with respect to prescribing accounting systems, forms, and procedures, or lessen the responsibility of collecting and disbursing officers for rendition of their accounts for settlement by the General Accounting Office.

Chapter 33, Disposal Of Records, 44 U.S.C. §§ 3301-3324 provides:

§ 3301. Definition of records

As used in this chapter, "records" includes all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included.

§ 3302. Regulations covering lists of records for disposal, procedure for disposal, and standards for reproduction

The Archivist shall promulgate regulations, not inconsistent with this chapter, establishing—

- (1) procedures for the compiling and submitting to him of lists and schedules of records proposed for disposal,
- (2) procedures for the disposal of records authorized for disposal, and
- (3) standards for the reproduction of records by photographic or microphotographic processes with a view to the disposal of the original records.

§ 3303. Lists and schedules of records to be submitted to the Archivist by head of each Government agency

The head of each agency of the United States Government shall submit to the Archivist, under regulations promulgated as provided by section 3302 of this title—

- (1) lists of any records in the custody of the agency that have been photographed or microphotographed under the regulations and that, as a consequence, do not appear to have sufficient value to warrant their further preservation by the Government;
- (2) lists of other records in the custody of the agency not needed by it in the transaction of its current business and that do not appear to have sufficient administrative, legal, research, or other value to warrant their further preservation by the Government; and
- (3) schedules proposing the disposal after the lapse of specified periods of time of records of a specified form or character that either have accumulated in the custody of the agency or may accumulate after the submission of the schedules and apparently will not after the lapse of the period specified have sufficient administrative, legal, research, or other value to warrant their further preservation by the Government.

§ 3303a. Examination by Archivist of lists and schedules of records lacking preservation value: disposal of records

(a) The Archivist shall examine the lists and schedules submitted to him under section 3303 of this title. If the Archivist determines that any of the records listed in a list or schedule submitted to him do not, or will not after the lapse of the period specified, have sufficient administrative, legal, research, or other value to warrant their continued preservation by the Government, he may, after publication of notice in the Federal Register and an opportunity for interested persons to submit comment thereon—

(1) notify the agency to that effect; and

(2) empower the agency to dispose of those records in accordance with regulations promulgated under section 3302 of this title.

(b) Authorizations granted under lists and schedules submitted to the Archivist under section 3303 of this title, and schedules promulgated by the Archivist under subsection (d) of this section, shall be mandatory, subject to section 2909 of this title. As between an authorization granted under lists and schedules submitted to the Archivist under section 3303 of this title and an authorization contained in a schedule promulgated under subsection (d) of this section, application of the authorization

providing for the shorter retention period shall be required, subject to section 2909 of this title.

(c) The Archivist may request advice and counsel from the Committee on Rules and Administration of the Senate and the Committee on House Administration of the House of Representatives with respect to the disposal of any particular records under this chapter whenever he considers that—

- (1) those particular records may be of special interest to the Congress; or
- (2) consultation with the Congress regarding the disposal of those particular records is in the public interest.

However, this subsection does not require the Archivist to request such advice and counsel as a regular procedure in the general disposal of records under this chapter.

(d) The Archivist shall promulgate schedules authorizing the disposal, after the lapse of specified periods of time, of records of a specified form or character common to several or all agencies if such records will not, at the end of the periods specified, have sufficient administrative, legal, research, or other value to warrant their further preservation by the United States Government. A Federal agency may request changes in such schedules for its records pursuant to section 2909 of this title.

(e) The Archivist may approve and effect the disposal of records that are in his legal custody, provided that records that had been in the custody of another existing agency may not be disposed of without the written consent of the head of the agency.

(f) The Archivist shall make an annual report to the Congress concerning the disposal of records under this chapter, including general descriptions of the types of records disposed of and such other information as he considers appropriate to keep the Congress fully informed regarding the disposal of records under this chapter.

[§§ 3304 to 3307. Repealed. Pub.L. 91-287, § 2(c)(1) to (4), June 23, 1970, 84 Stat. 321, 322]

§ 3308. Disposal of similar records where prior disposal was authorized

When it appears to the Archivist that an agency has in its custody, or is accumulating, records of the same form or character as those of the same agency previously authorized to be disposed of, he may empower the head of the agency to dispose of the records, after they have been in existence a specified period of time, in accordance with regulations promulgated under section 3302 of this title and without listing or scheduling them.

§ 3309. Preservation of claims of Government until settled in General Accounting Office; disposal authorized upon written approval of Comptroller General

Records pertaining to claims and demands by or against the Government of the United States or to accounts in which the Government of the United States is concerned, either as debtor or creditor, may not be disposed of by the head of an agency under authorization granted under this chapter, until the claims, demands, and accounts have been settled and adjusted in the General Accounting Office, except upon the written approval of the Comptroller General of the United States.

§ 3310. Disposal of records constituting menace to health, life, or property

When the Archivist and the head of the agency that has custody of them jointly determine that records in the custody of an agency of the United States Government are a continuing menace to human health or life or to property, the Archivist shall eliminate the menace immediately by any method he considers necessary. When records in the custody of the Archivist are disposed of under this section, the Archivist shall report their disposal to the agency from which they were transferred.

§ 3311. Destruction of records outside continental United States in time of war or when hostile action seems imminent: written report to Archivist

During a state of war between the United States and another nation, or when hostile action by a foreign power appears imminent, the head of an agency of the United States Government may authorize the destruction of records in his legal custody situated in a military or naval establishment, ship, or other depository outside the territorial limits of continental United States—

(1) the retention of which would be prejudicial to the interests of the United States or

(2) which occupy space urgently needed for military purposes and are, in his opinion, without sufficient administrative, legal, research, or other value to warrant their continued preservation.

Within six months after their disposal, the official who directed the disposal shall submit a written report to the Archivist in which he shall describe the character of the records and state when and where he disposed of them.

§ 3312. Photographs or microphotographs of records considered as originals: certified reproductions admissible in evidence

Photographs or microphotographs of records made in compliance with regulations under section 3302 of this title shall have the same effect as the originals and shall be treated as originals for the purpose of their admissibility in evidence. Certified or authenticated reproductions of the photographs or microphotographs shall be admitted in evidence equally with the original photographs or microphotographs.

§ 3313. Moneys from sale of records payable into the Treasury

Money derived by agencies of the Government from the sale of records disposed of under this chapter shall be paid into the Treasury of the United States unless otherwise required by law.

§ 3314. Procedures for disposal of records exclusive

The procedures prescribed by this chapter are exclusive, and records of the United States Government may not be alienated or destroyed except under this chapter.

§ 3315. Definitions

For purposes of this section and section 3316 through section 3324 of this title—

(1) the term "Federal official" means any individual holding the office of President or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States, or any officer of the executive, judicial, or legislative branch of the Federal Government;

(2) the term "Commission" means the National Study Commission on Records and Documents of Federal Officials; and

(3) the term "records and documents" shall include handwritten and typewritten documents, motion pictures, television tapes and recordings, magnetic tapes, automated data processing documentation in various forms, and other records that reveal the history of the Nation.

§ 3316. Establishment of Commission

There is established a commission to be known as the National Study Commission on Records and Documents of Federal Officials.

§ 3317. Duties of Commission

It shall be the duty of the Commission to study problems and questions with respect to the control, disposition, and preservation of records and documents produced by or on behalf of Federal officials, with a view toward the development of appropriate legislative recommendations and other recommendations regarding appropriate rules and procedures with respect to such control, disposition, and preservation. Such study shall include consideration of—

(1) whether the historical practice regarding the records and documents produced by or on behalf of Presidents of the United States should be rejected or accepted and whether such practice should be made applicable with respect to all Federal officials;

(2) the relationship of the findings of the Commission to the provisions of chapter 19 of this title, section 2101 through section 2108 of this title, and other Federal laws relating to the control, disposition, and preservation of records and documents of Federal officials;

(3) whether the findings of the Commission should affect the control, disposition, and preservation of records and documents of agencies within the Executive Office of the President created for short-term purposes by the President;

(4) the recordkeeping procedures of the White House Office, with a view toward establishing means to determine which records and documents are produced by or on behalf of the President;

(5) the nature of rules and procedures which should apply to the control, disposition, and preservation of records and documents produced by Presidential task forces, commissions, and boards;

(6) criteria which may be used generally in determining the scope of materials which should be considered to be the records and documents of Members of the Congress;

(7) the privacy interests of individuals whose communications with Federal officials, and with task forces, commissions, and boards, are a part of the records and documents produced by such officials, task forces, commissions, and boards; and

(8) any other problems, questions, or issues which the Commission considers relevant to carrying out its duties under section 3315 through section 3324 of this title.

§ 3318. Membership

(a)(1) The Commission shall be composed of seventeen members as follows:

(A) one Member of the House of Representatives appointed by the Speaker of the House upon recommendation made by the majority leader of the House;

(B) one Member of the House of Representatives appointed by the Speaker of the House upon recommendation made by the minority leader of the House;

(C) one Member of the Senate appointed by the President pro tempore of the Senate upon recommendation made by the majority leader of the Senate;

(D) one Member of the Senate appointed by the President pro tempore of the Senate upon recommendation made by the minority leader of the Senate;

(E) one member of the Federal judiciary appointed by the Chief Justice of the United States;

(F) one person employed by the Executive Office of the President or the White House Office, appointed by the President;

(G) three appointed by the President, by and with the advice and consent of the Senate, from persons who are not officers or employees of any government and who are specially qualified to serve on the Commission by virtue of their education, training, or experience;

(H) one representative of the Department of State, appointed by the Secretary of State;

(I) one representative of the Department of Defense, appointed by the Secretary of Defense;

(J) one representative of the Department of Justice, appointed by the Attorney General;

(K) the Administrator of General Services (or his delegate);

(L) the Librarian of Congress;

(M) one member of the American Historical Association, appointed by the counsel of such Association;

(N) one member of the Society of American Archivists, appointed by such Society; and

(O) one member of the Organization of American Historians, appointed by such Organization.

(2) No more than two members appointed under paragraph (1)(G) may be of the same political party.

(b) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(c) If any member of the Commission who was appointed to the Commission as a Member of the Congress leave such office, or if any member of the Commission who was appointed from persons who are not officers or employees of any government becomes an officer or employee of a government, he may continue as a member of the Commission for no longer than the sixty-day period beginning on the date he leaves such office or becomes such an officer or employee, as the case may be.

(d) Members shall be appointed for the life of the Commission.

(e)(1) Members of the Commission shall serve without pay.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses in the same manner as persons employed intermittently in the service of the Federal Government are allowed expenses under section 5703 of title 5, United States Code, except that per diem in lieu of subsistence shall be paid only to those members of the Commission who are not full-time officers or employees of the United States or Members of the Congress.

(f) The Chairman of the Commission shall be designated by the President from among members appointed under subsection (a)(1)(G).

(g) The Commission shall meet at the call of the Chairman or a majority of its members.

§ 3319. Director and staff; experts and consultants

(a) The Commission shall appoint a Director who shall be paid at a rate not to exceed the rate of basic pay in effect for level V of the Executive Schedule (5 U.S.C. 5316).

(b) The Commission may appoint and fix the pay of such additional personnel as it deems necessary.

(c)(1) The Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-15 of the General Schedule (5 U.S.C. 5332).

(2) In procuring services under this subsection, the Commission shall seek to obtain the advice and assistance of constitutional scholars and members of the historical, archival, and journalistic professions.

(d) Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist it in carrying out its duties under sections 3315 through 3324 of this title.

§ 3320. Powers of Commission

(a) The Commission may, for the purpose of carrying out its duties under sections 3315 through 3324 of this title, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission may deem desirable.

(b) When so authorized by the Commission, any member or agent of the Commission may take any action which the Commission is authorized to take by this section.

(c) The Commission may secure directly from any department or agency of the United States information necessary to enable the Commission to carry out its duties under section 3315 through section 3324 of this title. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

Presidential Documents

Title 3—

The President

Executive Order 12958 of April 17, 1995

Classified National Security Information

This order prescribes a uniform system for classifying, safeguarding, and declassifying national security information. Our democratic principles require that the American people be informed of the activities of their Government. Also, our Nation's progress depends on the free flow of information. Nevertheless, throughout our history, the national interest has required that certain information be maintained in confidence in order to protect our citizens, our democratic institutions, and our participation within the community of nations. Protecting information critical to our Nation's security remains a priority. In recent years, however, dramatic changes have altered, although not eliminated, the national security threats that we confront. These changes provide a greater opportunity to emphasize our commitment to open Government.

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

PART 1—ORIGINAL CLASSIFICATION

Section 1.1. *Definitions.* For purposes of this order:

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

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

(c) "Classified national security information" (hereafter "classified information") means information that has been determined pursuant to this order or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(d) "Foreign Government Information" means:

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

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

(3) information received and treated as "Foreign Government Information" under the terms of a predecessor order.

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

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

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

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

(i) "Agency" means any "Executive agency," as defined in 5 U.S.C. 105, and any other entity within the executive branch that comes into the possession of classified information.

(j) "Senior agency official" means the official designated by the agency head under section 5.6(c) of this order to direct and administer the agency's program under which information is classified, safeguarded, and declassified.

(k) "Confidential source" means any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation that the information or relationship, or both, are to be held in confidence.

(l) "Damage to the national security" means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, to include the sensitivity, value, and utility of that information.

Sec. 1.2. Classification Standards. (a) Information may be originally classified under the terms of this order only if all of the following conditions are met:

- (1) an original classification authority is classifying the information;
- (2) the information is owned by, produced by or for, or is under the control of the United States Government;
- (3) the information falls within one or more of the categories of information listed in section 1.5 of this order; and
- (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security and the original classification authority is able to identify or describe the damage.

(b) If there is significant doubt about the need to classify information, it shall not be classified. This provision does not:

- (1) amplify or modify the substantive criteria or procedures for classification; or
- (2) create any substantive or procedural rights subject to judicial review.

(c) Classified information shall not be declassified automatically as a result of any unauthorized disclosure of identical or similar information.

Sec. 1.3. Classification Levels. (a) Information may be classified at one of the following three levels:

- (1) "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 that the original classification authority is able to identify or describe.
- (2) "Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.
- (3) "Confidential" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the original classification authority is able to identify or describe.

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

(c) If there is significant doubt about the appropriate level of classification, it shall be classified at the lower level.

Sec. 1.4. Classification Authority. (a) The authority to classify information originally may be exercised only by:

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

(b) Officials authorized to classify information at a specified level are also authorized to classify information at a lower level.

(c) Delegation of original classification authority.

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

(2) "Top Secret" original classification authority may be delegated pursuant to paragraph (a)(2), above.

(3) "Secret" or "Confidential" original classification authority may be delegated only by the President; an agency head or official designated pursuant to paragraph (a)(2), above; or the senior agency official, provided that official has been delegated "Top Secret" original classification authority by the agency head.

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

(d) Original classification authorities must receive training in original classification as provided in this order and its implementing directives.

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

Sec. 1.5. Classification Categories.

Information may not be considered for classification unless it concerns:

- (a) military plans, weapons systems, or operations;
- (b) foreign government information;
- (c) intelligence activities (including special activities), intelligence sources or methods, or cryptology;
- (d) foreign relations or foreign activities of the United States, including confidential sources;
- (e) scientific, technological, or economic matters relating to the national security;
- (f) United States Government programs for safeguarding nuclear materials or facilities; or
- (g) vulnerabilities or capabilities of systems, installations, projects or plans relating to the national security.

Sec. 1.6. Duration of Classification. (a) At the time of original classification, the original classification authority shall attempt to establish a specific date

or event for declassification based upon the duration of the national security sensitivity of the information. The date or event shall not exceed the time frame in paragraph (b), below.

(b) If the original classification authority cannot determine an earlier specific date or event for declassification, information shall be marked for declassification 10 years from the date of the original decision, except as provided in paragraph (d), below.

(c) An original classification authority may extend the duration of classification or reclassify specific information for successive periods not to exceed 10 years at a time if such action is consistent with the standards and procedures established under this order. This provision does not apply to information contained in records that are more than 25 years old and have been determined to have permanent historical value under title 44, United States Code.

(d) At the time of original classification, the original classification authority may exempt from declassification within 10 years specific information, the unauthorized disclosure of which could reasonably be expected to cause damage to the national security for a period greater than that provided in paragraph (b), above, and the release of which could reasonably be expected to:

- (1) reveal an intelligence source, method, or activity, or a cryptologic system or activity;
- (2) reveal information that would assist in the development or use of weapons of mass destruction;
- (3) reveal information that would impair the development or use of technology within a United States weapons system;
- (4) reveal United States military plans, or national security emergency preparedness plans;
- (5) reveal foreign government information;
- (6) damage relations between the United States and a foreign government, reveal a confidential source, or seriously undermine diplomatic activities that are reasonably expected to be ongoing for a period greater than that provided in paragraph (b), above;
- (7) impair the ability of responsible United States Government officials to protect the President, the Vice President, and other individuals for whom protection services, in the interest of national security, are authorized; or
- (8) violate a statute, treaty, or international agreement.

(e) Information marked for an indefinite duration of classification under predecessor orders, for example, "Originating Agency's Determination Required," or information classified under predecessor orders that contains no declassification instructions shall be declassified in accordance with part 3 of this order.

Sec. 1.7. Identification and Markings. (a) At the time of original classification, the following shall appear on the face of each classified document, or shall be applied to other classified media in an appropriate manner:

- (1) one of the three classification levels defined in section 1.3 of this order;
- (2) the identity, by name or personal identifier and position, of the original classification authority;
- (3) the agency and office of origin, if not otherwise evident;
- (4) declassification instructions, which shall indicate one of the following:
 - (A) the date or event for declassification, as prescribed in section 1.6(a) or section 1.6(c); or
 - (B) the date that is 10 years from the date of original classification, as prescribed in section 1.6(b); or
 - (C) the exemption category from declassification, as prescribed in section 1.6(d); and
- (5) a concise reason for classification which, at a minimum, cites the applicable classification categories in section 1.5 of this order.

(b) Specific information contained in paragraph (a), above, may be excluded if it would reveal additional classified information.

(c) Each classified document shall, by marking or other means, indicate which portions are classified, with the applicable classification level, which portions are exempt from declassification under section 1.6(d) of this order, and which portions are unclassified. In accordance with standards prescribed in directives issued under this order, the Director of the Information Security Oversight Office may grant waivers of this requirement for specified classes of documents or information. The Director shall revoke any waiver upon a finding of abuse.

(d) Markings implementing the provisions of this order, including abbreviations and requirements to safeguard classified working papers, shall conform to the standards prescribed in implementing directives issued pursuant to this order.

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

(f) Information assigned a level of classification under this or predecessor orders shall be considered as classified at that level of classification despite the omission of other required markings. Whenever such information is used in the derivative classification process or is reviewed for possible declassification, holders of such information shall coordinate with an appropriate classification authority for the application of omitted markings.

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

Sec. 1.8. Classification Prohibitions and Limitations. (a) In no case shall information be classified in order to:

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

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

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

(d) Information that has not previously been disclosed to the public under proper authority may be classified or reclassified after an agency has received a request for it under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of section 3.6 of this order only if such classification meets the requirements of this order and is accomplished on a document-by-document basis with the personal participation or under the direction of the agency head, the deputy agency head, or the senior agency official designated under section 5.6 of this order. This provision does not apply to classified information contained in records that are more than 25 years old and have been determined to have permanent historical value under title 44, United States Code.

(e) Compilations of items of information which are individually unclassified may be classified if the compiled information reveals an additional association or relationship that:

- (1) meets the standards for classification under this order; and
- (2) is not otherwise revealed in the individual items of information.

As used in this order, "compilation" means an aggregation of pre-existing unclassified items of information.

Sec. 1.9. Classification Challenges. (a) Authorized holders of information who, in good faith, believe that its classification status is improper are encouraged and expected to challenge the classification status of the information in accordance with agency procedures established under paragraph (b), below.

(b) In accordance with implementing directives issued pursuant to this order, an agency head or senior agency official shall establish procedures under which authorized holders of information are encouraged and expected to challenge the classification of information that they believe is improperly classified or unclassified. These procedures shall assure that:

- (1) individuals are not subject to retribution for bringing such actions;
- (2) an opportunity is provided for review by an impartial official or panel; and
- (3) individuals are advised of their right to appeal agency decisions to the Interagency Security Classification Appeals Panel established by section 5.4 of this order.

PART 2—DERIVATIVE CLASSIFICATION

Sec. 2.1. Definitions. For purposes of this order:

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

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

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

(d) "Source document" means an existing document that contains classified information that is incorporated, paraphrased, restated, or generated in new form into a new document.

(e) "Multiple sources" means two or more source documents, classification guides, or a combination of both.

Sec. 2.2. Use of Derivative Classification. (a) 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.

(b) Persons who apply derivative classification markings shall:

- (1) observe and respect original classification decisions; and
- (2) carry forward to any newly created documents the pertinent classification markings. For information derivatively classified based on multiple sources, the derivative classifier shall carry forward:
 - (A) the date or event for declassification that corresponds to the longest period of classification among the sources; and
 - (B) a listing of these sources on or attached to the official file or record copy.

Sec. 2.3. Classification Guides. (a) Agencies with original classification authority shall prepare classification guides to facilitate the proper and uniform derivative classification of information. These guides shall conform to standards contained in directives issued under this order.

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

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

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

(c) Agencies shall establish procedures to assure that classification guides are reviewed and updated as provided in directives issued under this order.

PART 3—DECLASSIFICATION AND DOWNGRADING

Sec. 3.1. Definitions. For purposes of this order:

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

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

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

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

(c) "Declassification authority" means:

(1) the official who authorized the original classification, if that official is still serving in the same position;

(2) the originator's current successor in function;

(3) a supervisory official of either; or

(4) officials delegated declassification authority in writing by the agency head or the senior agency official.

(d) "Mandatory declassification review" means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.6 of this order.

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

(f) "Declassification guide" means written instructions issued by a declassification authority that describes the elements of information regarding a specific subject that may be declassified and the elements that must remain classified.

(g) "Downgrading" means a determination by a declassification authority that information classified and safeguarded at a specified level shall be classified and safeguarded at a lower level.

(h) "File series" means documentary material, regardless of its physical form or characteristics, that is arranged in accordance with a filing system or maintained as a unit because it pertains to the same function or activity.

Sec. 3.2. Authority for Declassification. (a) Information shall be declassified as soon as it no longer meets the standards for classification under this order.

(b) It is presumed that information that continues to meet the classification requirements under this order requires continued protection. In some exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the agency head or the senior agency official. That official will determine, as an exercise of discretion, whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure. This provision does not:

(1) amplify or modify the substantive criteria or procedures for classification; or

(2) create any substantive or procedural rights subject to judicial review.

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

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

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

Sec. 3.3. Transferred Information. (a) In the case of classified information transferred in conjunction with a transfer of functions, and not merely for storage purposes, the receiving agency shall be deemed to be the originating agency for purposes of this order.

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

(c) Classified information accessioned into the National Archives and Records Administration ("National Archives") as of the effective date of this order shall be declassified or downgraded by the Archivist in accordance with this order, the directives issued pursuant to this order, agency declassification guides, and any existing procedural agreement between the Archivist and the relevant agency head.

(d) The originating agency shall take all reasonable steps to declassify classified information contained in records determined to have permanent historical value before they are accessioned into the National Archives. However, the Archivist may require that records containing classified information be accessioned into the National Archives when necessary to comply with the provisions of the Federal Records Act. This provision does not apply to information being transferred to the Archivist pursuant to section 2203 of title 44, United States Code, or information for which the National Archives and Records Administration serves as the custodian of the records of an agency or organization that goes out of existence.

(e) To the extent practicable, agencies shall adopt a system of records management that will facilitate the public release of documents at the time such documents are declassified pursuant to the provisions for automatic declassification in sections 1.6 and 3.4 of this order.

Sec. 3.4. Automatic Declassification. (a) Subject to paragraph (b), below, within 5 years from the date of this order, all classified information contained in records that (1) are more than 25 years old, and (2) have been determined to have permanent historical value under title 44, United States Code, shall be automatically declassified whether or not the records have been reviewed. Subsequently, all classified information in such records shall be automatically declassified no longer than 25 years from the date of its original classification, except as provided in paragraph (b), below.

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

- (1) reveal the identity of a confidential human source, or reveal information about the application of an intelligence source or method, or reveal the identity of a human intelligence source when the unauthorized disclosure of that source would clearly and demonstrably damage the national security interests of the United States;
- (2) reveal information that would assist in the development or use of weapons of mass destruction;
- (3) reveal information that would impair U.S. cryptologic systems or activities;
- (4) reveal information that would impair the application of state of the art technology within a U.S. weapon system;

- (5) reveal actual U.S. military war plans that remain in effect;
- (6) reveal information that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States;
- (7) reveal information that would clearly and demonstrably impair the current ability of United States Government officials to protect the President, Vice President, and other officials for whom protection services, in the interest of national security, are authorized;
- (8) reveal information that would seriously and demonstrably impair current national security emergency preparedness plans; or
- (9) violate a statute, treaty, or international agreement.

(c) No later than the effective date of this order, an agency head shall notify the President through the Assistant to the President for National Security Affairs of any specific file series of records for which a review or assessment has determined that the information within those file series almost invariably falls within one or more of the exemption categories listed in paragraph (b), above, and which the agency proposes to exempt from automatic declassification. The notification shall include:

- (1) a description of the file series;
- (2) an explanation of why the information within the file series is almost invariably exempt from automatic declassification and why the information must remain classified for a longer period of time; and
- (3) except for the identity of a confidential human source or a human intelligence source, as provided in paragraph (b), above, a specific date or event for declassification of the information.

The President may direct the agency head not to exempt the file series or to declassify the information within that series at an earlier date than recommended.

(d) At least 180 days before information is automatically declassified under this section, an agency head or senior agency official shall notify the Director of the Information Security Oversight Office, serving as Executive Secretary of the Interagency Security Classification Appeals Panel, of any specific information beyond that included in a notification to the President under paragraph (c), above, that the agency proposes to exempt from automatic declassification. The notification shall include:

- (1) a description of the information;
- (2) an explanation of why the information is exempt from automatic declassification and must remain classified for a longer period of time; and
- (3) except for the identity of a confidential human source or a human intelligence source, as provided in paragraph (b), above, a specific date or event for declassification of the information. The Panel may direct the agency not to exempt the information or to declassify it at an earlier date than recommended. The agency head may appeal such a decision to the President through the Assistant to the President for National Security Affairs. The information will remain classified while such an appeal is pending.

(e) No later than the effective date of this order, the agency head or senior agency official shall provide the Director of the Information Security Oversight Office with a plan for compliance with the requirements of this section, including the establishment of interim target dates. Each such plan shall include the requirement that the agency declassify at least 15 percent of the records affected by this section no later than 1 year from the effective date of this order, and similar commitments for subsequent years until the effective date for automatic declassification.

(f) Information exempted from automatic declassification under this section shall remain subject to the mandatory and systematic declassification review provisions of this order.

(g) The Secretary of State shall determine when the United States should commence negotiations with the appropriate officials of a foreign government or international organization of governments to modify any treaty or international agreement that requires the classification of information contained in records affected by this section for a period longer than 25 years from the date of its creation, unless the treaty or international agreement pertains to information that may otherwise remain classified beyond 25 years under this section.

Sec. 3.5. Systematic Declassification Review. (a) Each agency that has originated classified information under this order or its predecessors shall establish and conduct a program for systematic declassification review. This program shall apply to historically valuable records exempted from automatic declassification under section 3.4 of this order. Agencies shall prioritize the systematic review of records based upon:

- (1) recommendations of the Information Security Policy Advisory Council, established in section 5.5 of this order, on specific subject areas for systematic review concentration; or
- (2) the degree of researcher interest and the likelihood of declassification upon review.

(b) The Archivist shall conduct a systematic declassification review program for classified information: (1) accessioned into the National Archives as of the effective date of this order; (2) information transferred to the Archivist pursuant to section 2203 of title 44, United States Code; and (3) information for which the National Archives and Records Administration serves as the custodian of the records of an agency or organization that has gone out of existence. This program shall apply to pertinent records no later than 25 years from the date of their creation. The Archivist shall establish priorities for the systematic review of these records based upon the recommendations of the Information Security Policy Advisory Council; or the degree of researcher interest and the likelihood of declassification upon review. These records shall be reviewed in accordance with the standards of this order, its implementing directives, and declassification guides provided to the Archivist by each agency that originated the records. The Director of the Information Security Oversight Office shall assure that agencies provide the Archivist with adequate and current declassification guides.

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

Sec. 3.6. Mandatory Declassification Review. (a) Except as provided in paragraph (b), below, all information classified under this order or predecessor orders shall be subject to a review for declassification by the originating agency if:

- (1) the request for a review describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort;
- (2) the information is not exempted from search and review under the Central Intelligence Agency Information Act; and
- (3) the information has not been reviewed for declassification within the past 2 years. If the agency has reviewed the information within the past 2 years, or the information is the subject of pending litigation, the agency shall inform the requester of this fact and of the requester's appeal rights.

(b) Information originated by:

- (1) the incumbent President;
- (2) the incumbent President's White House Staff;
- (3) committees, commissions, or boards appointed by the incumbent President; or

(4) other entities within the Executive Office of the President that solely advise and assist the incumbent President is exempted from the provisions of paragraph (a), above. However, the Archivist shall have the authority to review, downgrade, and declassify information of former Presidents under the control of the Archivist pursuant to sections 2107, 2111, 2111 note, or 2203 of title 44, United States Code. Review procedures developed by the Archivist shall provide for consultation with agencies having primary subject matter interest and shall be consistent with the provisions of applicable laws or lawful agreements that pertain to the respective Presidential papers or records. Agencies with primary subject matter interest shall be notified promptly of the Archivist's decision. Any final decision by the Archivist may be appealed by the requester or an agency to the Interagency Security Classification Appeals Panel. The information shall remain classified pending a prompt decision on the appeal.

(c) Agencies conducting a mandatory review for declassification shall declassify information that no longer meets the standards for classification under this order. They shall release this information unless withholding is otherwise authorized and warranted under applicable law.

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

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

Sec. 3.7. Processing Requests and Reviews. In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of this order, or pursuant to the automatic declassification or systematic review provisions of this order:

(a) An agency may refuse to confirm or deny the existence or nonexistence of requested information whenever the fact of its existence or nonexistence is itself classified under this order.

(b) When an agency receives any request for documents in its custody that contain information that was originally classified by another agency, or comes across such documents in the process of the automatic declassification or systematic review provisions of this order, it shall refer copies of any request and the pertinent documents to the originating agency for processing, and may, after consultation with the originating agency, inform any requester of the referral unless such association is itself classified under this order. In cases in which the originating agency determines in writing that a response under paragraph (a), above, is required, the referring agency shall respond to the requester in accordance with that paragraph.

Sec. 3.8. Declassification Database. (a) The Archivist in conjunction with the Director of the Information Security Oversight Office and those agencies that originate classified information, shall establish a Governmentwide database of information that has been declassified. The Archivist shall also explore other possible uses of technology to facilitate the declassification process.

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

(c) Except as otherwise authorized and warranted by law, all declassified information contained within the database established under paragraph (a), above, shall be available to the public.

PART 4—SAFEGUARDING

Sec. 4.1. Definitions. For purposes of this order: (a) "Safeguarding" means measures and controls that are prescribed to protect classified information.

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

(c) "Need-to-know" means a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function.

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

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

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

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

(h) "Special access program" means a program established for a specific class of classified information that imposes safeguarding and access requirements that exceed those normally required for information at the same classification level.

Sec. 4.2. General Restrictions on Access. (a) A person may have access to classified information provided that:

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

(b) Classified information shall remain under the control of the originating agency or its successor in function. An agency shall not disclose information originally classified by another agency without its authorization. An official or employee leaving agency service may not remove classified information from the agency's control.

(c) Classified information may not be removed from official premises without proper authorization.

(d) Persons authorized to disseminate classified information outside the executive branch shall assure the protection of the information in a manner equivalent to that provided within the executive branch.

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

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

(f) Consistent with law, directives, and regulation, each agency head or senior agency official shall establish controls to ensure that classified information is used, processed, stored, reproduced, transmitted, and destroyed under conditions that provide adequate protection and prevent access by unauthorized persons.

(g) Consistent with directives issued pursuant to this order, an agency shall safeguard foreign government information under standards that provide a degree of protection at least equivalent to that required by the government or international organization of governments that furnished the information. When adequate to achieve equivalency, these standards may be less restrictive than the safeguarding standards that ordinarily apply to United States "Confidential" information, including allowing access to individuals with a need-to-know who have not otherwise been cleared for access to classified information or executed an approved nondisclosure agreement.

(h) Except as provided by statute or directives issued pursuant to this order, 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. An agency head or senior agency official may waive this requirement for specific information originated within that agency. For purposes of this section, the Department of Defense shall be considered one agency.

Sec. 4.3. Distribution Controls. (a) Each agency shall establish controls over the distribution of classified information to assure that it is distributed only to organizations or individuals eligible for access who also have a need-to-know the information.

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

Sec. 4.4. Special Access Programs. (a) Establishment of special access programs. Unless otherwise authorized by the President, only the Secretaries of State, Defense and Energy, and the Director of Central Intelligence, or the principal deputy of each, may create a special access program. For special access programs pertaining to intelligence activities (including special activities, but not including military operational, strategic and tactical programs), or intelligence sources or methods, this function will be exercised by the Director of Central Intelligence. These officials shall keep the number of these programs at an absolute minimum, and shall establish them only upon a specific finding that:

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

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

(2) Each agency head shall establish and maintain a system of accounting for special access programs consistent with directives issued pursuant to this order.

(3) Special access programs shall be subject to the oversight program established under section 5.6(c) of this order. In addition, the Director of the Information Security Oversight Office shall be afforded access to these programs, in accordance with the security requirements of each program, in order to perform the functions assigned to the Information Security Oversight Office under this order. An agency head may limit access to a special access program to the Director and no more than one other employee of the Information Security Oversight Office; or, for special access programs that are extraordinarily sensitive and vulnerable, to the Director only.

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

(5) Upon request, an agency shall brief the Assistant to the President for National Security Affairs, or his or her designee, on any or all of the agency's special access programs.

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

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

Sec. 4.5. Access by Historical Researchers and Former Presidential Appointees. (a) The requirement in section 4.2(a)(3) of this order that access to classified information may be granted only to individuals who have a need-to-know the information may be waived for persons who:

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

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

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

PART 5—IMPLEMENTATION AND REVIEW

Sec. 5.1. Definitions. For purposes of this order: (a) "Self-inspection" means the internal review and evaluation of individual agency activities and the agency as a whole with respect to the implementation of the program established under this order and its implementing directives.

(b) "Violation" means:

- (1) any knowing, willful, or negligent action that could reasonably be expected to result in an unauthorized disclosure of classified information;
- (2) any knowing, willful, or negligent action to classify or continue the classification of information contrary to the requirements of this order or its implementing directives; or
- (3) any knowing, willful, or negligent action to create or continue a special access program contrary to the requirements of this order.

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

Sec. 5.2. Program Direction. (a) The Director of the Office of Management and Budget, in consultation with the Assistant to the President for National Security Affairs and the co-chairs of the Security Policy Board, shall issue such directives as are necessary to implement this order. These directives shall be binding upon the agencies. Directives issued by the Director of the Office of Management and Budget shall establish standards for:

- (1) classification and marking principles;
- (2) agency security education and training programs;
- (3) agency self-inspection programs; and
- (4) classification and declassification guides.

(b) The Director of the Office of Management and Budget shall delegate the implementation and monitorship functions of this program to the Director of the Information Security Oversight Office.

(c) The Security Policy Board, established by a Presidential Decision Directive, shall make a recommendation to the President through the Assistant to the President for National Security Affairs with respect to the issuance of a Presidential directive on safeguarding classified information. The Presidential directive shall pertain to the handling, storage, distribution, transmittal, and destruction of and accounting for classified information.

Sec. 5.3. Information Security Oversight Office. (a) There is established within the Office of Management and Budget an Information Security Oversight Office. The Director of the Office of Management and Budget shall appoint the Director of the Information Security Oversight Office, subject to the approval of the President.

(b) Under the direction of the Director of the Office of Management and Budget acting in consultation with the Assistant to the President for National Security Affairs, the Director of the Information Security Oversight Office shall:

- (1) develop directives for the implementation of this order;
- (2) oversee agency actions to ensure compliance with this order and its implementing directives;
- (3) review and approve agency implementing regulations and agency guides for systematic declassification review prior to their issuance by the agency;
- (4) have the authority to conduct on-site reviews of each agency's program established under this order, and to require of each agency those reports, information, and other cooperation that may be necessary to fulfill its responsibilities. If granting access to specific categories of classified information would pose an exceptional national security risk, the affected agency head or the senior agency official shall submit a written justification recommending the denial of access to the Director of the Office of Management and Budget within 60 days of the request for access. Access shall be denied pending a prompt decision by the Director of the Office of Management and Budget, who shall consult on this decision with the Assistant to the President for National Security Affairs;
- (5) review requests for original classification authority from agencies or officials not granted original classification authority and, if deemed appropriate, recommend Presidential approval through the Director of the Office of Management and Budget;
- (6) consider and take action on complaints and suggestions from persons within or outside the Government with respect to the administration of the program established under this order;
- (7) have the authority to prescribe, after consultation with affected agencies, standardization of forms or procedures that will promote the implementation of the program established under this order;
- (8) report at least annually to the President on the implementation of this order; and
- (9) convene and chair interagency meetings to discuss matters pertaining to the program established by this order.

Sec. 5.4. Interagency Security Classification Appeals Panel.

(a) Establishment and Administration.

- (1) There is established an Interagency Security Classification Appeals Panel ("Panel"). The Secretaries of State and Defense, the Attorney General, the Director of Central Intelligence, the Archivist of the United States, and the Assistant to the President for National Security Affairs shall each appoint a senior level representative to serve as a member of the Panel. The President shall select the Chair of the Panel from among the Panel members.
- (2) A vacancy on the Panel shall be filled as quickly as possible as provided in paragraph (1), above.
- (3) The Director of the Information Security Oversight Office shall serve as the Executive Secretary. The staff of the Information Security Oversight Office shall provide program and administrative support for the Panel.

(1) Each Council member may be compensated at a rate of pay not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the general schedule under section 5376 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Council.

(2) While away from their homes or regular place of business in the actual performance of the duties of the Council, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5703(b)).

(3) To the extent permitted by law and subject to the availability of funds, the Information Security Oversight Office shall provide the Council with administrative services, facilities, staff, and other support services necessary for the performance of its functions.

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

Sec. 5.6. General Responsibilities. Heads of agencies that originate or handle classified information shall:

(a) demonstrate personal commitment and commit senior management to the successful implementation of the program established under this order;

(b) commit necessary resources to the effective implementation of the program established under this order; and

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

(1) overseeing the agency's program established under this order, provided, an agency head may designate a separate official to oversee special access programs authorized under this order. This official shall provide a full accounting of the agency's special access programs at least annually;

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

(3) establishing and maintaining security education and training programs;

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

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

(6) developing special contingency plans for the safeguarding of classified information used in or near hostile or potentially hostile areas;

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

(8) accounting for the costs associated with the implementation of this order, which shall be reported to the Director of the Information Security Oversight Office for publication; and

(9) assigning in a prompt manner agency personnel to respond to any request, appeal, challenge, complaint, or suggestion arising out of this order that pertains to classified information that originated in a component of the agency that no longer exists and for which there is no clear successor in function.

Sec. 5.7. Sanctions. (a) If the Director of the Information Security Oversight Office finds that a violation of this order or its implementing directives may have occurred, the Director shall make a report to the head of the agency or to the senior agency official so that corrective steps, if appropriate, may be taken.

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

(1) disclose to unauthorized persons information properly classified under this order or predecessor orders;

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

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

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

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

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

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

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

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

PART 6—GENERAL PROVISIONS

Sec. 6.1. General Provisions. (a) Nothing in this order shall supersede any requirement made by or under the Atomic Energy Act of 1954, as amended, or the National Security Act of 1947, as amended. "Restricted Data" and "Formerly Restricted Data" shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and regulations issued under that Act.

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

(c) Nothing in this order limits the protection afforded any information by other provisions of law, including the exemptions to the Freedom of Information Act, the Privacy Act, and the National Security Act of 1947, as amended. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. The foregoing is in addition to the specific provisions set forth in sections 1.2(b), 3.2(b) and 5.4(e) of this order.

(d) Executive Order No. 12356 of April 6, 1982, is revoked as of the effective date of this order.

Sec. 6.2. *Effective Date.* This order shall become effective 180 days from the date of this order.

William Clinton

THE WHITE HOUSE,
April 17, 1995.

[FR Doc. 95-9841
Filed 4-18-95; 2:04 pm]
Billing code 3195-01-P