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Bill Casselman is
to do over in form
of response to memo of 2/17
and show to Phil A.
before releasing.
P.



THE WHITE HOUSE

WASHINGTON

February 18, 1975

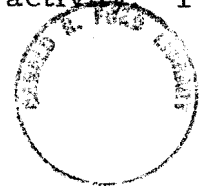
MEMORANDUM FOR: Phil Buchen
FROM: Bill Casselman *BC*
SUBJECT: Proclamation Terminating Selective
Service Registration

In general, I concur with OLC's revision. The proclamation should make it clear that the registration procedures are being terminated, and not the statutory registration requirement. However, I also recommend that the Selective Service System seek repeal of 50 U.S.C. App. 460(h) in part.

OLC's memorandum appears to be somewhat narrow in its interpretation regarding compliance with the provisions of subsection 460(h). The full text of that subsection provides:

"If at any time calls under this section for the induction of persons for training and service in the Armed Forces are discontinued because the Armed Forces are placed on an all volunteer basis for meeting their active duty manpower needs, the Selective Service System, as it is constituted on the date of the enactment of this subsection [September 28, 1971], shall, nevertheless, be maintained as an active standby organization, with (1) a complete registration and classification structure capable of immediate operation in the event of a national emergency, and (2) personnel adequate to reinstitute immediately the full operation of the System, including military reservists who are trained to operate such System and who can be ordered to active duty for such purpose in the event of a national emergency." (Emphasis added).

The FY 76 Budget states at page 78 that the new all volunteer System will begin "major program adjustments" in 1976, including a phase down of local board operations and deferral of classification activity. This will



result in significant personnel cutbacks and a \$14 million reduction in service to registrants, which will necessitate the closing of many local boards. Whether any of these "adjustments" would be construed by the courts as a change in the Selective Service System as it "is constituted on the date of enactment of this subsection [460(h)]" is a matter of conjecture which was not addressed by OLC.

In construing an act which has been the subject of searching review by the Federal courts, prudence would seem to dictate that, when in doubt, one should seek the repeal of language which would appear to be inconsistent with major actions contemplated by the Executive. Accordingly, Congress should be asked to delete the underscored language in subsection 460(h), above, so as not to conflict with any of the proposed changes in the Selective Service System.

The policy underlying the Executive Order also appears questionable. Caesar Augustus once decreed that "all the world should be enrolled." Although the Roman penalty for failure to register no doubt was more harsh than that provided in the Military Selective Service Act, not everyone bothered to heed even Caesar's proclamation.

Dubious historical analogies aside, the Selective Service System, under present procedures, nevertheless registers approximately 95% of those eligible for the draft (who are required to enroll 30 days before or 30 days after their 18th birthday). As it turns out, according to reliable estimates, almost 1/3 do not register until after the deadline. To provide an "annual registration period" of relatively short duration may significantly reduce the number of persons who register per year. Those who fail to register during the annual period could be left without a local board before which to take their case and would also be subject to criminal prosecution.

Finally, a great deal of confusion may arise from first terminating registration procedures entirely and then, at a later date, establishing an annual registration period. Despite the best intentions and public information campaigns, a considerable number of draft eligibles doubtlessly will misapprehend this proclamation, mistaking it for a final termination of registration procedures--thus further complicating the problem of prosecution potential.

I realize that these are involved policy issues that may already be "set in concrete" (with reductions in the Selective Service budget having been made accordingly), but I truly doubt the wisdom and effectiveness of the proposed proclamation.



ACTION MEMORANDUM

Date: February 14, 1975

Time: 11:30 a.m.

FOR ACTION: NSC/S
Max Friedersdorf
Phil Areeda
Paul Theiscc (for information): Warren Hendriks
Jerry Jones
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Monday, February 17

Time: 3:00 p.m.

SUBJECT:

Proclamation: Terminating Registration Procedures
under the Military Selective Service Act

ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

See attached memo - JCPLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.If you have any questions or if you anticipate a
delay in submitting the required material, please
telephone the Staff Secretary immediately.Warren R. Hendriks
for the President


BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Under authority vested in him by the Military Selective Service Act (62 Stat. 604), as amended, the President has provided for the registration of male citizens of the United States and of other male persons who are subject to registration under Section 3 of said Act, as amended (85 Stat. 348).

Present military manpower needs do not necessitate year round registration of males as they reach their eighteenth birthday, as is now required. ~~It, therefore, is feasible to end the existing~~ registration requirement; and, at a later date, to institute new procedures for periodic registration.

NOW, THEREFORE, I, GERALD R. FORD, President of the United States of America, by virtue of the authority vested in me by the Constitution and the statutes of the United States, including the Military Selective Service Act, as amended, do hereby revoke Proclamations No. 2799 of July 20, 1948, No. 2937 of August 16, 1951, No. 2938 of August 16, 1951, No. 2942 of August 30, 1951, No. 2972 of April 17, 1952, No. 3314 of September 14, 1959, and No. 4101 of January 13, 1972; thereby terminating the present procedures for registration under the Military Selective Service Act, as amended.



February 10, 1975

MEMORANDUM FOR THE RECORD

Subject: Proposed Proclamation entitled "Terminating
Registration Under the Military Selective
Service Act, as Amended"

Mr. Werner Windus (DOD, ext. 697-1305) confirmed that
that Department had no intention to object to the
issuance of this proposed Proclamation.



Ronald A. Kienlen
Assistant General Counsel



January 21, 1975

Honorable James P. Schlesinger
Secretary of Defense
Washington, D. C. 20301

Dear Mr. Secretary:

Herewith, in accordance with the provisions of Executive Order No. 11030, as amended, is a proposed Proclamation entitled "Terminating Registration Under the Military Selective Service Act, As Amended." This proposed Proclamation was submitted by the Director of the Selective Service System.

On behalf of the Director of the Office of Management and Budget, I would appreciate your comments, by February 4, 1975, concerning the issuance of this proposed Proclamation. If I have not heard from you by that time, I will assume that you have no objections to its issuance. Any inquiries may be telephoned to Mr. Ronald A. Rakielen (395-5600 or 165-5000).

Sincerely,

(Signed) William M. Nichols

William M. Nichols
Acting General Counsel

Enclosure

cc: E.O. Records; OGC Chron; General Counsel;
Mr. Ogilvie; Mr. Sitrin; Mr. Hannon
DO:OGC:RAKIENLEN:mjr:1/21/75





OFFICE OF THE DIRECTOR

NATIONAL HEADQUARTERS
SELECTIVE SERVICE SYSTEM

1724 F STREET N.W.
WASHINGTON, D. C. 20435



ADDRESS REPLY TO
THE DIRECTOR OF SELECTIVE SERVICE

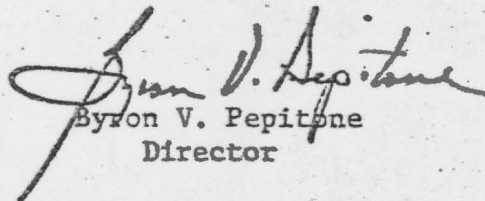
January 17, 1975

Dear Mr. Ash,

In accordance with 1 CFR 19.2(a), enclosed is a proposed Proclamation terminating the registration of men under the Military Selective Service Act, as amended. Copies of a fact sheet for possible use at the time the Proclamation is signed are also enclosed.

Based upon the Presidential guidance provided in your letter of December 19, 1974, the suspension of registration of 18-year-olds is required in order to have a resource of potential registrants in calendar year 1976 to test the procedures of an "annual registration." A suitable proposed Proclamation announcing the "annual registration" procedure will be forwarded for signature in accordance with 1 CFR 19.2(a) at the appropriate time.

Sincerely,


Byron V. Pepitone
Director

Enclosures

The Honorable Roy L. Ash
Director
Office of Management and Budget



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

GENERAL COUNSEL

FEB 11 1976

Honorable Edward H. Levi
Attorney General
Washington, D. C. 20530

Dear Mr. Attorney General:

Herewith, in accordance with the provisions of Executive Order No. 11030, as amended, is a proposed Proclamation entitled "Terminating Registration Procedures Under the Military Selective Service Act, As Amended."

This proposed Proclamation would end the existing requirement for eighteen year old males to register for the draft. Until the President issues new procedures, no one is to be registered.

The Director of the Selective Service System submitted this proposed Proclamation, which has been slightly revised in this office. Changes have been made to more clearly express the intent of the Proclamation. Reference to those "required to register heretofore" has been deleted, since they will no longer be under a continuing obligation to register until new procedures have been established.

In view of 1 U.S.C. 29, this Proclamation should not affect the penal sanctions under Section 12 of the Military Selective Service Act (62 Stat. 622), as amended by 79 Stat. 586; 81 Stat. 105; 85 Stat. 352. It is our understanding that prosecutions under this provision are undertaken at the request of the Director of the Selective Service System (81 Stat. 105, 50 U.S.C. App. 462(c)).

It is our understanding that the Director of the Selective Service System urges the prompt issuance of this proposed Proclamation, in order to have a sizable group of unregistered males for testing annual or periodic registration procedures.



The views of the Department of Defense have been solicited and a representative thereof has informally advised that the Department does not intend to object.

This proposed Proclamation has the approval of the Director of the Office of Management and Budget.

Sincerely,

(Signed) William M. Nichols

William M. Nichols
Acting General Counsel

Enclosure



Department of Justice
Washington, D.C. 20530

FEB 13 1975

The President,

The White House.

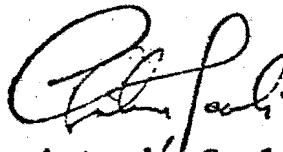
My dear Mr. President:

I am herewith transmitting a proposed proclamation entitled "Terminating Registration Procedures Under the Military Selective Service Act, as Amended."

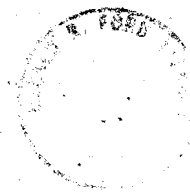
This proposed proclamation was presented by the Director of Selective Service and has been forwarded for the consideration of this Department as to form and legality by the Office of Management and Budget with the approval of the Director, after revision in that agency. The proclamation has been further revised in this Department.

The proposed proclamation is approved as to form and legality.

Respectfully,



Antonin Scalia
Assistant Attorney General
Office of Legal Counsel



FEB 13 1975

MEMORANDUM

Re: Proposed proclamation entitled
"Terminating Registration Procedures
Under the Military Selective Service Act"

The attached proposed proclamation was presented by the Director of Selective Service and has been forwarded for the consideration of this Department as to form and legality by the Office of Management and Budget with the approval of the Director, after revision in that agency. The proclamation has been further revised in this Department.

Section 3 of the Military Selective Service Act, as amended, 50 U.S.C. App. 453, requires male citizens and certain other male persons to register under the Act "at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed" under the Act. See also 50 U.S.C. App. 460(b)(1), which authorizes the President to prescribe necessary rules and regulations to carry out the provisions of the Act, and 50 U.S.C. App. 465(a), which provides that persons shall be deemed to have notice of the requirements of the Act upon publication by the President of a proclamation or other public notice fixing the time for registration under section 3.

This proposed proclamation revokes the prior proclamations providing for registration under the Military Selective Service Act, as amended, terminating the existing registration procedures.



The preamble to the proclamation states that present military manpower requirements no longer necessitate year round registration of males as they reach their eighteenth birthday. The transmittal letter from the Director of Selective Service indicates that new proposed procedures for an "annual registration" period will be presented at a later date.

The preamble has been revised in this Department to make clear that it is the registration procedures that are terminated, not the registration requirement, which is statutory.

The OMB transmittal letter notes that discontinuing the registration procedures should not affect the penal sanctions under section 12 of the Act (50 U.S.C. App. 462) for violations occurring when the procedures were in effect. See 1 U.S.C. 109.

Section 10(h) of the Act, as added by Public Law 92-129, 85 Stat. 348, requires the Selective Service System to be maintained as an active standby organization, with "a complete registration and classification structure capable of immediate operation in the event of a national emergency" even when calls for induction of persons into the Armed Forces are discontinued because the Armed Forces are placed on an all-volunteer basis. 50 U.S.C. App. 460(h). The question arises as to whether the termination or suspension of procedures for registration is in conflict with section 10(h). The provision was added on the Senate floor, and its legislative history indicates that it was not intended to require continuous registration. Senator Hruska asked the following question of then Senator Saxbe, who proposed the amendment (117 Cong. Rec. 20501-20502):

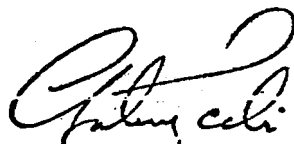
Mr. Hruska. Mr. President, the language of the amendment says that there shall be maintained as an active standby organization with a complete registration and classification structure capable of immediate operation, and so forth.

It is not contemplated that registration shall be maintained. It is only the structure and the organization, the equipment, the procedures, and the manuals that are necessary to initiate registration if and when a national emergency comes.

Mr. Saxbe. The Senator is correct. Whether or not registrations are to be maintained will be a decision when we go to a volunteer army. It is not involved in this discussion at the present time.

We are advised that the Selective Service System will continue to maintain the structure and capacity to register people.

The proposed Executive order is acceptable as to form and legality.



Antonin Scalia
Assistant Attorney General
Office of Legal Counsel

TERMINATING REGISTRATION PROCEDURES
UNDER THE MILITARY SELECTIVE SERVICE ACT,
AS AMENDED

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Under authority vested in the President by the Military Selective Service Act (62 Stat. 604), as amended, procedures have been established for the registration of male citizens of the United States and of other male persons who are subject to registration under Section 3 of said Act, as amended (85 Stat. 348).

Present military manpower requirements do not necessitate year round registration of males as they reach their eighteenth birthday, as the existing procedures require. It therefore is feasible to end the existing registration procedures and, at a later date, to institute new procedures for periodic registration.

NOW, THEREFORE, I, GERALD R. FORD, President of the United States of America, by virtue of the authority vested in me by the Constitution and the statutes of the United States, including the Military Selective Service Act, as amended, do hereby revoke Proclamations No. 2799 of July 20, 1948, No. 2937 of August 16, 1951, No. 2938 of August 16, 1951, No. 2942 of August 30, 1951, No. 2972 of April 17, 1952, No. 3314 of September 14, 1959, and No. 4101 of January 13, 1972; thereby terminating the present procedures for registration under the Military Selective Service Act, as amended.



IN WITNESS WHEREOF, I have hereunto set my
hand this day of , in
the year of our Lord nineteen hundred seventy-five, and
of the Independence of the United States of America the
one hundred and ninety-ninth.



THE WHITE HOUSE

WASHINGTON

February 18, 1975

MEMORANDUM FOR: Phil Buchen

FROM: Bill Casselman *BC*

SUBJECT: Proclamation Terminating Selective Service Registration

In general, I concur with OLC's revision. The proclamation should make it clear that the registration procedures are being terminated, and not the statutory registration requirement. However, I also recommend that the Selective Service System seek repeal of 50 U.S.C. App. 460(h) in part.

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Dubious historical analogies aside, the Selective Service System, under present procedures, nevertheless registers approximately 95% of those eligible for the draft (who are required to enroll 30 days before or 30 days after their 18th birthday). As it turns out, according to reliable estimates, almost 1/3 do not register until after the deadline. To provide an "annual registration period" of relatively short duration may significantly reduce the number of persons who register per year. Those who fail to register during the annual period could be left without a local board before which to take their case and would also be subject to criminal prosecution.

Finally, a great deal of confusion may arise from first terminating registration procedures entirely and then, at a later date, establishing an annual registration period. Despite the best intentions and public information campaigns, a considerable number of draft eligibles doubtlessly will misapprehend this proclamation, mistaking it for a final termination of registration procedures--thus further complicating the problem of prosecution potential.

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Date: February 14, 1975

Time: 11:30 a.m.

FOR ACTION: NSC/S
Max Friedersdorf
Phil Areeda
Paul Theiscc (for information): Warren Hendriks
Jerry Jones
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Monday, February 17

Time: 3:00 p.m.

SUBJECT:

Proclamation: Terminating Registration Procedures
under the Military Selective Service Act

ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

REMARKS:

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*See attached volume - JC*PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.If you have any questions or if you anticipate a
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telephone the Staff Secretary immediately.Warren K. Hendriks
for the President

Department of Justice
Washington, D.C. 20530

FEB 13 1975

MEMORANDUM

Re: Proposed proclamation entitled
"Terminating Registration Procedures
Under the Military Selective Service Act"

The attached proposed proclamation was presented by the Director of Selective Service and has been forwarded for the consideration of this Department as to form and legality by the Office of Management and Budget with the approval of the Director, after revision in that agency. The proclamation has been further revised in this Department.

Section 3 of the Military Selective Service Act, as amended, 50 U.S.C. App. 453, requires male citizens and certain other male persons to register under the Act "at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed" under the Act. See also 50 U.S.C. App. 460(b)(1), which authorizes the President to prescribe necessary rules and regulations to carry out the provisions of the Act, and 50 U.S.C. App. 465(a), which provides that persons shall be deemed to have notice of the requirements of the Act upon publication by the President of a proclamation or other public notice fixing the time for registration under section 3.

This proposed proclamation revokes the prior proclamations providing for registration under the Military Selective Service Act, as amended, terminating the existing registration procedures.



THE WHITE HOUSE
WASHINGTON

March 4, 1975

MEMORANDUM TO: JERRY JONES
(ATTN: JUDY JOHNSTON)

THROUGH: PHIL BUCHEN *T.W.B.*

FROM: BILL CASSELMAN *BC*

SUBJECT: PROCLAMATION: TERMINATING
REGISTRATION PROCEDURES UNDER
THE MILITARY SELECTIVE SERVICE ACT

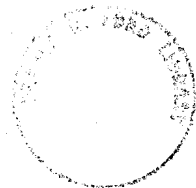
This office concurs in the revisions made in the proposed proclamation by the Office of Legal Counsel and also concurs in OLC's opinion as to the acceptability of the proclamation as to form and legality. However, we recommend that certain policy guidance received by OLC, and upon which it based part of its opinion, be carefully reviewed as to its sufficiency.

In its memorandum, OLC concludes, inter alia, that the termination or suspension of registration procedures does not conflict with the provisions of Section 10(h) of the Act.¹ In reaching this opinion, OLC relies upon (1) a reading of the legislative history of 10(h) to the effect that the amendment was not intended by its author to require continuous registration and (2) advice received from unnamed sources that the Selective Service System will continue to maintain the "structure and capability" to conduct registrations.

¹Section 10(h) was added as an amendment to the Act in 1971 by Public Law 92-129, 85 Stat. 348. It basically provides that, in the event the Armed Forces are placed on an all-volunteer basis, the Selective Service System, "as it is constituted on the date of enactment of this subsection [September 28, 1971]," shall nevertheless be maintained as an active standby organization with (1) "a complete registration and classification structure capable of immediate operation" and (2) personnel adequate to reinstitute immediately the full operation of the System." (Emphasis added.)

OLC does not specifically address the issue of whether this structure and capability will be sufficient to maintain the System as it was constituted on the date of enactment of Section 10(h), as required by that Section. In view of the substantial revision in the Selective Service System proposed in the FY 76 budget, there may be some question on this point.

Accordingly, as a matter of caution, we recommend that the advice given to OLC be reexamined to assure that the revised structure and capability provided for in the new budget will, in fact, permit maintenance of the Selective Service System as constituted on September 28, 1971. In the event that a reduction in the budget results in a significant change from the 1971 standard, then it would be necessary to ask Congress to eliminate or reduce the requirements of Section 10(h). In the alternative, the budget could be revised.



September 4, 1975

To: Jay French

From: Phil Buchen

Bill Casselman worked on this
previously.

Could you dig out his file and
prepare comments for me...

*see
NSC*




MEMORANDUM

NATIONAL SECURITY COUNCIL

~~CONFIDENTIAL~~ - GDS

September 1, 1975

MEMORANDUM FOR: PHIL BUCHEN
FROM: BRENT SCOWCROFT 
SUBJECT: Selective Service Annual Registration

In December 1975, at the direction of the President, the Selective Service plans to institute new administrative procedures for the management of a standby draft capability. As part of this new system, Selective Service proposes to convert from present registration procedures requiring each male citizen to register during the month of his eighteenth birthday, to an annual one-day registration of all young men reaching age eighteen during the calendar year. The first annual registration is scheduled to take place on March 31, 1976.

As currently envisioned, this registration would involve the physical reporting of the majority of approximately 1.7 million eligible men to some 20,000 temporary registration sites around the country. Manned by volunteers, these sites would be located at American Legion/VFW posts, National Guard armories, Army Reserve centers, high schools, and so on. Registration day would be preceded by an extensive publicity effort, initiated by the publication of a Presidential proclamation.

It occurs to us that, because of its visibility, such a procedure might have domestic ~~implications~~ implications worth considering before the plan is finalized. We would therefore appreciate your comments.

~~CONFIDENTIAL~~ - GDS

RAO, 6/24/88