

Paragraph 6005 Class E airspace area extending upward from 700 feet or more above the surface of the earth.

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AWP CA E5 Santa Ynez, CA [Revised]

Santa Ynez Airport, CA
(lat. 34°36'25" N, long. 120°04'32" W)

That airspace extending upward from 700 feet above the surface beginning at lat. 34°33'24" N, long. 120°00'50" W; to lat. 34°29'00" N, long. 120°06'04" W; to lat. 34°29'00" N, long. 120°12'24" W; to lat. 34°37'10" N, long. 120°22'34" W; to lat. 34°45'40" N, long. 120°18'44" W; to lat. 34°40'25" N, long. 120°02'37" W, thence clockwise along the 4.3-mile radius of the Santa Ynez Airport to the point of beginning and within 4.5 miles northeast and 2 miles southwest of the 111° bearing from the Santa Ynez Airport, extending from the 4.3-mile radius to 15 miles southeast of the Santa Ynez Airport, excluding that portion within Santa Barbara, CA, Class C and E airspace areas.

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Issued in Los Angeles, California, on June 2, 1997.

Sabra W. Kaulia,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. 97N-0223]

Investigational New Drug Application; Exception from Informed Consent; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its investigational new drug application (IND) regulations to clarify that, within 30 days after the receipt of an IND for any clinical investigation involving an exception from informed consent, FDA will provide a written determination as to whether the investigation may begin. This action is intended to clarify a recent amendment to the IND regulations for clinical investigations involving an exception from informed consent that states that FDA will provide a written authorization within 30 days of receipt of the IND.

EFFECTIVE DATE: June 23, 1997.

FOR FURTHER INFORMATION CONTACT: David LePay, Center for Drug Evaluation

and Research (HFD-340), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301-594-0020.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 2, 1996 (61 FR 51498), FDA amended its regulations by adding § 50.24 (21 CFR 50.24) to provide a narrow exception from informed consent requirements for a limited class of emergency research. Under the amendments, certain research activities involving human subjects who are in need of emergency medical intervention, but who cannot give informed consent because of their life-threatening medical condition, and who do not have a legally authorized person to represent them, may be exempt from the informed consent requirements.

The October 2, 1996, final rule also amended the IND regulations at § 312.20(c) by adding paragraph (c) (21 CFR 312.20(c)), which requires a sponsor to submit a separate IND for any clinical investigation involving an exception from informed consent under § 50.24. This requirement is to ensure that FDA has an opportunity to review the protocol and supporting information before the investigation begins. Section 312.20(c) also provides that the clinical investigation may not proceed without the prior written authorization from FDA. The requirement for written authorization is to document that the agency has reviewed the protocol and supporting information and has agreed that the investigation may proceed. To enable sponsors to begin these investigations as expeditiously as possible, current § 312.20 (c) also states that "FDA shall provide such written authorization 30 days after FDA receives the IND or earlier."

Current IND regulations at § 312.40(b) (21 CFR 312.40(b)) state that an IND goes into effect 30 days after FDA receives the IND or upon earlier notification by FDA that the investigations may begin, unless FDA notifies the sponsor that the investigations are subject to a clinical hold. Thus, under current IND regulations, FDA may grant or deny permission for the investigations to begin, within 30 days after it receives an IND. The statement in § 312.20(c) that "FDA shall provide such written authorization 30 days after FDA receives the IND or earlier" suggests that the agency may only grant permission for the investigations to begin. To correct this unintended meaning, FDA is amending the last sentence in § 312.20(c) to state that "FDA shall provide a written determination 30 days after FDA receives the IND or earlier."

Because this amendment is nonsubstantive and is intended only to provide consistency with current IND regulations, FDA finds for good cause that notice and public procedure and delayed effective date are unnecessary (5 U.S.C. 553(b)(B) and (d)).

List of Subjects in 21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 312 is amended as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

1. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 321, 331, 351, 352, 353, 355, 356, 357, 371); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

Section 312.20 is amended by revising the last sentence of paragraph (c) to read as follows:

§ 312.20 Requirement for an IND.

* * * * *

(c) * * * FDA shall provide a written determination 30 days after FDA receives the IND or earlier.

Dated: June 10, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97-15759 Filed 6-13-97; 8:45 am]

BILLING CODE 4160-01-F

CENTRAL INTELLIGENCE AGENCY

32 CFR Parts 1900, 1901, 1907, 1908, and 1909

Freedom of Information Act; Privacy Act; and Executive Order 12958; Implementation

AGENCY: Central Intelligence Agency.

ACTION: Interim Rule.

SUMMARY: The Central Intelligence Agency is hereby promulgating interim rules and soliciting comments prior to adoption of final rules to implement its obligations under the Freedom of Information Act, the Privacy Act, and Executive Order 12958 (or successor Orders) provisions relating to classification challenges by authorized holders, requests for mandatory

declassification review, and access by historical researchers.

DATES: The interim rules are effective May 29, 1997. Public comments are solicited for the interim rules on or before July 28, 1997.

ADDRESSES: Comments may be submitted to the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505.

FOR FURTHER INFORMATION CONTACT: Lee S. Strickland, Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505; telephone (703) 613-1287; facsimile (703) 613-3007.

SUPPLEMENTARY INFORMATION: On December 8, 1987, the CIA published in the **Federal Register** the most recent regulations governing public access to its documents and records and its handling of declassification requests. See 32 Code of Federal Regulations (CFR) Chapter XIX parts 1900 and 1901.

This document promulgates interim rules and seeks public comment prior to adoption of a final rule. These rules do not alter substantially any existing rights of members of the public. Rather, certain changes were required, in light of changes in the applicable laws or judicial decisions, in order to clarify provisions that have proven confusing to requesters and to improve the processing of requests. In addition, the Agency is pleased to announce that all sections of the regulations have been rewritten in standard, conversational English. These revisions should greatly enhance the public's understanding of the regulations. The more significant changes are summarized below and the rules in their entirety are set forth in the following sections.

In the Part 1900 Regulations Implementing the Freedom of Information Act

(a) All provisions relating to requests under the Executive Order on classification are removed from part 1900 and codified together in new parts 1907, 1908, and 1909 for greater clarity;

(b) The section entitled "*Definitions*" is amended to include additional terms common to the processing of FOIA requests and to expand the definition of news media to include foreign media having a substantial impact on the American public's understanding of the operations or activities of the United States Government; see *Southam News v. Immigration and Naturalization Service*, 674 F. Supp. 881, 882 (D.D.C. 1987) and 32 CFR 1900.02;

(c) The section now entitled "*Contact for general information and requests*" is

amended to indicate that the Agency will accept facsimile requests and inquiries; see 32 CFR 1900.03;

(d) The subsections relating to fee waivers are amended to broaden the time a requester may seek a fee waiver or appeal an initial denial of a fee waiver and to permit the processing of a request during the pendency of a request or appeal, provided that the requester commits to payment of fees in the event of an adverse decision; see 32 CFR 1900.13(b)-(d);

(e) The subsection relating to our schedule of fees is amended in part to reflect current costs and to be more consistent with other federal agencies; personnel costs reflect current average grades and salaries, reproduction costs reflect equipment and personnel costs, and computer costs are unchanged since improvements in capability have generally negated increases in costs; see 32 CFR 1900.13(g);

(f) A new section entitled "*Procedures for information concerning other persons*" is added to reflect the established guidelines utilized by the Agency in the past to address such information and to reflect judicial determinations in this regard; see, e.g., *Beck v. Department of Justice*, 997 F.2d 1489, 1492-94 (D.C. Cir. 1993), *The Nation Magazine v. Department of State*, Civ. No. 92-2303 (D.D.C. 18 August 1995), and 32 CFR 1900.32;

(g) A new section relating to expedited processing is added; the first subsection concerning requests for expedited processing prior to October 2, 1997 reflects the established guidelines adopted and utilized by the Agency in the past to consider such requests; see 32 CFR 1900.34(b); the second subsection concerning requests for expedited processing on or after October 2, 1997 reflects new statutory provisions set forth in the Electronic Freedom of Information Act Amendments of 1996; see 32 CFR 1900.34(c);

(h) All sections relating to administrative appeals and the CIA Information Review Committee (IRC) are amended to reflect a change of name to the Historical Records Policy Board (HRPB) and a change of membership by inclusion of the Executive Director, the General Counsel, the Director of Congressional Affairs, the Director of the Public Affairs Staff, the Director, Center for the Study of Intelligence, and the Associate Deputy Director for Administration/Information Services, or their designees, and a corresponding deletion of the Inspector General; see 32 CFR 1900.41;

(i) Those sections relating to administrative appeals are also amended to reflect the creation of a new

administrative review body, the Agency Release Panel (ARP), subordinate to the HRPB, in order to provide an Agency-wide perspective to the information review and release process and to reduce the time required for the processing of appeals; see 32 CFR 1900.41 and 32 CFR 1900.44; and

(j) The section now entitled "*Right of appeal and appeal procedures*" is amended to provide that appeals are accepted from requesters who have received a determination that no records were located; see *Oglesby v. Department of the Army*, 920 F.2d 57, 67 (D.C. Cir. 1990) and 32 CFR 1900.42(a).

In the Part 1901 Regulations Implementing the Privacy Act

(a) the section entitled "*Definitions*" is amended to include additional terms common to the processing of Privacy Act requests and to reflect a redesignation under the Freedom of Information Reform Act of 1986, Pub. L. 99-570 section 1802(b); see 32 CFR 1901.02;

(b) The section now entitled "*Contact for general information and requests*" is amended to reflect that Privacy Act requests with the required identification statement must be filed in original form by mail, but that subsequent communications and inquiries will be accepted by facsimile; see 32 CFR 1901.03;

(c) The section now entitled "*Requirements as to form*" is clarified so that it applies clearly to both requests for copies of records and requests to amend records; see 32 CFR 1901.12;

(d) The section now entitled "*Requirements as to identification of requester*" is clarified for requests concerning children, broadened to address requests by attorneys on behalf of clients, and further amended to permit any request to be made under a penalty of perjury declaration pursuant to 28 U.S.C. 1746 in addition to the more familiar notarization procedure; see *Summers v. Department of Justice*, 999 F.2d 570, 572-73 (D.C. Cir. 1993) and 32 CFR 1901.13;

(e) The section now entitled "*Special procedures for medical and psychological records*" is amended to conform the release of these types of records to the requester's designated physician who has agreed to (1) Review the records with the requesting individual, (2) explain the meaning of the records, and (3) offer counseling designed to temper any adverse reaction; see *Benavides v. Bureau of Prisons*, 995 F. 2d 269, 272 (D.C. Cir. 1993) and 32 CFR 1901.31;

(f) A new section entitled "*Requests for expedited processing*" is added to

reflect the established guidelines adopted and utilized by the Agency in the past to consider such requests; see 32 CFR 1901.32;

(g) All sections relating to administrative appeals and the CIA Information Review Committee (IRC) are amended to reflect a change of name to the Historical Records Policy Board (HRPB) and a change of membership by inclusion of the Executive Director, the General Counsel, the Director of Congressional Affairs, the Director of the Public Affairs Staff, the Director, Center for the Study of Intelligence, and the Associate Deputy Director for Administration/Information Services, or their designees, and a corresponding deletion of the Inspector General; see 32 CFR 1901.41 through 32 CFR 1901.45;

(h) Those sections relating to administrative appeals are also amended to reflect the creation of a new administrative review body, the Agency Release Panel (ARP), subordinate to the HRPB, in order to provide an Agency-wide perspective to the information review and release process and to reduce the time required for the processing of appeals; see 32 CFR 1901.41 through 32 CFR 1901.45;

(i) The section now entitled "Limitations on disclosure" is amended to regulate disclosures not only to another person but also to another federal agency or other authorized entity; see 32 CFR 1901.51;

(j) The section entitled "Criminal penalties" is amended to authorize the Coordinator and the Inspector General to conduct surveys to ensure that no records or file systems are maintained in contravention of the Privacy Act; see 32 CFR 1901.52;

(k) The sections entitled "Purpose and authority" and "General exemptions" are amended to add new subsections to implement section 17 of the CIA Act of 1949, as amended, 50 U.S.C. 403q(e)(3) which provides a general exemption for the identity of individuals providing information to the Inspector General of the CIA; see 32 CFR 1901.61(d) and 32 CFR 1901.62(d)(3); and

(l) All sections relating to exemptions are now grouped together for convenience and clarity; see 32 CFR 1901.62.

In the New Part 1907 Regulations Implementing the § 1.9 "Classification Challenges" Provisions of Executive Order 12958

This new part is intended to implement the provisions of § 1.9 of Executive Order (E.O.) 12958 which permits authorized holders of classified information to challenge the classified

status of that information. This provision and these regulations confer no rights upon members of the general public who shall continue to request reviews of classification under the Mandatory Declassification Review provisions set forth at § 3.6 of E.O. 12958 and at 32 CFR part 1908.

In the New Part 1908 Regulations Implementing the § 3.6 "Mandatory Declassification Review" Provisions of Executive Order 12958

This new Part is intended to implement the provisions of § 3.6 of Executive Order (E.O.) 12958 which permits members of the public to request a declassification review of any information classified under this or predecessor orders. While substantially similar to the regulations implementing this provision in prior Orders, it does include new sections addressing the right of appeal to the new Interagency Security Classification Appeals Panel which was established pursuant to § 5.4 of E.O. 12958. This Executive Order provision and these regulations do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees.

Lastly, in the New Part 1909 Regulations Implementing the § 4.5 "Access by Historical Researchers and Former Presidential Appointees" Provision of Executive Order 12958

This new part is intended to implement the provisions of § 4.5 of Executive Order (E.O.) 12958 which provides a waiver of the need-to-know principle in limited circumstances for historical researchers and former Presidential appointees. These rules are substantially similar to those implementing this provision in prior Orders. These rules do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees. The decision of the Agency in this regard is final.

List of Subjects in 32 CFR Parts 1900, 1901, 1907, 1908, and 1909

Central Intelligence Agency, Executive Order on Classification, Freedom of Information Act, Privacy Act.

Dated: May 29, 1997.

Richard D. Calder,

Deputy Director for Administration.

For the reasons set forth herein, the CIA hereby revises Parts 1900, 1901, 1907 and adds Parts 1908 and 1909 as follows:

PART 1900—PUBLIC ACCESS TO CIA RECORDS UNDER THE FREEDOM OF INFORMATION ACT (FOIA)

General

Sec.

1900.01 Authority and purpose.

1900.02 Definitions.

1900.03 Contact for general information and requests.

1900.04 Suggestions and complaints.

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1900.12 Requirements as to form and content.

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CIA Action on FOIA Requests

1900.21 Processing of requests for records.

1900.22 Action and determination(s) by originator(s) or any interested party.

1900.23 Payment of fees, notification of decision, and right of appeal.

Additional Administrative Matters

1900.31 Procedures for business information.

1900.32 Procedures for information concerning other persons.

1900.33 Allocation of resources; agreed extensions of time.

1900.34 Requests for expedited processing.

CIA Action on FOIA Administrative Appeals

1900.41 Establishment of appeals structure.

1900.42 Right of appeal and appeal procedures.

1900.43 Determination(s) by Deputy Director(s).

1900.44 Action by appeals authority.

1900.45 Notification of decision and right of judicial review.

Authority: National Security Act of 1947, as amended; Central Intelligence Agency Act of 1949, as amended; Freedom of Information Act, as amended; CIA Information Act of 1984; and Executive Order 12958, 60 FR 19825, 3 CFR 1996 Comp., p. 333-356 (or successor Orders).

General

§ 1900.01 Authority and purpose.

This part is issued under the authority of and in order to implement the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552); the CIA Information Act of 1984 (50 U.S.C. 431); sec. 102 of the National Security Act of 1947, as amended (50 U.S.C. 403); and sec. 6 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403g). It prescribes procedures for:

(a) Requesting information on available CIA records, or the CIA administration of the FOIA, or estimates of fees that may become due as a result of a request;

(b) Requesting records pursuant to the FOIA; and

(c) Filing an administrative appeal of an initial adverse decision under the FOIA.

§ 1900.02 Definitions.

For purposes of this part, the following terms have the meanings indicated:

(a) *Agency* or *CIA* means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator;

(b) *Days* means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

(c) *Control* means ownership or the authority of the CIA pursuant to federal statute or privilege to regulate official or public access to records;

(d) *Coordinator* means the CIA Information and Privacy Coordinator who serves as the Agency manager of the information review and release program instituted under the Freedom of Information Act;

(e) *Direct costs* means those expenditures which an agency actually incurs in the processing of a FOIA request; it does not include overhead factors such as space; it does include:

(1) *Pages* means paper copies of standard office size or the dollar value equivalent in other media;

(2) *Reproduction* means generation of a copy of a requested record in a form appropriate for release;

(3) *Review* means all time expended in examining a record to determine whether any portion must be withheld pursuant to law and in effecting any required deletions but excludes personnel hours expended in resolving general legal or policy issues; it also means personnel hours of professional time;

(4) *Search* means all time expended in looking for and retrieving material that may be responsive to a request utilizing available paper and electronic indices and finding aids; it also means personnel hours of professional time or the dollar value equivalent in computer searches;

(f) *Expression of interest* means a written communication submitted by a member of the public requesting information on or concerning the FOIA program and/or the availability of documents from the CIA;

(g) *Federal agency* means any executive department, military department, or other establishment or

entity included in the definition of agency in 5 U.S.C. 552(f);

(h) *Fees* means those direct costs which may be assessed a requester considering the categories established by the FOIA; requesters should submit information to assist the Agency in determining the proper fee category and the Agency may draw reasonable inferences from the identity and activities of the requester in making such determinations; the fee categories include:

(1) *Commercial* means a request in which the disclosure sought is primarily in the commercial interest of the requester and which furthers such commercial, trade, income or profit interests;

(2) *Non-commercial educational or scientific institution* means a request from an accredited United States educational institution at any academic level or institution engaged in research concerning the social, biological, or physical sciences or an instructor or researcher or member of such institutions; it also means that the information will be used in a specific scholarly or analytical work, will contribute to the advancement of public knowledge, and will be disseminated to the general public;

(3) *Representative of the news media* means a request from an individual actively gathering news for an entity that is organized and operated to publish and broadcast news to the American public and pursuant to their news dissemination function and not their commercial interests; the term *news* means information which concerns current events, would be of current interest to the general public, would enhance the public understanding of the operations or activities of the U.S. Government, and is in fact disseminated to a significant element of the public at minimal cost; freelance journalists are included in this definition if they can demonstrate a solid basis for expecting publication through such an organization, even though not actually employed by it; a publication contract or prior publication record is relevant to such status;

(4) *All other* means a request from an individual not within paragraph (h)(1), (2), or (3) of this section;

(i) *Freedom of Information Act* or "FOIA" means the statutes as codified at 5 U.S.C. 552;

(j) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject

matter or physical interest in the documents or information at issue;

(k) *Originator* means the U.S. Government official who originated the document at issue or successor in office or such official who has been delegated release or declassification authority pursuant to law;

(l) *Potential requester* means a person, organization, or other entity who submits an expression of interest;

(m) *Reasonably described records* means a description of a document (record) by unique identification number or descriptive terms which permit an Agency employee to locate documents with reasonable effort given existing indices and finding aids;

(n) *Records* or *agency records* means all documents, irrespective of physical or electronic form, made or received by the CIA in pursuance of federal law or in connection with the transaction of public business and appropriate for preservation by the CIA as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the CIA or because of the informational value of the data contained therein; it does not include:

(1) *Books, newspapers, magazines, journals, magnetic or printed transcripts of electronic broadcasts, or similar public sector materials* acquired generally and/or maintained for library or reference purposes; to the extent that such materials are incorporated into any form of analysis or otherwise distributed or published by the Agency, they are fully subject to the disclosure provisions of the FOIA;

(2) *Index, filing, or museum documents* made or acquired and preserved solely for reference, indexing, filing, or exhibition purposes; and

(3) *Routing and transmittal sheets and notes and filing or destruction notes* which do not also include information, comment, or statements of substance;

(o) *Responsive records* means those documents (i.e., records) which the Agency has determined to be within the scope of a FOIA request.

§ 1900.03 Contact for general information and requests.

For general information on this part, to inquire about the FOIA program at CIA, or to file a FOIA request (or expression of interest), please direct your communication in writing to the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Such inquiries will also be accepted by facsimile at (703) 613-3007. For general information or status information on pending cases only, the telephone number is (703)

613-1287. Collect calls cannot be accepted.

§ 1900.04 Suggestions and complaints.

The Agency welcomes suggestions or complaints with regard to its administration of the Freedom of Information Act. Many requesters will receive pre-paid, customer satisfaction survey cards. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. The Agency will respond to all substantive communications and take such actions as determined feasible and appropriate.

Filing of FOIA Requests

§ 1900.11 Preliminary Information.

Members of the public shall address all communications to the CIA Coordinator as specified at 32 CFR 1900.03 and clearly delineate the communication as a request under the Freedom of Information Act and this regulation. CIA employees receiving a communication in the nature of a FOIA request shall expeditiously forward same to the Coordinator. Requests and appeals on requests, referrals, or coordinations received from members of the public who owe outstanding fees for information services at this or other federal agencies will not be accepted and action on all pending requests shall be terminated in such circumstances.

§ 1900.12 Requirements as to form and content.

(a) *Required information.* No particular form is required. A request need only reasonably describe the records of interest. This means that documents must be described sufficiently to enable a professional employee familiar with the subject to locate the documents with a reasonable effort. Commonly this equates to a requirement that the documents must be locatable through the indexing of our various systems. Extremely broad or vague requests or requests requiring research do not satisfy this requirement.

(b) *Additional information for fee determination.* In addition, a requester should provide sufficient personal identifying information to allow us to determine the appropriate fee category. A requester should also provide an agreement to pay all applicable fees or fees not to exceed a certain amount or request a fee waiver.

(c) *Otherwise.* Communications which do not meet these requirements will be considered an expression of interest and the Agency will work with, and offer suggestions to, the potential requester in order to define a request properly.

§ 1900.13 Fees for record services.

(a) *In general.* Search, review, and reproduction fees will be charged in accordance with the provisions below relating to schedule, limitations, and category of requester. Applicable fees will be due even if our search locates no responsive records or some or all of the responsive records must be denied under one or more of the exemptions of the Freedom of Information Act.

(b) *Fee waiver requests.* Records will be furnished without charge or at a reduced rate whenever the Agency determines:

- (1) That, as a matter of administrative discretion, the interest of the United States Government would be served, or
- (2) That it is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester; the Agency shall consider the following factors when making this determination:

- (i) Whether the subject of the request concerns the operations or activities of the United States Government; and, if so,
- (ii) Whether the disclosure of the requested documents is likely to contribute to an understanding of United States Government operations or activities; and, if so,
- (iii) Whether the disclosure of the requested documents will contribute to public understanding of United States Government operations or activities; and, if so,
- (iv) Whether the disclosure of the requested documents is likely to contribute significantly to public understanding of United States Government operations and activities; and

(v) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(vi) Whether the disclosure is primarily in the commercial interest of the requester.

(c) *Fee waiver appeals.* Denials of requests for fee waivers or reductions may be appealed to the Chair of the Agency Release Panel via the Coordinator. A requester is encouraged to provide any explanation or argument as to how his or her request satisfies the statutory requirement set forth above.

(d) *Time for fee waiver requests and appeals.* It is suggested that such requests and appeals be made and resolved prior to the initiation of processing and the incurring of costs. However, fee waiver requests will be accepted at any time prior to the release

of documents or the completion of a case, and fee waiver appeals within forty-five (45) days of our initial decision subject to the following condition: If processing has been initiated, then the requester must agree to be responsible for costs in the event of an adverse administrative or judicial decision.

(e) *Agreement to pay fees.* In order to protect requesters from large and/or unanticipated charges, the Agency will request specific commitment when it estimates that fees will exceed \$100.00. The Agency will hold in abeyance for forty-five (45) days requests requiring such agreement and will thereafter deem the request closed. This action, of course, would not prevent an individual from refileing his or her FOIA request with a fee commitment at a subsequent date.

(f) *Deposits.* The Agency may require an advance deposit of up to 100 percent of the estimated fees when fees may exceed \$250.00 and the requester has no history of payment, or when, for fees of any amount, there is evidence that the requester may not pay the fees which would be accrued by processing the request. The Agency will hold in abeyance for forty-five (45) days those requests where deposits have been requested.

(g) *Schedule of fees—(1) In general.* The schedule of fees for services performed in responding to requests for records is established as follows:

Personnel Search and Review		
Clerical/Technical	Quarter hour	\$5.00
Professional/Supervisory.	Quarter hour	10.00
Manager/Senior Professional.	Quarter hour	18.00
Computer Search and Production		
Search (on-line) ...	Flat rate	10.00
Search (off-line) ...	Flat rate	30.00
Other activity	Per minute	10.00
Tapes (mainframe cassette).	Each	9.00
Tapes (mainframe cartridge).	Each	9.00
Tapes (mainframe reel).	Each	20.00
Tapes (PC 9mm)	Each	25.00
Diskette (3.5")	Each	4.00
CD (bulk recorded).	Each	10.00
CD (recordable) ...	Each	20.00
Telecommunications.	Per minute50
Paper (mainframe printer).	Per page10
Paper (PC b&w laser printer).	Per page10
Paper (PC color printer).	Per page	1.00

Paper Production

Photocopy (stand-ard or legal).	Per page10
Microfiche	Per frame20
Pre-printed (if available).	Per 100 pages.	5.00
Published (if available).	Per item	NTIS

(2) *Application of schedule.* Personnel search time includes time expended in either manual paper records searches, indices searches, review of computer search results for relevance, personal computer system searches, and various reproduction services. In any event where the actual cost to the Agency of a particular item is less than the above schedule (e.g., a large production run of a document resulted in a cost less than \$5.00 per hundred pages), then the actual lesser cost will be charged. Items published and available at the National Technical Information Service (NTIS) are also available from CIA pursuant to this part at the NTIS price as authorized by statute.

(3) *Other services.* For all other types of output, production, or reproduction (e.g., photographs, maps, or published reports), actual cost or amounts authorized by statute. Determinations of actual cost shall include the commercial cost of the media, the personnel time expended in making the item to be released, and an allocated cost of the equipment used in making the item, or, if the production is effected by a commercial service, then that charge shall be deemed the actual cost for purposes of this part.

(h) *Limitations on collection of fees.—*
 (1) *In general.* No fees will be charged if the cost of collecting the fee is equal to or greater than the fee itself. That cost includes the administrative costs to the Agency of billing, receiving, recording, and processing the fee for deposit to the Treasury Department and, as of the date of these regulations, is deemed to be \$10.00.

(2) *Requests for personal information.* No fees will be charged for requesters seeking records about themselves under the FOIA; such requests are processed in accordance with both the FOIA and the Privacy Act in order to ensure the maximum disclosure without charge.

(i) *Fee categories.* There are four categories of FOIA requesters for fee purposes: “*Commercial use*” requesters, “*educational and non-commercial scientific institution*” requesters, “*representatives of the news media*” requesters, and “*all other*” requesters. The categories are defined in § 1900.02, and applicable fees, which are the same in two of the categories, will be assessed as follows:

(1) “*Commercial use*” requesters: Charges which recover the full direct costs of searching for, reviewing, and duplicating responsive records (if any);

(2) “*Educational and non-commercial scientific institution*” requesters as well as “*representatives of the news media*” requesters: Only charges for reproduction beyond the first 100 pages;

(3) “*All other*” requesters: Charges which recover the full direct cost of searching for and reproducing responsive records (if any) beyond the first 100 pages of reproduction and the first two hours of search time which will be furnished without charge.

(j) *Associated requests.* A requester or associated requesters may not file a series of multiple requests, which are merely discrete subdivisions of the information actually sought for the purpose of avoiding or reducing applicable fees. In such instances, the Agency may aggregate the requests and charge the applicable fees.

§ 1900.14 Fee estimates (pre-request option).

In order to avoid unanticipated or potentially large fees, a requester may submit a request for a fee estimate. The Agency will endeavor within ten (10) days to provide an accurate estimate, and, if a request is thereafter submitted, the Agency will not accrue or charge fees in excess of our estimate without the specific permission of the requester. Effective October 2, 1997, the ten (10) day provision is modified to twenty (20) days pursuant to the Electronic Freedom of Information Act Amendments of 1996.

CIA Action on FOIA Requests

§ 1900.21 Processing of requests for records.

(a) *In general.* Requests meeting the requirements of §§ 1900.11 through 1900.13 shall be accepted as formal requests and processed under the Freedom of Information Act, 5 U.S.C. 552, and these regulations. Upon receipt, the Agency shall within ten (10) days record each request, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the CIA components reasonably believed to hold responsive records. Effective October 2, 1997, the ten (10) day provision is modified to twenty (20) days pursuant to the Electronic Freedom of Information Act Amendments of 1996.

(b) *Database of “officially released information.”* As an alternative to extensive tasking and as an accommodation to many requesters, the Agency maintains a database of “officially released information” which

contains copies of documents released by this Agency. Searches of this database, containing currently in excess of 500,000 pages, can be accomplished expeditiously. Moreover, requests that are specific and well-focused will often incur minimal, if any, costs. Requesters interested in this means of access should so indicate in their correspondence. Effective November 1, 1997 and consistent with the mandate of the Electronic Freedom of Information Act Amendments of 1996, on-the-public. Detailed information regarding such access will line electronic access to these records will be available to be available at that time from the point of contact specified in § 1900.03.

(c) *Effect of certain exemptions.* In processing a request, the Agency shall decline to confirm or deny the existence or nonexistence of any responsive records whenever the fact of their existence or nonexistence is itself classified under Executive Order 12958 or revealing of intelligence sources and methods protected pursuant to section 103(c)(5) of the National Security Act of 1947. In such circumstances, the Agency, in the form of a final written response, shall so inform the requester and advise of his or her right to an administrative appeal.

(d) *Time for response.* The Agency will utilize every effort to determine within the statutory guideline of ten (10) days after receipt of an initial request whether to comply with such a request. However, the current volume of requests require that the Agency seek additional time from a requester pursuant to 32 CFR 1900.33. In such event, the Agency will inform the requester in writing and further advise of his or her right to file an administrative appeal of any adverse determination. Effective October 2, 1997, the ten (10) day provision is modified to twenty (20) days pursuant to the Electronic Freedom of Information Act Amendments of 1996.

§ 1900.22 Action and determination(s) by originator(s) or any interested party.

(a) *Initial action for access.* CIA components tasked pursuant to a FOIA request shall search all relevant record systems within their cognizance which have not been excepted from search by the provisions of the CIA Information Act of 1984. They shall:

- (1) Determine whether a record exists;
- (2) Determine whether and to what extent any FOIA exemptions apply;
- (3) Approve the disclosure of all non-exempt records or portions of records for which they are the originator; and
- (4) Forward to the Coordinator all records approved for release or necessary for coordination with or

referral to another originator or interested party. In making these decisions, the CIA component officers shall be guided by the applicable law as well as the procedures specified at 32 CFR 1900.31 and 32 CFR 1900.32 regarding confidential commercial information and personal information (about persons other than the requester).

(b) *Referrals and coordinations.* As applicable and within ten (10) days of receipt by the Coordinator, any CIA records containing information originated by other CIA components shall be forwarded to those entities for action in accordance with paragraph (a) of this section and return. Records originated by other federal agencies or CIA records containing other federal agency information shall be forwarded to such agencies within ten (10) days of our completion of initial action in the case for action under their regulations and direct response to the requester (for other agency records) or return to the CIA (for CIA records). Effective October 2, 1997, the ten (10) day provision is modified to twenty (20) days pursuant to the Electronic Freedom of Information Act Amendments of 1996.

§ 1900.23 Payment of fees, notification of decision, and right of appeal.

(a) *Fees in general.* Fees collected under this part do not accrue to the Central Intelligence Agency and shall be deposited immediately to the general account of the United States Treasury.

(b) *Notification of decision.* Upon completion of all required review and the receipt of accrued fees (or promise to pay such fees), the Agency will promptly inform the requester in writing of those records or portions of records which may be released and which must be denied. With respect to the former, the Agency will provide copies; with respect to the latter, the Agency shall explain the reasons for the denial, identify the person(s) responsible for such decisions by name and title, and give notice of a right of administrative appeal.

(c) *Availability of reading room.* As an alternative to receiving records by mail, a requester may arrange to inspect the records deemed releasable at a CIA "reading room" in the metropolitan Washington, DC area. Access will be granted after applicable and accrued fees have been paid. Requests to review or browse documents in our database of "officially released records" will also be honored in this manner to the extent that paper copies or electronic copies in unclassified computer systems exist. All such requests shall be in writing and addressed pursuant to 32 CFR 1900.03. The records will be available at such

times as mutually agreed but not less than three (3) days from our receipt of a request. The requester will be responsible for reproduction charges for any copies of records desired.

Additional Administrative Matters

§ 1900.31 Procedures for business information.

(a) *In general.* Business information obtained by the Central Intelligence Agency by a submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) *Business information* means commercial or financial information in which a legal entity has a recognized property interest;

(2) *Confidential commercial information* means such business information provided to the United States Government by a submitter which is reasonably believed to contain information exempt from release under exemption (b)(4) of the Freedom of Information Act, 5 U.S.C. 552, because disclosure could reasonably be expected to cause substantial competitive harm;

(3) *Submitter* means any person or entity who provides confidential commercial information to the United States Government; it includes, but is not limited to, corporations, businesses (however organized), state governments, and foreign governments; and

(b) *Designation of confidential commercial information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be confidential commercial information and hence protected from required disclosure pursuant to exemption (b)(4). Such designations shall expire ten (10) years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) *Process in event of FOIA request.—*
(1) *Notice to submitters.* The Agency shall provide a submitter with prompt written notice of receipt of a Freedom of Information Act request encompassing business information whenever:

(i) The submitter has in good faith designated the information as confidential commercial information, or

(ii) The Agency believes that disclosure of the information could reasonably be expected to cause substantial competitive harm, and

(iii) The information was submitted within the last ten (10) years unless the

submitter requested and provided acceptable justification for a specific notice period of greater duration.

(2) *Form of notice.* This notice shall either describe the exact nature of the confidential commercial information at issue or provide copies of the responsive records containing such information.

(3) *Response by submitter.* (i) Within seven (7) days of the above notice, all claims of confidentiality by a submitter must be supported by a detailed statement of any objection to disclosure. Such statement shall:

(A) Specify that the information has not been disclosed to the public;

(B) Explain why the information is contended to be a trade secret or confidential commercial information;

(C) Explain how the information is capable of competitive damage if disclosed;

(D) State that the submitter will provide the Agency and the Department of Justice with such litigation defense as requested; and

(E) Be certified by an officer authorized to legally bind the corporation or similar entity.

(ii) It should be noted that information provided by a submitter pursuant to this provision may itself be subject to disclosure under the FOIA.

(4) Decision and notice of intent to disclose. (i) The Agency shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to its final determination. If the Agency decides to disclose a document over the objection of a submitter, the Agency shall provide the submitter a written notice which shall include:

(A) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(B) A description of the information to be disclosed; and

(C) A specified disclosure date which is seven (7) days after the date of the instant notice.

(ii) When notice is given to a submitter under this section, the Agency shall also notify the requester and, if the Agency notifies a submitter that it intends to disclose information, then the requester shall be notified also and given the proposed date for disclosure.

(5) *Notice of FOIA lawsuit.* If a requester initiates a civil action seeking to compel disclosure of information asserted to be within the scope of this section, the Agency shall promptly notify the submitter. The submitter, as specified above, shall provide such litigation assistance as required by the Agency and the Department of Justice.

(6) *Exceptions to notice requirement.* The notice requirements of this section

shall not apply if the Agency determines that:

- (i) The information should not be disclosed in light of other FOIA exemptions;
- (ii) The information has been published lawfully or has been officially made available to the public;
- (iii) The disclosure of the information is otherwise required by law or federal regulation; or
- (iv) The designation made by the submitter under this section appears frivolous, except that, in such a case, the Agency will, within a reasonable time prior to the specified disclosure date, give the submitter written notice of any final decision to disclose the information.

§ 1900.32 Procedures for information concerning other persons.

(a) *In general.* Personal information concerning individuals other than the requester shall not be disclosed under the Freedom of Information Act if the proposed release would constitute a clearly unwarranted invasion of personal privacy. See 5 U.S.C. 552(b)(6). For purposes of this section, the following definitions apply:

(1) *personal information* means any information about an individual that is not a matter of public record, or easily discernible to the public, or protected from disclosure because of the implications that arise from Government possession of such information.

(2) *public interest* means the public interest in understanding the operations and activities of the United States Government and not simply any matter which might be of general interest to the requester or members of the public.

(b) *Determination to be made.* In making the required determination under this section and pursuant to exemption (b)(6) of the FOIA, the Agency will balance the privacy interests that would be compromised by disclosure against the public interest in release of the requested information.

(c) *Otherwise.* A requester seeking information on a third person is encouraged to provide a signed affidavit or declaration from the third person waiving all or some of their privacy rights. However, all such waivers shall be narrowly construed and the Coordinator, in the exercise of his discretion and administrative authority, may seek clarification from the third party prior to any or all releases.

§ 1900.33 Allocation of resources; agreed extensions of time.

(a) *In general.* Agency components shall devote such personnel and other resources to the responsibilities

imposed by the Freedom of Information Act as may be appropriate and reasonable considering:

- (1) The totality of resources available to the component,
- (2) The business demands imposed on the component by the Director of Central Intelligence or otherwise by law,
- (3) The information review and release demands imposed by the Congress or other governmental authority, and
- (4) The rights of all members of the public under the various information review and disclosure laws.

(b) *Discharge of FOIA responsibilities.* Components shall exercise due diligence in their responsibilities under the FOIA and must allocate a reasonable level of resources to requests under the Act in a strictly "first-in, first-out" basis and utilizing two or more processing queues to ensure that smaller as well as larger (i.e., project) cases receive equitable attention. The Information and Privacy Coordinator is responsible for management of the Agency-wide program defined by this part and for establishing priorities for cases consistent with established law. The Director, Information Management through the Agency Release Panel shall provide policy and resource direction as necessary and render decisions on administrative appeals.

(c) *Requests for extension of time.* When the Agency is unable to meet the statutory time requirements of the FOIA, it will inform the requester that the request cannot be processed within the statutory time limits, provide an opportunity for the requester to limit the scope of the request so that it can be processed within the statutory time limits, or arrange with the requester an agreed upon time frame for processing the request, or determine that exceptional circumstances mandate additional time. In such instances the Agency will, however, inform a requester of his or her right to decline our request and proceed with an administrative appeal or judicial review as appropriate. Effective October 2 1997, the definition of exceptional circumstances is modified per section 552(a)(6)(C) of the Freedom of Information Act, as amended.

§ 1900.34 Requests for expedited processing.

(a) *In general.* All requests will be handled in the order received on a strictly "first-in, first-out" basis. Exceptions to this rule will only be made in accordance with the following procedures. In all circumstances, however, and consistent with established judicial precedent, requests

§ 1900.34 Requests for expedited processing.

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more properly the scope of requests under the Federal Rules of Civil or Criminal Procedure (or other federal, state, or foreign judicial or quasi-judicial rules) will not be granted expedited processing under this or related (e.g., Privacy Act) provisions unless expressly ordered by a federal court of competent jurisdiction.

(b) *Procedure prior to October 2, 1997.* Requests for expedited processing shall be granted only in circumstances that the Agency deems to be exceptional. In making this determination, the Agency shall consider and must decide in the affirmative on all of the following factors:

- (i) That there is a genuine need for the specific requested records; and
- (ii) That the personal need is exceptional; and
- (iii) That there are no alternative forums for the records or information sought; and
- (iv) That it is reasonably believed that substantive records relevant to the stated needs may exist and be deemed releasable.

(2) In sum, requests shall be considered for expedited processing only when health, humanitarian, or due process considerations involving possible deprivation of life or liberty create circumstances of exceptional urgency and extraordinary need.

(c) *Procedure on or after October 2, 1997.* Requests for expedited processing will be approved only when a compelling need is established to the satisfaction of the Agency. A requester may make such a request with a certification of "compelling need" and, within ten (10) days of receipt, the Agency will decide whether to grant expedited processing and will notify the requester of its decision. The certification shall set forth with specificity the relevant facts upon which the requester relies and it appears to the Agency that substantive records relevant to the stated needs may exist and be deemed releasable. A

"compelling need" is deemed to exist:

(1) When the matter involves an imminent threat to the life or physical safety of an individual; or

(2) When the request is made by a person primarily engaged in disseminating information and the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity.

CIA Action on FOIA Administrative Appeals

§ 1900.41 Establishment of appeals structure.

(a) *In general.* Two administrative entities have been established by the

Director of Central Intelligence to facilitate the processing of administrative appeals under the Freedom of Information Act. Their membership, authority, and rules of procedure are as follows.

(b) *Historical Records Policy Board* ("HRPB" or "Board"). This Board, the successor to the CIA Information Review Committee, acts as the senior corporate board in the CIA on all matters of information review and release.

(1) *Membership*. The HRPB is composed of the Executive Director, who serves as its Chair, the Deputy Director for Administration, the Deputy Director for Intelligence, the Deputy Director for Operations, the Deputy Director for Science and Technology, the General Counsel, the Director of Congressional Affairs, the Director of the Public Affairs Staff, the Director, Center for the Study of Intelligence, and the Associate Deputy Director for Administration/Information Services, or their designees.

(2) *Authorities and activities*. The HRPB, by majority vote, may delegate to one or more of its members the authority to act on any appeal or other matter or authorize the Chair to delegate such authority, as long as such delegation is not to the same individual or body who made the initial denial. The Executive Secretary of the HRPB is the Director, Information Management. The Chair may request interested parties to participate when special equities or expertise are involved.

(c) *Agency Release Panel* ("ARP" or "Panel"). The HRPB, pursuant to its delegation of authority, has established a subordinate Agency Release Panel.

(1) *Membership*. The ARP is composed of the Director, Information Management, who serves as its Chair; the Information Review Officers from the Directorates of Administration, Intelligence, Operations, Science and Technology, and the Director of Central Intelligence Area; the CIA Information and Privacy Coordinator; the Chief, Historical Review Group; the Chair, Publications Review Board; the Chief, Records Declassification Program; and representatives from the Office of General Counsel, the Office of Congressional Affairs, and the Public Affairs Staff.

(2) *Authorities and activities*. The Panel shall meet on a regular schedule and may take action when a simple majority of the total membership is present. The Panel shall advise and assist the HRPB on all information release issues, monitor the adequacy and timeliness of Agency releases, set component search and review priorities,

review adequacy of resources available to and planning for all Agency release programs, and perform such other functions as deemed necessary by the Board. The Information and Privacy Coordinator also serves as Executive Secretary of the Panel. The Chair may request interested parties to participate when special equities or expertise are involved. The Panel, functioning as a committee of the whole or through individual members, will make final Agency decisions from appeals of initial adverse decisions under the Freedom of Information Act and such other information release decisions made under 32 CFR parts 1901, 1907, and 1908. Issues shall be decided by a majority of members present; in all cases of a divided vote, any member of the ARP then present may refer such matter to the HRPB by written memorandum to the Executive Secretary of the HRPB. Matters decided by the Panel or Board will be deemed a final decision by the Agency.

§ 1900.42 Right of appeal and appeal procedures.

(a) *Right of Appeal*. A right of administrative appeal exists whenever access to any requested record or any portion thereof is denied, no records are located in response to a request, or a request for a fee waiver is denied. The Agency will apprise all requesters in writing of their right to appeal such decisions to the CIA Agency Release Panel through the Coordinator.

(b) *Requirements as to time and form*. Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of the Agency's initial decision. The Agency may, for good cause and as a matter of administrative discretion, permit an additional thirty (30) days for the submission of an appeal. All appeals shall be in writing and addressed as specified in 32 CFR 1900.03. All appeals must identify the documents or portions of documents at issue with specificity and may present such information, data, and argument in support as the requester may desire.

(c) *Exceptions*. No appeal shall be accepted if the requester has outstanding fees for information services at this or another federal agency. In addition, no appeal shall be accepted if the information in question has been the subject of a review within the previous two (2) years or is the subject of pending litigation in the federal courts.

(d) *Receipt, recording, and tasking*. The Agency shall promptly record each request received under this part, acknowledge receipt to the requester in writing, and thereafter effect the

necessary taskings to the Deputy Director(s) in charge of the directorate(s) which originated or has an interest in the record(s) subject to the appeal. As used herein, the term Deputy Director includes an equivalent senior official in the DCI-area as well as a designee known as the Information Review Officer for a directorate or area.

(e) *Time for response*. The Agency shall attempt to complete action on an appeal within twenty (20) days of the date of receipt. The current volume of requests, however, often requires that the Agency request additional time from the requester pursuant to 32 CFR 1900.33. In such event, the Agency will inform the requester of the right to judicial review.

§ 1900.43 Determination(s) by Deputy Director(s).

Each Deputy Director in charge of a directorate which originated or has an interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested parties may become involved through the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond in writing to the Coordinator with a finding as to the exempt status of the information. This response shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the various information review and release laws.

§ 1900.44 Action by appeals authority.

(a) *Preparation of docket*. The Coordinator, acting in the capacity of Executive Secretary of the Agency Release Panel, shall place administrative appeals of FOIA requests ready for adjudication on the agenda at the next occurring meeting of that Panel. The Executive Secretary shall provide a summation memorandum for consideration of the members; the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of the concerned Deputy Director(s) or designee(s).

(b) *Decision by the Agency Release Panel*. The Agency Release Panel shall meet and decide requests sitting as a committee of the whole. Decisions are by majority vote of those present at a meeting and shall be based on the written record and their deliberations; no personal appearances shall be permitted without the express permission of the Panel.

(c) *Decision by the Historical Records Policy Board.* In any cases of divided vote by the ARP, any member of that body is authorized to refer the request to the CIA Historical Records Policy Board which acts as the senior corporate board for the Agency. The record compiled (the request, the memoranda filed by the originator and interested parties, and the previous decision(s)) as well as any memorandum of law or policy the referent desires to be considered, shall be certified by the Executive Secretary of the Agency Release Panel and shall constitute the official record of the proceedings and must be included in any subsequent filings.

§ 1900.45 Notification of decision and right of judicial review.

The Executive Secretary of the Agency Release Panel shall promptly prepare and communicate the decision of the Panel or Board to the requester. With respect to any decision to deny information, that correspondence shall state the reasons for the decision, identify the officer responsible, and include a notice of a right to judicial review.

PART 1901—PUBLIC RIGHTS UNDER THE PRIVACY ACT OF 1974

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General

§ 1901.01 Authority and purpose.

(a) *Authority.* This part is issued under the authority of and in order to implement the Privacy Act of 1974 (5 U.S.C. 552a); sec. 102 of the National Security Act of 1947, as amended (50 U.S.C. 403); and sec. 6 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403g).

(b) *Purpose in general.* This part prescribes procedures for a requester, as defined herein:

(1) To request notification of whether the Central Intelligence Agency maintains a record concerning them in any non-exempt portion of a system of records or any non-exempt system of records;

(2) To request a copy of all non-exempt records or portions of records;

(3) To request that any such record be amended or augmented; and

(4) To file an administrative appeal to any initial adverse determination to deny access to or amend a record.

(c) *Other purposes.* This part also sets forth detailed limitations on how and to whom the Agency may disclose personal information and gives notice that certain actions by officers or employees of the United States Government or members of the public could constitute criminal offenses.

§ 1901.02 Definitions.

For purposes of this part, the following terms have the meanings indicated:

(a) *Agency* or *CIA* means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator;

(b) *Days* means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

(c) *Control* means ownership or the authority of the CIA pursuant to federal

statute or privilege to regulate official or public access to records;

(d) *Coordinator* means the CIA Information and Privacy Coordinator who serves as the Agency manager of the information review and release program instituted under the Privacy Act;

(e) *Federal agency* means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

(f) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S.

Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue;

(g) *Maintain* means maintain, collect, use, or disseminate;

(h) *Originator* means the U.S. Government official who originated the document at issue or successor in office or such official who has been delegated release or declassification authority pursuant to law;

(i) *Privacy Act* or *PA* means the statute as codified at 5 U.S.C. 552a;

(j) *Record* means an item, collection, or grouping of information about an individual that is maintained by the Central Intelligence Agency in a system of records;

(k) *Requester* or *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence who is a living being and to whom a record might pertain;

(l) *Responsive record* means those documents (records) which the Agency has determined to be within the scope of a Privacy Act request;

(m) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which the record is maintained;

(n) *System of records* means a group of any records under the control of the Central Intelligence Agency from which records are retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to that individual.

§ 1901.03 Contact for general information and requests.

For general information on this part, to inquire about the Privacy Act program at CIA, or to file a Privacy Act request, please direct your communication in writing to the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC. 20505. Requests with the required identification statement

pursuant to 32 CFR 1901.13 must be filed in original form by mail. Subsequent communications and any inquiries will be accepted by mail or facsimile at (703) 613-3007 or by telephone at (703) 613-1287. Collect calls cannot be accepted.

§ 1901.04 Suggestions and complaints.

The Agency welcomes suggestions or complaints with regard to its administration of the Privacy Act. Many requesters will receive pre-paid, customer satisfaction survey cards. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. The Agency will respond to all substantive communications and take such actions as determined feasible and appropriate.

Filing of Privacy Act Requests

§ 1901.11 Preliminary information.

Members of the public shall address all communications to the contact specified at § 1901.03 and clearly delineate the communication as a request under the Privacy Act and this regulation. Requests and administrative appeals on requests, referrals, and coordinations received from members of the public who owe outstanding fees for information services at this or other federal agencies will not be accepted and action on existing requests and appeals will be terminated in such circumstances.

§ 1901.12 Requirements as to form.

(a) *In general.* No particular form is required. All requests must contain the identification information required at § 1901.13.

(b) *For access.* For requests seeking access, a requester should, to the extent possible, describe the nature of the record sought and the record system(s) in which it is thought to be included. Requesters may find assistance from information described in the Privacy Act Issuances Compilation which is published biannually by the **Federal Register**. In lieu of this, a requester may simply describe why and under what circumstances it is believed that this Agency maintains responsive records; the Agency will undertake the appropriate searches.

(c) *For amendment.* For requests seeking amendment, a requester should identify the particular record or portion subject to the request, state a justification for such amendment, and provide the desired amending language.

§ 1901.13 Requirements as to identification of requester.

(a) *In general.* Individuals seeking access to or amendment of records

concerning themselves shall provide their full (legal) name, address, date and place of birth, and current citizenship status together with a statement that such information is true under penalty of perjury or a notarized statement swearing to or affirming identity. If the Agency determines that this information is not sufficient, the Agency may request additional or clarifying information.

(b) *Requirement for aliens.* Only aliens lawfully admitted for permanent residence (PRAs) may file a request pursuant to the Privacy Act and this part. Such individuals shall provide, in addition to the information required under paragraph (a) of this section, their Alien Registration Number and the date that status was acquired.

(c) *Requirement for representatives.* The parent or guardian of a minor individual, the guardian of an individual under judicial disability, or an attorney retained to represent an individual shall provide, in addition to establishing the identity of the minor or individual represented as required in paragraph (a) or (b) of this section, evidence of such representation by submission of a certified copy of the minor's birth certificate, court order, or representational agreement which establishes the relationship and the requester's identity.

(d) *Procedure otherwise.* If a requester or representative fails to provide the information in paragraph (a), (b), or (c) of this section within forty-five (45) days of the date of our request, the Agency will deem the request closed. This action, of course, would not prevent an individual from refileing his or her Privacy Act request at a subsequent date with the required information.

§ 1901.14 Fees.

No fees will be charged for any action under the authority of the Privacy Act, 5 U.S.C. 552a, irrespective of the fact that a request is or may be processed under the authority of both the Privacy Act and the Freedom of Information Act.

Action on Privacy Act Requests

§ 1901.21 Processing requests for access to or amendment of records.

(a) *In general.* Requests meeting the requirements of 32 CFR 1901.11 through 1901.13 shall be processed under both the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a, and the applicable regulations, unless the requester demands otherwise in writing. Such requests will be processed under both Acts regardless of whether the requester

cites one Act in the request, both, or neither. This action is taken in order to ensure the maximum possible disclosure to the requester.

(b) *Receipt, recording and tasking.* Upon receipt of a request meeting the requirements of §§ 1901.11 through 1901.13, the Agency shall within ten (10) days record each request, acknowledge receipt to the requester, and thereafter effect the necessary taskings to the components reasonably believed to hold responsive records.

(c) *Effect of certain exemptions.* In processing a request, the Agency shall decline to confirm or deny the existence or nonexistence of any responsive records whenever the fact of their existence or nonexistence is itself classified under Executive Order 12958 or revealing of intelligence sources and methods protected pursuant to section 103(c)(5) of the National Security Act of 1947. In such circumstances, the Agency, in the form of a final written response, shall so inform the requester and advise of his or her right to an administrative appeal.

(d) *Time for response.* Although the Privacy Act does not mandate a time for response, our joint treatment of requests under both the Privacy Act and the FOIA means that the Agency should provide a response within the FOIA statutory guideline of ten (10) days on initial requests and twenty (20) days on administrative appeals. However, the current volume of requests require that the Agency often seek additional time from a requester pursuant to 32 CFR 1901.33. In such event, the Agency will inform the requester in writing and further advise of his or her right to file an administrative appeal.

§ 1901.22 Action and determination(s) by originator(s) or any interested party.

(a) *Initial action for access.* CIA components tasked pursuant to a Privacy Act access request shall search all relevant record systems within their cognizance. They shall:

- (1) Determine whether responsive records exist;
- (2) Determine whether access must be denied in whole or part and on what legal basis under both Acts in each such case;
- (3) Approve the disclosure of records for which they are the originator; and
- (4) Forward to the Coordinator all records approved for release or necessary for coordination with or referral to another originator or interested party as well as the specific determinations with respect to denials (if any).

(b) *Initial action for amendment.* CIA components tasked pursuant to a

Privacy Act amendment request shall review the official records alleged to be inaccurate and the proposed amendment submitted by the requester. If they determine that the Agency's records are not accurate, relevant, timely or complete, they shall promptly:

- (1) Make the amendment as requested;
- (2) Write to all other identified persons or agencies to whom the record has been disclosed (if an accounting of the disclosure was made) and inform of the amendment; and
- (3) Inform the Coordinator of such decisions.

(c) *Action otherwise on amendment request.* If the CIA component records manager declines to make the requested amendment or declines to make the requested amendment but agrees to augment the official records, that manager shall promptly:

- (1) Set forth the reasons for refusal; and
- (2) Inform the Coordinator of such decision and the reasons therefore.

(d) *Referrals and coordinations.* As applicable and within ten (10) days of receipt by the Coordinator, any CIA records containing information originated by other CIA components shall be forwarded to those entities for action in accordance with paragraphs (a), (b), or (c) of this section and return. Records originated by other federal agencies or CIA records containing other federal agency information shall be forwarded to such agencies within ten (10) days of our completion of initial action in the case for action under their regulations and direct response to the requester (for other agency records) or return to the CIA (for CIA records).

(e) *Effect of certain exemptions.* This section shall not be construed to allow access to systems of records exempted by the Director of Central Intelligence pursuant to subsections (j) and (k) of the Privacy Act or where those exemptions require that the CIA can neither confirm nor deny the existence or nonexistence of responsive records.

§ 1901.23 Notification of decision and right of appeal.

Within ten (10) days of receipt of responses to all initial taskings and subsequent coordinations (if any), and dispatch of referrals (if any), the Agency will provide disclosable records to the requester. If a determination has been made not to provide access to requested records (in light of specific exemptions) or that no records are found, the Agency shall so inform the requester, identify the denying official, and advise of the right to administrative appeal.

Additional Administrative Matters

§ 1901.31 Special procedures for medical and psychological records.

(a) *In general.* When a request for access or amendment involves medical or psychological records and when the originator determines that such records are not exempt from disclosure, the Agency will, after consultation with the Director of Medical Services, determine:

- (1) Which records may be sent directly to the requester and
- (2) Which records should not be sent directly to the requester because of possible medical or psychological harm to the requester or another person.

(b) *Procedure for records to be sent to physician.* In the event that the Agency determines, in accordance with paragraph (a)(2) of this section, that records should not be sent directly to the requester, the Agency will notify the requester in writing and advise that the records at issue can be made available only to a physician of the requester's designation. Upon receipt of such designation, verification of the identity of the physician, and agreement by the physician:

- (1) To review the documents with the requesting individual,
- (2) To explain the meaning of the documents, and
- (3) To offer counseling designed to temper any adverse reaction, the Agency will forward such records to the designated physician.

(c) *Procedure if physician option not available.* If within sixty (60) days of the paragraph (a)(2) of this section, the requester has failed to respond or designate a physician, or the physician fails to agree to the release conditions, the Agency will hold the documents in abeyance and advise the requester that this action may be construed as a technical denial. The Agency will also advise the requester of the responsible official and of his or her rights to administrative appeal and thereafter judicial review.

§ 1901.32 Requests for expedited processing.

(a) All requests will be handled in the order received on a strictly "first-in, first-out" basis. Exceptions to this rule will only be made in circumstances that the Agency deems to be exceptional. In making this determination, the Agency shall consider and must decide in the affirmative on all of the following factors:

- (1) That there is a genuine need for the records; and
- (2) That the personal need is exceptional; and
- (3) That there are no alternative forums for the records sought; and

(4) That it is reasonably believed that substantive records relevant to the stated needs may exist and be deemed releasable.

(b) In sum, requests shall be considered for expedited processing only when health, humanitarian, or due process considerations involving possible deprivation of life or liberty create circumstances of exceptional urgency and extraordinary need. In accordance with established judicial precedent, requests more properly the scope of requests under the Federal Rules of Civil or Criminal Procedure (or equivalent state rules) will not be granted expedited processing under this or related (e.g., Freedom of Information Act) provisions unless expressly ordered by a federal court of competent jurisdiction.

§ 1901.33 Allocation of resources; agreed extensions of time.

(a) *In general.* Agency components shall devote such personnel and other resources to the responsibilities imposed by the Privacy Act as may be appropriate and reasonable considering:

- (1) The totality of resources available to the component,
- (2) The business demands imposed on the component by the Director of Central Intelligence or otherwise by law,
- (3) The information review and release demands imposed by the Congress or other governmental authority, and

(4) The rights of all members of the public under the various information review and disclosure laws.

(b) *Discharge of Privacy Act responsibilities.* Components shall exercise due diligence in their responsibilities under the Privacy Act and must allocate a reasonable level of resources to requests under the Act in a strictly "first-in, first-out" basis and utilizing two or more processing queues to ensure that smaller as well as larger (i.e., project) cases receive equitable attention. The Information and Privacy Coordinator is responsible for management of the Agency-wide program defined by this Part and for establishing priorities for cases consistent with established law. The Director, Information Management through the Agency Release Panel shall provide policy and resource direction as necessary and shall make determinations on administrative appeals.

(c) *Requests for extension of time.* While the Privacy Act does not specify time requirements, our joint treatment of requests under the FOIA means that when the Agency is unable to meet the statutory time requirements of the FOIA,

the Agency may request additional time from a requester. In such instances the Agency will inform a requester of his or her right to decline our request and proceed with an administrative appeal or judicial review as appropriate.

Action on Privacy Act Administrative Appeals

§ 1901.41 Establishment of appeals structure.

(a) *In general.* Two administrative entities have been established by the Director of Central Intelligence to facilitate the processing of administrative appeals under the Freedom of Information Act. Their membership, authority, and rules of procedure are as follows.

(b) *Historical Records Policy Board ("HRPB" or "Board").* This Board, the successor to the CIA Information Review Committee, acts as the senior corporate board in the CIA on all matters of information review and release.

(1) *Membership.* The HRPB is composed of the Executive Director, who serves as its Chair, the Deputy Director for Administration, the Deputy Director for Intelligence, the Deputy Director for Operations, the Deputy Director for Science and Technology, the General Counsel, the Director of Congressional Affairs, the Director of the Public Affairs Staff, the Director, Center for the Study of Intelligence, and the Associate Deputy Director for Administration/Information Services, or their designees.

(2) *Authorities and activities.* The HRPB, by majority vote, may delegate to one or more of its members the authority to act on any appeal or other matter or authorize the Chair to delegate such authority, as long as such delegation is not to the same individual or body who made the initial denial. The Executive Secretary of the HRPB is the Director, Information Management. The Chair may request interested parties to participate when special equities or expertise are involved.

(c) *Agency Release Panel ("ARP" or "Panel").* The HRPB, pursuant to its delegation of authority, has established a subordinate Agency Release Panel.

(1) *Membership.* The ARP is composed of the Director, Information Management, who serves as its Chair; the Information Review Officers from the Directorates of Administration, Intelligence, Operations, Science and Technology, and the Director of Central Intelligence Area; the CIA Information and Privacy Coordinator; the Chief, Historical Review Group; the Chair, Publications Review Board; the Chief,

Records Declassification Program; and representatives from the Office of General Counsel, the Office of Congressional Affairs, and the Public Affairs Staff.

(2) *Authorities and activities.* The Panel shall meet on a regular schedule and may take action when a simple majority of the total membership is present. The Panel shall advise and assist the HRPB on all information release issues, monitor the adequacy and timeliness of Agency releases, set component search and review priorities, review adequacy of resources available to and planning for all Agency release programs, and perform such other functions as deemed necessary by the Board. The Information and Privacy Coordinator also serves as Executive Secretary of the Panel. The Chair may request interested parties to participate when special equities or expertise are involved. The Panel, functioning as a committee of the whole or through individual members, will make final Agency decisions from appeals of initial adverse decisions under the Freedom of Information Act and such other information release decisions made under 32 CFR parts 1901, 1907, and 1908. Issues shall be decided by a majority of members present; in all cases of a divided vote, any member of the ARP then present may refer such matter to the HRPB by written memorandum to the Executive Secretary of the HRPB. Matters decided by the Panel or Board will be deemed a final decision by the Agency.

§ 1901.42 Right of appeal and appeal procedures.

(a) *Right of Appeal.* A right of administrative appeal exists whenever access to any requested record or any portion thereof is denied, no records are located in response to a request, or a request for amendment is denied. The Agency will apprise all requesters in writing of their right to appeal such decisions to the CIA Agency Release Panel through the Coordinator.

(b) *Requirements as to time and form.* Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of the Agency's initial decision. The Agency may, for good cause and as a matter of administrative discretion, permit an additional thirty (30) days for the submission of an appeal. All appeals to the Panel shall be in writing and addressed as specified in 32 CFR 1901.03. All appeals must identify the documents or portions of documents at issue with specificity, provide the desired amending language (if applicable), and may present such

information, data, and argument in support as the requester may desire.

(c) *Exceptions.* No appeal shall be accepted if the requester has outstanding fees for information services at this or another federal agency. In addition, no appeal shall be accepted if the information in question has been the subject of an administrative review within the previous two (2) years or is the subject of pending litigation in the federal courts.

(d) *Receipt, recording, and tasking.* The Agency shall promptly record each administrative appeal, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the Deputy Director(s) in charge of the directorate(s) which originated or has an interest in the record(s) subject to the appeal. As used herein, the term Deputy Director includes an equivalent senior official within the DCI-area as well as a designee known as the Information Review Officer for a directorate or area.

§ 1901.43 Determination(s) by Deputy Director(s).

Each Deputy Director in charge of a directorate which originated or has an interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested parties may become involved through the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond in writing to the Coordinator with a finding as to the exempt or non-exempt status of the information including citations to the applicable exemption and/or their agreement or disagreement as to the requested amendment and the reasons therefore. Each response shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the various information review and release laws.

§ 1901.44 Action by appeals authority.

(a) *Preparation of docket.* The Coordinator, acting as the Executive Secretary of the Agency Release Panel, shall place administrative appeals of Privacy Act requests ready for adjudication on the agenda at the next occurring meeting of that Panel. The Executive Secretary shall provide a summation memorandum for consideration of the members; the complete record of the request consisting of the request, the document(s) (sanitized and full text) at

issue, and the findings of the concerned Deputy Director(s) or designee(s).

(b) *Decision by the Agency Release Panel.* The Agency Release Panel shall meet and decide requests sitting as a committee of the whole. Decisions are by majority vote of those present at a meeting and shall be based on the written record and their deliberations; no personal appearances shall be permitted without the express permission of the Panel.

(c) *Decision by the Historical Records Policy Board.* In any cases of divided vote by the ARP, any member of that body is authorized to refer the request to the CIA Historical Records Policy Board which acts as the senior corporate board for the Agency. The record compiled (the request, the memoranda filed by the originator and interested parties, and the previous decision(s)) as well as any memorandum of law or policy the referent desires to be considered, shall be certified by the Executive Secretary of the Agency Release Panel and shall constitute the official record of the proceedings and must be included in any subsequent filings.

§ 1901.45 Notification of decision and right of judicial review.

(a) *In general.* The Executive Secretary of the Agency Release Panel shall promptly prepare and communicate the decision of the Panel or Board to the requester. With respect to any decision to deny information or deny amendment, that correspondence shall state the reasons for the decision, identify the officer responsible, and include a notice of the right to judicial review.

(b) *For amendment requests.* With further respect to any decision to deny an amendment, that correspondence shall also inform the requester of the right to submit within forty-five (45) days a statement of his or her choice which shall be included in the official records of the CIA. In such cases, the applicable record system manager shall clearly note any portion of the official record which is disputed, append the requester's statement, and provide copies of the statement to previous recipients (if any are known) and to any future recipients when and if the disputed information is disseminated in accordance with a routine use.

Prohibitions

§ 1901.51 Limitations on disclosure.

No record which is within a system of records shall be disclosed by any means of communication to any individual or to another agency, except pursuant to a written request by, or with the prior

written consent of, the individual to whom the record pertains, unless disclosure of the record would be:

(a) To those officers and employees of this Agency which maintains the record who have a need for the record in the performance of their duties;

(b) Required under the Freedom of Information Act, 5 U.S.C. 552;

(c) For a routine use as defined in § 1901.02(m), as contained in the Privacy Act Issuances Compilation which is published biennially in the **Federal Register**, and as described in §§ (a)(7) and (e)(4)(D) of the Act;

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of U.S.C. Title 13;

(e) To a recipient who has provided the Agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or designee to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of that agency or instrumentality has made a written request to the CIA specifying the particular information desired and the law enforcement activity for which the record is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office; or

(k) To any agency, government instrumentality, or other person or entity pursuant to the order of a court of competent jurisdiction of the United States or constituent states.

§ 1901.52 Criminal penalties.

(a) *Unauthorized disclosure.* Criminal penalties may be imposed against any officer or employee of the CIA who, by virtue of employment, has possession of or access to Agency records which contain information identifiable with an individual, the disclosure of which is prohibited by the Privacy Act or by these rules, and who, knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive same.

(b) *Unauthorized maintenance.* Criminal penalties may be imposed against any officer or employee of the CIA who willfully maintains a system of records without meeting the requirements of section (e)(4) of the Privacy Act, 5 U.S.C.552a. The Coordinator and the Inspector General are authorized independently to conduct such surveys and inspect such records as necessary from time to time to ensure that these requirements are met.

(c) *Unauthorized requests.* Criminal penalties may be imposed upon any person who knowingly and willfully requests or obtains any record concerning an individual from the CIA under false pretenses.

Exemptions

§ 1901.61 Purpose and authority.

Purpose of exemptions. This Part sets forth those systems of records or portions of systems of records which the Director of Central Intelligence has determined to exempt from the procedures established by this regulation and from certain provisions of the Privacy Act:

(a) The purpose of the following specified general exemption of polygraph records is to prevent access and review of records which intimately reveal CIA operational methods. The purpose of the general exemption from the provisions of sections (c)(3) and (e)(3) (A)–(D) of the Privacy Act is to avoid disclosures that may adversely affect ongoing operational relationships with other intelligence and related organizations and thus reveal or jeopardize intelligence sources and methods or risk exposure of intelligence sources and methods in the processing of covert employment applications.

(b) The purpose of the general exemption from sections (d), (e)(4)(G), (f)(1), and (g) of the Privacy Act is to protect only those portions of systems of records which if revealed would risk exposure of intelligence sources and methods or hamper the ability of the CIA to effectively use information

received from other agencies or foreign governments.

(c) It should be noted that by subjecting information which would consist of, reveal, or pertain to intelligence sources and methods to separate determinations by the Director of Central Intelligence under the provision entitled "General exemptions," 32 CFR 1901.62 regarding access and notice, an intent is established to apply the exemption from access and notice only in those cases where notice in itself would constitute a revelation of intelligence sources and methods; in all cases where only access to information would reveal such source or method, notice will be given upon request.

(d) The purpose of the general exemption for records that consist of, pertain to, or would otherwise reveal the identities of employees who provide information to the Office of the Inspector General is to implement section 17 of the CIA Act of 1949, as amended, 50 U.S.C. 403q(e)(3), and to ensure that no action constituting a reprisal or threat of reprisal is taken because an employee has cooperated with the Office of Inspector General.

(e) The purpose of the specific exemptions provided for under section (k) of the Privacy Act is to exempt only those portions of systems of records which would consist of, reveal, or pertain to that information which is enumerated in that section of the Act.

(f) In each case, the Director of Central Intelligence currently or then in office has determined that the enumerated classes of information should be exempt in order to comply with dealing with the proper classification of national defense or foreign policy information; protect the identification of persons who provide information to the CIA Inspector General; protect the privacy of other persons who supplied information under an implied or express grant of confidentiality in the case of law enforcement or employment and security suitability investigations (or promotion material in the case of the armed services); protect information used in connection with protective services under 18 U.S.C. 3056; protect the efficacy of testing materials; and protect information which is required by statute to be maintained and used solely as statistical records.

§ 1901.62 General exemptions.

(a) Pursuant to authority granted in section (j) of the Privacy Act, the Director of Central Intelligence has determined to exempt from all sections of the Act—except sections 552a(b); (c) (1) and (2); (e) (1), (4) (A)–(F), (5), (6),

(7), (9), (10), and (11); and (i)—the following systems of records or portions of records in a system of record:

(1) Polygraph records.

(b) Pursuant to authority granted in section (j) of the Privacy Act, the Director of Central Intelligence has determined to exempt from sections (c)(3) and (e)(3) (A)–(D) of the Act all systems of records maintained by this Agency.

(c) Pursuant to authority granted in section (j) of the Privacy Act, the Director of Central Intelligence has determined to exempt from notification under sections (e)(4)(G) and (f)(1) those portions of each and all systems of records which have been exempted from individual access under section (j) in those cases where the Coordinator determines after advice by the responsible components that confirmation of the existence of a record may jeopardize intelligence sources and methods. In such cases the Agency must neither confirm nor deny the existence of the record and will advise a requester that there is no record which is available pursuant to the Privacy Act of 1974.

(d) Pursuant to authority granted in section (j) of the Privacy Act, the Director of Central Intelligence has determined to exempt from access by individuals under section (d) of the Act those portions and only those portions of all systems of records maintained by the CIA that:

(1) Consist of, pertain to, or would otherwise reveal intelligence sources and methods;

(2) Consist of documents or information provided by any foreign government entity, international organization, or, any United States federal, state, or other public agency or authority; and

(3) Consist of information which would reveal the identification of persons who provide information to the CIA Inspector General.

(e) Pursuant to authority granted in section (j) of the Privacy Act, the Director of Central Intelligence has determined to exempt from judicial review under section (g) of the Act all determinations to deny access under section (d) of the Act and all decisions to deny notice under sections (e)(4)(G) and (f)(1) of the Act pursuant to determination made under paragraph (c) of this section when it has been determined by an appropriate official of the CIA that such access would disclose information which would:

(1) Consist of, pertain to, or otherwise reveal intelligence sources and methods;

(2) Consist of documents or information provided by any foreign government entity, international organization, or, any United States federal, state, or other public agency or authority; and

(3) Consist of information which would reveal the identification of persons who provide information to the CIA Inspector General.

§ 1901.63 Specific exemptions.

Pursuant to authority granted in section (k) of the Privacy Act, the Director of Central Intelligence has determined to exempt from section (d) of the Privacy Act those portions and only those portions of all systems of records maintained by the CIA that would consist of, pertain to, or otherwise reveal information that is:

(a) Classified pursuant to Executive Order 12958 (or successor or prior Order) and thus subject to the provisions of 5 U.S.C. 552(b)(1) and 5 U.S.C. 552a(k)(1);

(b) Investigatory in nature and compiled for law enforcement purposes, other than material within the scope of section (j)(2) of the Act; provided however, that if an individual is denied any right, privilege, or benefit to which they are otherwise eligible, as a result of the maintenance of such material, then such material shall be provided to that individual except to the extent that the disclosure would reveal the identity of a source who furnished the information to the United States Government under an express promise of confidentiality, or, prior to the effective date of this section, under an implied promise of confidentiality;

(c) Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056;

(d) Required by statute to be maintained and used solely as statistical records;

(e) Investigatory in nature and compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the United States Government under an express promise of confidentiality, or, prior to the effective date of this section, under an implied promise of confidentiality;

(f) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal service the disclosure of which would compromise

the objectivity or fairness of the testing or examination process; or

(g) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the United States Government under an express promise of confidentiality, or, prior to the effective date of this section, under an implied promise of confidentiality.

PART 1907—CHALLENGES TO CLASSIFICATION OF DOCUMENTS BY AUTHORIZED HOLDERS PURSUANT TO § 1.9 OF EXECUTIVE ORDER 12958

General

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Right of Appeal

- 1907.31 Right of appeal.

Authority: Executive Order 12958, 60 FR 19825, 3 CFR 1996 Comp., P. 333-356 (or successor orders).

General

§ 1907.01 Authority and purpose.

(a) *Authority.* This Part is issued under the authority of and in order to implement § 1.9 of Executive Order (E.O.) 12958, sec. 102 of the National Security Act of 1947, and sec. 6 of the CIA Act of 1949.

(b) *Purpose.* This part prescribes procedures for authorized holders of information classified under the various provisions of E.O. 12958, or predecessor Orders, to seek a review or otherwise challenge the classified status of information to further the interests of the United States Government. This part and § 1.9 of E.O. 12958 confer no rights upon members of the general public, or authorized holders acting in their personal capacity, both of whom shall continue to request reviews of classification under the mandatory

declassification review provisions set forth at § 3.6 of E.O. 12958.

§ 1907.02 Definitions.

For purposes of this part, the following terms have the meanings as indicated:

(a) *Agency* or *CIA* means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator;

(b) *authorized holders* means any member of any United States executive department, military department, the Congress, or the judiciary (Article III) who holds a security clearance from or has been specifically authorized by the Central Intelligence Agency to possess and use on official business classified information, or otherwise has Constitutional authority pursuant to their office;

(c) *days* means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this CFR Part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

(d) *challenge* means a request in the individual's official, not personal, capacity and in furtherance of the interests of the United States;

(e) *control* means ownership or the authority of the CIA pursuant to federal statute or privilege to regulate official or public access to records;

(f) *Coordinator* means the CIA Information and Privacy Coordinator acting in the capacity of Executive Secretary of the Agency Release Panel;

(g) *Information* means any knowledge that can be communicated or documentary material, regardless of its physical form, that is:

(1) Owned by, produced by or for, or under the control of the United States Government, and

(2) Lawfully and actually in the possession of an authorized holder and for which ownership and control has not been relinquished by the CIA;

(h) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue;

(i) *Originator* means the CIA officer who originated the information at issue, or successor in office, or a CIA officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

(j) *This Order* means Executive Order 12958 of April 17, 1995 and published at 60 FR 19825-19843 (or successor Orders).

§ 1907.03 Contact for general information and requests.

For information on this part or to file a challenge under this part, please direct your inquiry to the Executive Secretary, Agency Release Panel, Central Intelligence Agency, Washington, DC 20505. The commercial (non-secure) telephone is (703) 613-1287; the classified (secure) telephone for voice and facsimile is (703) 613-3007.

§ 1907.04 Suggestions and complaints.

The Agency welcomes suggestions or complaints with regard to its administration of the Executive Order. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. The Agency will respond to all substantive communications and take such actions as determined feasible and appropriate.

Filing of Challenges

§ 1907.11 Prerequisites.

The Central Intelligence Agency has established liaison and procedures with many agencies for declassification issues. Prior to reliance on this Part, authorized holders are required to first exhaust such established administrative procedures for the review of classified information. Further information on these procedures is available from the point of contact, see 32 CFR 1907.03.

§ 1907.12 Requirements as to form.

The challenge shall include identification of the challenger by full name and title of position, verification of security clearance or other basis of authority, and an identification of the documents or portions of documents or information at issue. The challenge shall also, in detailed and factual terms, identify and describe the reasons why it is believed that the information is not protected by one or more of the § 1.5 provisions, that the release of the information would not cause damage to the national security, or that the information should be declassified due to the passage of time. The challenge must be properly classified; in this regard, until the challenge is decided, the authorized holder must treat the challenge, the information being challenged, and any related or explanatory information as classified at the same level as the current classification of the information in dispute.

§ 1907.13 Identification of material at issue.

Authorized holders shall append the documents at issue and clearly mark those portions subject to the challenge. If information not in documentary form is in issue, the challenge shall state so clearly and present or otherwise refer with specificity to that information in the body of the challenge.

§ 1907.14 Transmission.

Authorized holders must direct challenge requests to the CIA as specified in § 1907.03. The classified nature of the challenge, as well as the appended documents, require that the holder transmit same in full accordance with established security procedures. In general, registered U.S. mail is approved for SECRET, non-compartmented material; higher classifications require use of approved Top Secret facsimile machines or CIA-approved couriers. Further information is available from the CIA as well as corporate or other federal agency security departments.

Action on Challenges**§ 1907.21 Receipt, recording, and tasking.**

The Executive Secretary of the Agency Release Panel shall within ten (10) days record each challenge received under this Part, acknowledge receipt to the authorized holder, and task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within five (5) days of notification.

§ 1907.22 Challenges barred by res judicata.

The Executive Secretary of the Agency Release Panel shall respond on behalf of the Panel and deny any challenge where the information in question has been the subject of a classification review within the previous two (2) years or is the subject of pending litigation in the federal courts.

§ 1907.23 Response by originator(s) and/or any interested party.

(a) *In general.* The originator of the classified information (document) is a required party to any challenge; other interested parties may become involved through the request of the Executive Secretary or the originator when it is determined that some or all of the information is also within their official cognizance.

(b) *Determination.* These parties shall respond in writing to the Executive Secretary of the Agency Release Panel with a mandatory unclassified finding, to the greatest extent possible, and an

optional classified addendum. This finding shall agree to a declassification or, in specific and factual terms, explain the basis for continued classification including identification of the category of information, the harm to national security which could be expected to result from disclosure, and, if older than ten (10) years, the basis for the extension of classification time under §§ 1.6 and 3.4 of this Order. These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by § 6.1(c) of this Order.

(c) *Time.* The determination(s) shall be provided on a "first-in, first-out" basis with respect to all challenges pending under this section and shall be accomplished expeditiously taking into account the requirements of the authorized holder as well as the business requirements of the originator including their responsibilities under the Freedom of Information Act, the Privacy Act, or the mandatory declassification review provisions of this Order.

§ 1907.24 Designation of authority to hear challenges.

The Deputy Director for Administration has designated the Agency Release Panel and the Historical Records Policy Board, established pursuant to 32 CFR 1900.41, as the Agency authority to hear and decide challenges under these regulations.

§ 1907.25 Action on challenge.

(a) *Action by Agency Release Panel.* The Executive Secretary shall place challenges ready for adjudication on the agenda at the next occurring meeting of the Agency Release Panel. The Executive Secretary shall provide a summation memorandum for consideration of the members; the complete package consisting of the challenge, the information at issue, and the findings of the originator and interested parties shall also be provided. The Agency Release Panel shall meet and decide challenges sitting as a committee of the whole. Decisions are by majority vote of those present at a meeting and shall be based on the written record and their deliberations; no personal appearances shall be permitted without the express permission of the Panel.

(b) *Action by Historical Records Policy Board.* In any cases of divided vote by the ARP, any member of that body is authorized to refer the request to the CIA Historical Records Policy Board which acts as the senior corporate board for the Agency. The record

compiled (the request, the memoranda filed by the originator and interested parties, and the previous decision(s)) as well as any memorandum of law or policy the referent desires to be considered, shall be certified by the Executive Secretary of the Agency Release Panel and shall constitute the official record of the proceedings and must be included in any subsequent filings.

§ 1907.26 Notification of decision and prohibition on adverse action.

The Executive Secretary of the Agency Release Panel shall communicate the decision of the Agency to the authorized holder, the originator, and other interested parties within ten (10) days of the decision by the Panel or Board. That correspondence shall include a notice that no adverse action or retribution can be taken in regard to the challenge and that an appeal of the decision may be made to the Interagency Security Classification Appeals Panel (ISCAP) established pursuant to § 5.4 of this Order.

Right of Appeal**§ 1907.31 Right of appeal.**

A right of appeal is available to the ISCAP established pursuant to § 5.4 of this Order. Action by that body will be the subject of rules to be promulgated by the Information Security Oversight Office (ISOO).

PART 1908—PUBLIC REQUESTS FOR MANDATORY DECLASSIFICATION REVIEW OF CLASSIFIED INFORMATION PURSUANT TO § 3.6 OF EXECUTIVE ORDER 12958**General****Sec.**

- 1908.01 Authority and purpose.
- 1908.02 Definitions.
- 1908.03 Contact for general information and requests.
- 1908.04 Suggestions and complaints.

Filing of Mandatory Declassification Review (MDR) Requests

- 1908.11 Preliminary information.
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- 1908.21 Receipt, recording, and tasking.
- 1908.22 Requests barred by res judicata.
- 1908.23 Determination by originator or interested party.
- 1908.24 Notification of decision and right of appeal.

Agency Action on MDR Appeals

- 1908.31 Requirements as to time and form.
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- 1908.33 Determination by Deputy Director(s).

- 1908.34 Establishment of appeals structure.
 1908.35 Action by appeals authority.
 1908.36 Notification of decision and right of further appeal.

Further Appeals

- 1908.41 Right of further appeal.

Authority: Executive Orders 12958, 60 FR 19825, 3 CFR 1996 Comp., p. 333-356 (or successor Orders).

General

§ 1908.01 Authority and Purpose.

(a) *Authority.* This part is issued under the authority of and in order to implement § 3.6 of Executive Order (E.O.) 12958 (or successor Orders); the CIA Information Act of 1984 (50 U.S.C. 431); sec. 102 of the National Security Act of 1947, as amended (50 U.S.C. 403); and sec. 6 of the CIA Act of 1949, as amended (5 U.S.C. 403g).

(b) *Purpose.* This part prescribes procedures, subject to limitations set forth below, for members of the public to request a declassification review of information classified under the various provisions of this or predecessor Orders. Section 3.6 of E.O. 12958 and these regulations do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees.

§ 1908.02 Definitions.

For purposes of this part, the following terms have the meanings as indicated:

(a) *Agency* or *CIA* means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator;

(b) *Days* means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

(c) *Control* means ownership or the authority of the CIA pursuant to Federal statute or privilege to regulate official or public access to records;

(d) *Coordinator* means the CIA Information and Privacy Coordinator who serves as the Agency manager of the information review and release program instituted under the mandatory declassification review provisions of Executive Order 12958;

(e) *Federal agency* means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

(f) *Information* means any knowledge that can be communicated or

documentary material, regardless of its physical form that is owned by, produced by or for, or under the control of the United States Government; it does not include:

(1) Information within the scope of the CIA Information Act, or

(2) Information originated by the incumbent President, White House Staff, appointed committees, commissions or boards, or any entities within the Executive Office that solely advise and assist the incumbent President;

(g) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue;

(h) *NARA* means the National Archives and Records Administration;

(i) *Originator* means the CIA officer who originated the information at issue, or successor in office, or a CIA officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

(j) *Presidential libraries* means the libraries or collection authorities established by statute to house the papers of former Presidents Hoover, Roosevelt, Truman, Eisenhower, Kennedy, Nixon, Ford, Carter, Reagan, Bush and similar institutions or authorities as may be established in the future;

(k) *Referral* means coordination with or transfer of action to an interested party;

(l) *This Order* means Executive Order 12958 of April 17, 1995 and published at 60 FR 19825-19843 (or successor Orders);

§ 1908.03 Contact for general information and requests.

For general information on this Part or to request a declassification review, please direct your communication to the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Such inquiries will also be accepted by facsimile at (703) 613-3007. For general or status information only, the telephone number is (703) 613-1287. Collect calls cannot be accepted.

§ 1908.04 Suggestions and complaints.

The Agency welcomes suggestions or complaints with regard to its administration of the mandatory declassification review program established under Executive Order 12958. Many requesters will receive pre-

paid, customer satisfaction survey cards. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. The Agency will respond to all substantive communications and take such actions as determined feasible and appropriate.

Filing of Mandatory Declassification Review (MDR) Requests

§ 1908.11 Preliminary information.

Members of the public shall address all communications to the point of contact specified above and clearly delineate the communication as a request under this regulation. Requests and appeals on requests received from members of the public who owe outstanding fees for information services under this Order or the Freedom of Information Act at this or another federal agency will not be accepted until such debts are resolved.

§ 1908.12 Requirements as to form.

The request shall identify the document(s) or material(s) with sufficient specificity (e.g., National Archives and Records Administration (NARA) Document Accession Number or other applicable, unique document identifying number) to enable the Agency to locate it with reasonable effort. Broad or topical requests for records on a particular subject may not be accepted under this provision. A request for documents contained in the various Presidential libraries shall be effected through the staff of such institutions who shall forward the document(s) in question for Agency review. The requester shall also provide sufficient personal identifying information when required by the Agency to satisfy requirements of this part.

§ 1908.13 Fees.

Requests submitted via NARA or the various Presidential libraries shall be responsible for reproduction costs required by statute or regulation. Requests made directly to this Agency will be liable for costs in the same amount and under the same conditions as specified in 32 CFR part 1900.

Agency Action on MDR Requests

§ 1908.21 Receipt, recording, and tasking.

The Information and Privacy Coordinator shall within ten (10) days record each mandatory declassification review request received under this part, acknowledge receipt to the requester in writing (if received directly from a requester), and shall thereafter task the originator and other interested parties. Additional taskings, as required during

the review process, shall be accomplished within ten (10) days of notification.

§ 1908.22 Requests barred by res judicata.

The Coordinator shall respond to the requester and deny any request where the information in question has been the subject of a classification review within the previous two (2) years or is the subject of pending litigation in the federal courts.

§ 1908.23 Determination by originator or interested party.

(a) *In general.* The originator of the classified information (document) is a required party to any mandatory declassification review request; other interested parties may become involved through a referral by the Coordinator when it is determined that some or all of the information is also within their official cognizance.

(b) *Required determinations.* These parties shall respond in writing to the Coordinator with a finding as to the classified status of the information including the category of protected information as set forth in § 1.5 of this Order, and, if older than ten (10) years, the basis for the extension of classification time under §§ 1.6 and 3.4 of this Order. These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by § 6.1(c) of this Order.

(c) *Time.* This response shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the originator or interested parties and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act.

§ 1908.24 Notification of decision and right of appeal.

The Coordinator shall communicate the decision of the Agency to the requester within ten (10) days of completion of all review action. That correspondence shall include a notice of a right of administrative appeal to the Agency Release Panel pursuant to § 3.6(d) of this Order.

Agency Action on MDR Appeals

§ 1908.31 Requirements as to time and form.

Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of mailing of the Agency's initial decision. It shall identify with specificity the documents or information to be considered on

appeal and it may, but need not, provide a factual or legal basis for the appeal.

§ 1908.32 Receipt, recording, and tasking.

The Coordinator shall promptly record each appeal received under this part, acknowledge receipt to the requester, and task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

§ 1908.33 Determination by Deputy Director(s).

Each Deputy Director in charge of a directorate which originated or has an interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested parties may become involved through the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond in writing to the Coordinator with a finding as to the classified status of the information including the category of protected information as set forth in § 1.5 of this Order, and, if older than ten (10) years, the basis for continued classification under §§ 1.6 and 3.4 of this Order. These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by § 6.1(c) of this Order. This response shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act.

§ 1908.34 Establishment of appeals structure.

(a) *In general.* Two administrative entities have been established by the Director of Central Intelligence to facilitate the processing of administrative appeals under the mandatory declassification review provisions of this Order. Their membership, authority, and rules of procedure are as follows.

(b) *Historical Records Policy Board ("HRPB" or "Board").* This Board, the successor to the CIA Information Review Committee, acts as the senior corporate board in the CIA on all matters of information review and release. It is composed of the Executive Director, who serves as its Chair, the Deputy Director for Administration, the Deputy Director for Intelligence, the Deputy Director for Operations, the Deputy Director for Science and

Technology, the General Counsel, the Director of Congressional Affairs, the Director of the Public Affairs Staff, the Director, Center for the Study of Intelligence, and the Associate Deputy Director for Administration/Information Services, or their designees. The Board, by majority vote, may delegate to one or more of its members the authority to act on any appeal or other matter or authorize the Chair to delegate such authority, as long as such delegation is not to the same individual or body who made the initial denial. The Executive Secretary of the HRPB is the Director, Information Management. The Chair may request interested parties to participate when special equities or expertise are involved.

(c) *Agency Release Panel ("ARP" or "Panel").* The HRPB, pursuant to its delegation of authority, has established a subordinate Agency Release Panel. This Panel is composed of the Director, Information Management, who serves as its Chair; the Information Review Officers from the Directorates of Administration, Intelligence, Operations, Science and Technology, and the Director of Central Intelligence Area; the CIA Information and Privacy Coordinator; the Chief, Historical Review Group; the Chair, Publications Review Board; the Chief, Records Declassification Program; and representatives from the Offices of General Counsel and Congressional Affairs, and the Public Affairs Staff. The Information and Privacy Coordinator also serves as the Executive Secretary of the Panel. The Panel advises and assists the HRPB on all information release issues, monitors the adequacy and timeliness of Agency releases, sets component search and review priorities, reviews adequacy of resources available to and planning for all Agency release programs, and performs such other functions as deemed necessary by the Board. The Chair may request interested parties to participate when special equities or expertise are involved. The Panel, functioning as a committee of the whole or through individual members, will make final Agency decisions from appeals of initial denial decisions under E.O. 12958. Issues not resolved by the Panel will be referred by the Panel to the HRPB. Matters decided by the Panel or Board will be deemed a final decision by the Agency.

§ 1908.35 Action by appeals authority.

(a) *Action by Agency Release Panel.* The Coordinator, in his or her capacity as Executive Secretary of the Agency Release Panel, shall place appeals of mandatory declassification review requests ready for adjudication on the

agenda at the next occurring meeting of the Agency Release Panel. The Executive Secretary shall provide a summation memorandum for consideration of the members, the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of the originator and interested parties. The Panel shall meet and decide requests sitting as a committee of the whole. Decisions are by majority vote of those present at a meeting and shall be based on the written record and their deliberations; no personal appearances shall be permitted without the express permission of the Panel.

(b) *Action by Historical Records Policy Board.* In any cases of divided vote by the ARP, any member of that body is authorized to refer the request to the CIA Historical Records Policy Board which acts as the senior corporate board for the Agency. The record compiled (the request, the memoranda filed by the originator and interested parties, and the previous decision(s) as well as any memorandum of law or policy the referent desires to be considered, shall be certified by the Executive Secretary of the Agency Release Panel and shall constitute the official record of the proceedings and must be included in any subsequent filings.

§ 1908.36 Notification of decision and right of further appeal.

The Coordinator shall communicate the decision of the Panel or Board to the requester, NARA, or the particular Presidential Library within ten (10) days of such decision. That correspondence shall include a notice that an appeal of the decision may be made to the Interagency Security Classification Appeals Panel (ISCAP) established pursuant to § 5.4 of this Order.

Further Appeals

§ 1908.41 Right of Further Appeal.

A right of further appeal is available to the ISCAP established pursuant to § 5.4 of this Order. Action by that Panel will be the subject of rules to be promulgated by the Information Security Oversight Office (ISOO).

PART 1909—ACCESS BY HISTORICAL RESEARCHERS AND FORMER PRESIDENTIAL APPOINTEES PURSUANT TO § 4.5 OF EXECUTIVE ORDER 12958

General

- Sec.
1909.01 Authority and purpose.
1909.02 Definitions.

1909.03 Contact for general information and requests.

1909.04 Suggestions and complaints.

Requests for Historical Access

1909.11 Requirements as to who may apply.

1909.12 Designations of authority to hear requests.

1909.13 Receipt, recording, and tasking.

1909.14 Determinations by tasked officials.

1909.15 Action by hearing authority.

1909.16 Action by appeal authority.

1909.17 Notification of decision.

1909.18 Termination of access.

Authority: Executive Order 12958, 60 FR 19825, 3 CFR 1996 Comp., p. 333–356 (or successor Orders).

General

§ 1909.01 Authority and purpose.

(a) **Authority.** This part is issued under the authority of and in order to implement § 4.5 of Executive Order 12958 (or successor Orders); the CIA Information Act of 1984 (50 U.S.C. 431); sec. 102 of the National Security Act of 1947, as amended (50 U.S.C. 403); and sec. 6 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403g).

(b) **Purpose.** (1) This part prescribes procedures for:

(i) Requesting access to CIA records for purposes of historical research, or
(ii) Requesting access to CIA records as a former Presidential appointee.

(2) Section 4.5 of Executive Order 12958 and these regulations do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees.

§ 1909.02 Definitions.

For purposes of this part, the following terms have the meanings indicated:

(a) *Agency* or *CIA* means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator;

(b) *Agency Release Panel* or *Panel* or *ARP* means the CIA Agency Release Panel established pursuant to 32 CFR 1900.41;

(c) *Days* means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

(d) *Control* means ownership or the authority of the CIA pursuant to federal statute or privilege to regulate official or public access to records;

(e) *Coordinator* means the CIA Information and Privacy Coordinator

who serves as the Agency manager of the historical access program established pursuant to § 4.5 of this Order;

(f) *Director, Center for the Study of Intelligence* or “D/CSI” means the Agency official responsible for the management of the CIA’s various historical programs including the management of access granted under this section;

(g) *Director of Personnel Security* means the Agency official responsible for making all security and access approvals and for effecting the necessary non-disclosure and/or pre-publication agreements as may be required;

(h) *Federal agency* means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

(i) *Former Presidential appointee* means any person who has previously occupied a policy-making position in the executive branch of the United States Government to which they were appointed by the current or former President and confirmed by the United States Senate;

(j) *Historian* or *historical researcher* means any individual with professional training in the academic field of history (or related fields such as journalism) engaged in a research project leading to publication (or any similar activity such as academic course development) reasonably intended to increase the understanding of the American public into the operations and activities of the United States government;

(k) *Information* means any knowledge that can be communicated or documentary material, regardless of its physical form that is owned by, produced by or for, or is under the control of the United States Government;

(l) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue;

(m) *Originator* means the CIA officer who originated the information at issue, or successor in office, or a CIA officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

(n) *This Order* means Executive Order 12958 of April 17 1995 and published at 60 FR 19825-19843 (or successor Orders).

§ 1909.03 Contact for general information and requests.

For general information on this Part, to inquire about historical access to CIA records, or to make a formal request for such access, please direct your communication in writing to the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC. 20505. Inquiries will also be accepted by facsimile at (703) 613-3007. For general information only, the telephone number is (703) 613-1287. Collect calls cannot be accepted.

§ 1909.04 Suggestions and complaints.

The Agency welcomes suggestions or complaints with regard to its administration of the historical access program established pursuant to Executive Order 12958. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. The Agency will respond to all substantive communications and take such actions as determined feasible and appropriate.

Requests for Historical Access**§ 1909.11 Requirements as to who may apply.**

(a) *Historical researchers*.—(1) *In general*. Any historian engaged in a historical research project as defined above may submit a request in writing to the Coordinator to be given access to classified information for purposes of that research. Any such request shall indicate the nature, purpose, and scope of the research project.

(2) *Additional considerations*. In light of the very limited resources for the Agency's various historical programs, it is the policy of the Agency to consider applications for historical research privileges only in those instances where the researcher's needs cannot be satisfied through requests for access to reasonably described records under the Freedom of Information Act or the mandatory declassification review provisions of Executive Order 12958 and where issues of internal resource availability and fairness to all members of the historical research community militate in favor of a particular grant.

(b) *Former Presidential appointees*. Any former Presidential appointee as defined herein may also submit a request to be given access to any classified records which they originated, reviewed, signed, or received while serving in that capacity. Such appointees may also request approval for a research associate but there is no entitlement to such enlargement of access and the decision in this regard shall be in the sole discretion of the Agency. Requests from appointees shall

be in writing to the Coordinator and shall identify the records of interest.

§ 1909.12 Designations of authority to hear requests.

The Deputy Director for Administration has designated the Coordinator, the Agency Release Panel, and the Historical Records Policy Board, established pursuant to 32 CFR 1900.41, as the Agency authorities to decide requests for historical and former Presidential appointee access under Executive Order 12958 (or successor Orders) and these regulations.

§ 1909.13 Receipt, recording, and tasking.

The Information and Privacy Coordinator shall within ten (10) days record each request for historical access received under this Part, acknowledge receipt to the requester in writing and take the following action:

(a) *Compliance with general requirements*. The Coordinator shall review each request under this part and determine whether it meets the general requirements as set forth in 32 CFR 1909.11; if it does not, the Coordinator shall so notify the requester and explain the legal basis for this decision.

(b) *Action on requests meeting general requirements*. For requests which meet the requirements of 32 CFR 1909.11, the Coordinator shall thereafter task the D/CSI, the originator(s) of the materials for which access is sought, and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

§ 1909.14 Determinations by tasked officials.

(a) *Required determinations*. The tasked parties as specified below shall respond in writing to the Coordinator with recommended findings to the following issues:

(1) That a serious professional or scholarly research project by the requester is contemplated (by D/CSI);

(2) That such access is clearly consistent with the interests of national security (by originator and interested party, if any);

(3) That a non-disclosure agreement has been or will be executed by the requester (or research associate, if any) and other appropriate steps have been taken to assure that classified information will not be disclosed or otherwise compromised (by Director of Personnel Security and representative of the Office of General Counsel);

(4) That a pre-publication agreement has been or will be executed by the requester (or research associate, if any) which provides for a review of notes

and any resulting manuscript (by Director of Personnel Security and representative of the Office of General Counsel);

(5) That the information requested is reasonably accessible and can be located and compiled with a reasonable effort (by D/CSI and originator);

(6) That it is reasonably expected that substantial and substantive government documents and/or information will be amenable to declassification and release and/or publication (by D/CSI and originator);

(7) That sufficient resources are available for the administrative support of the researcher given current mission requirements (by D/CSI and originator); and,

(8) That the request cannot be satisfied to the same extent through requests for access to reasonably described records under the Freedom of Information Act or the mandatory declassification review provisions of Executive Order 12958 (by Coordinator, D/CSI and originator).

(b) *Time*. These responses shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the tasked offices and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act. The Agency will utilize its best efforts to complete action on requests under this part within thirty (30) days of date of receipt.

§ 1909.15 Action by hearing authority.

Action by Agency Release Panel. The Coordinator, in his or her capacity as Executive Secretary of the Agency Release Panel, shall place historical access requests ready for adjudication on the agenda at the next occurring meeting of the Agency Release Panel. The Executive Secretary shall provide a summation memorandum for consideration of the members, the complete record of the request consisting of the request and the findings of the tasked parties. The Panel shall meet and decide requests sitting as a committee of the whole on the basis of the eight factors enumerated at 32 CFR 1909.14(a). Decisions are by majority vote of those present at a meeting and shall be based on the written record and their deliberations; no personal appearances shall be permitted without the express permission of the Panel.

§ 1909.16 Action by appeal authority.

In any cases of divided vote by the ARP, any member of that body is authorized to refer the request to the

CIA Historical Records Policy Board which acts as the senior corporate board for the Agency. The record compiled (the request, the memoranda filed by the originator and interested parties, and the previous decision(s)) as well as any memorandum of law or policy the referent desires to be considered, shall be certified by the Executive Secretary of the Agency Release Panel and shall constitute the official record of the proceedings and must be included in any subsequent filings. In such cases, the factors to be determined as specified in 32 CFR 1909.14(a) will be considered by the Board de novo and that decision shall be final.

§ 1909.17 Notification of decision.

The Coordinator shall inform the requester of the decision of the Agency Release Panel or the Historical Records Policy Board within ten (10) days of the decision and, if favorable, shall manage the access for such period as deemed required but in no event for more than two (2) years unless renewed by the Panel or Board in accordance with the requirements of 32 CFR 1909.14(a).

§ 1909.18 Termination of access.

The Coordinator shall cancel any authorization whenever the Director of Personnel Security cancels the security clearance of a requester (or research associate, if any) or whenever the Agency Release Panel determines that continued access would not be in compliance with one or more of the requirements of 32 CFR 1909.14(a).

[FR Doc. 97-14883 Filed 6-13-97; 8:45 am]

BILLING CODE 6310-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL-5836-1]

RIN 2060-AF02

Preparation, Adoption, and Submittal of State Implementation Plans; Appendix M, Test Methods 204, 204A-204F

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule adds seven methods to Appendix M of 40 CFR Part 51 for capture efficiency (CE) testing to assist States in adopting enforceable CE measurement protocols into their State implementation plans (SIP's) for ozone. These final methods, in conjunction with the protocols, would also improve

EPA's ability to enforce State regulations to reduce volatile organic compounds (VOC) emissions in ozone nonattainment areas.

EFFECTIVE DATE: These methods are effective June 16, 1997.

ADDRESSES: *Docket.* A Docket A-91-70, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m.-5:30 p.m., Monday through Friday, at the EPA's Air Docket Section Mail Code: 6102, Room M-1500, Waterside Mall (ground floor), 401 M Street, S.W., Washington D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Candace Sorrell, Source Characterization Group A (MD-19), Emissions, Monitoring, and Analysis Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-1064.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

This rulemaking adds seven methods for measuring CE to Appendix M of 40 CFR Part 51 to provide methods that States can use in their SIP's.

II. Public Participation

The proposed rulemaking was published in the **Federal Register** (FR) on August 2, 1995 (60 FR 39297).

The opportunity to hold a public hearing on August 30, 1995 at 10 a.m. was presented in the proposal notice, but no one desired to make an oral presentation. The public comment period was from August 2, 1995 to October 2, 1995.

III. Electronic Access

The background information document for the promulgated test methods is available on the Technology Transfer Network (TTN) on the EPA's electronic bulletin boards. The document is entitled "Summary of Comments and Responses for Methods 204, 204A-F." If necessary, a limited number of copies are available from Candace Sorrell, MD-19, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541-1064.

IV. Significant Comments and Changes to the Proposed Rulemaking

Six comment letters were received from the proposal rulemaking. A detailed discussion of these comments is contained in the background document entitled "Summary of Comments and Responses for Methods 204, 204A-F," which is referred to in

the **SUPPLEMENTARY INFORMATION** section of this preamble. The major comments raised in these letters and the Agency's responses follow.

One commenter points out that even though Methods 204B and 204C measure the same parameter, captured VOC stream, the applicability sections of the methods were not consistent with respect to what type of material balance is permissible.

The EPA reviewed the applicability section for both methods and determined that there was an error in Method 204B. Method 204B is intended to be used only in a gas/gas protocol, not in a liquid/gas protocol. The method has been revised to correct this error.

One commenter suggests for Method 204D, section 8.2.4, and Method 204E, section 8.4, that EPA make it explicit that if on site gas chromatography (GC) is used as an alternative to flame ionization analyzers (FIA) than GC must also be used to measure the VOC concentration of the other gas or liquid steams.

The Agency agrees that further explanation is needed to explain that if a facility is conducting a gas/gas test and chooses to use the alternative GC procedure, it must use the GC procedure for both the captured and fugitive stream. If a facility wishes to conduct a liquid/gas test using GC, the facility must use Method 204F for the liquid steam. A GC is not an acceptable alternative to the FIA in Method 204A.

Another commenter suggests that Figure 204-1 of Method 204 be expanded to address capture efficiencies less than 80 percent since lower values are allowed in the current Reasonably Available Control Technology (RACT) rules.

The EPA agrees that further guidance is needed and has added an equation to section 7.2 to help in estimating the ventilation rate at different capture efficiencies.

Three commenters mention that Method 204A, section 11, the estimated uncertainty of 12 percent for the VOC fraction seemed too high.

The EPA went back and reviewed the method evaluation report and discovered that the 12 percent is an error. The estimated uncertainty for this method is 4.0 percent. The method has been revised to correct this error.

Two commenters note that several references in Method 204, sections 5.5 and 6.1, were incorrect.

The EPA agrees that several references in those sections are incorrect. The method has been revised to correct these errors.