

## § 8.19

collected, the requester shall be so advised pursuant to part 7, subpart H of the regulations of the Office of the Secretary (part 7, subpart H, of this subtitle), or in the case of National Transportation Safety Board material, pursuant to the regulations of the National Transportation Safety Board (14 CFR part 401, subpart C) [part 401 was redesignated as 49 CFR part 801, at 40 FR 30235, July 17, 1975].

(2) If the material is not available under the Freedom of Information Act, the requester shall be advised that the material has been declassified but that the record is unavailable pursuant to the Freedom of Information Act, and that the provisions concerning procedures for reconsidering decisions not to disclose records, contained in subpart G of part 7 of the regulations of the Office of the Secretary (part 7, subpart G, of this subtitle), or in the case of National Transportation Safety Board material, in 14 CFR part 401, subpart E [part 401 was redesignated as 49 CFR part 801, at 40 FR 30235, July 17, 1975], apply.

(g) Upon receipt of an appeal from a classification review determination based upon continued classification, the Departmental Security Review Committee shall immediately acknowledge receipt and act on the matter within 30 days. With respect to information originally classified by or under the primary cognizance of the Department, the Committee, acting for the Secretary, has authority to overrule previous determinations in whole or in part when, in its judgment, continued protection in the interest of national security is no longer required. When the classification of the material produced in the Department is based upon a classification determination made by another department or agency, the Security Review Committee shall immediately consult with its counterpart committee for that department.

(1) If it is determined that the material produced in the Department requires continued classification, the requester will be so notified and advised of his right to appeal the decision to the Interagency Classification Review Committee.

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(2) If it is determined that the material no longer requires classification, it shall be declassified and remarked. The committee shall refer the request to the general counsel, or to the head of the operating administration concerned, or to the Chairman, National Transportation Safety Board, as the case may be, to determine if the material is otherwise available for public release under the Freedom of Information Act (5 U.S.C. 552) and the relevant regulations, and the provisions set forth in paragraphs (f)(1) and (2) of this section shall be followed. A copy of the response to the requester shall be provided to the committee.

(h) Requests for a classification review of material more than 30 years old shall be referred directly to the Archivist of the United States and the requester shall be notified of the referral. In this event, the provisions of § 8.19 apply.

### **§ 8.19 Declassification of classified material after 30 years.**

(a) Classified material produced in the Department after June 1, 1972, which remains in a protected status, will become automatically declassified at the end of 30 full calendar years after the date of its original classification. If it appears, however, that continued protection is essential to the national security or that disclosure would place a person in immediate jeopardy, the matter shall be referred to the Secretary, through the Director of Investigations and Security. A determination that continued classification is warranted may be made only by the Secretary.

(b) Classified material produced before June 1, 1972, and which is more than 30 years old will be reviewed systematically for declassification by the Archivist of the United States by the end of the 30th full calendar year following the year in which it was originated. In his review, the Archivist will separate and keep protected only such material produced by the Department as is specifically identified by the Secretary as requiring protection. The Director of Investigations and Security is designated as the liaison officer for the Department with the Archivist for this

purpose. Each administration shall advise the Director of Investigations and Security of classified material under its cognizance which is or becomes 30 years old. This notification shall also include recommendations for protection of the material considered to warrant continued classification in order that a determination by the Secretary may be obtained.

**§ 8.21 Burden of proof.**

For the purpose of determinations to be made under §§ 8.13, 8.15, and 8.17, the burden of proof is on the originating element to show that continued classification is warranted.

**§ 8.23 Classified material transferred to the Department of Transportation.**

(a) Classified material officially transferred to the Department pursuant to statute or Executive order in conjunction with a transfer of function, and not merely for storage purposes, shall be considered to have been originated by the Department for the purpose of downgrading and declassification.

(b) Classified material in the custody of the Department originated by a department or agency which has ceased to exist and whose functions and records were not officially transferred to another department shall be downgraded and declassified by the Department in accordance with the provisions of this part. If it appears that another department or agency may have an interest in the subject matter of the material from a classification standpoint, that department shall be advised of the nature of the material and the intention to downgrade or declassify. The notified department shall be allowed 30 days in which to express an objection, if it so desires, before action is taken. A difference of opinion which cannot be resolved shall be referred to the Departmental Security Review Committee which will consult with its counterpart committee for the respective department.

**§ 8.25 Public availability of declassified information.**

(a) It is a fundamental policy of the Department to make information

available to the public to the maximum extent permitted by law. Information which is declassified for any reason loses its status as material protected in the interest of national security. Accordingly, declassified information shall be handled in every respect on the same basis as all other unclassified information. Declassified information is subject to the Departmental public information policies and procedures, with particular reference to regulations of the Office of the Secretary on public availability of information (part 7 of this subtitle) and the Freedom of Information Act (5 U.S.C. 552).

(b) In furtherance of this policy, all classified material produced after June 1, 1972, which is of sufficient historical or other value to warrant preservation as permanent records in accordance with appropriate records administrative standards, and which becomes declassified, shall be systematically reviewed prior to the end of each calendar year for the purpose of making the material publicly available. To the maximum extent possible without destroying the integrity of the Department's files, all such material shall be segregated or set aside for public release upon request.

**§ 8.27 Access to historical researchers, former Presidential appointees and contractors.**

(a) *Historical researchers.* (1) Persons outside the executive branch who are engaged in historical research projects may have access to classified information provided that:

(i) Access to the information will be clearly consistent with the interests of national security; and

(ii) The person to be granted access is trustworthy.

(2) The provisions of this paragraph apply only to persons who are conducting historical research as private individuals or under private sponsorship and do not apply to research conducted under Government contract or sponsorship. The provisions are applicable only to situations where the classified information concerned, or any part of it, was originated by the Department or Department contractors, or where the information, if originated elsewhere, is in the sole custody of the Department.