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Director, Central Administrative Support Center.
Director, Western Administrative Support Center.
Director, Mountain Administrative Support Center.

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PART 4a—CLASSIFICATION, DECLASSIFICATION AND PUBLIC AVAILABILITY OF NATIONAL SECURITY INFORMATION

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AUTHORITY: Sec. 5.3(b), E.O. 12356; 47 FR 14874, April 6, 1982; 47 FR 15557, April 12, 1982.

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Subpart A—Classification of National Security Information

§4a.1 General.

Executive Order 12356 provides the only basis for classifying information within the Department of Commerce, except as provided in the Atomic Energy Act of 1954. The policy of the Department of Commerce is to make information concerning its activities available to the public consistent with the need to protect the national defense or foreign relations as required by the interests of the United States and its citizens. Accordingly, security classification shall be applied only to protect the national security.

§4a.2 Director, Office of Security.

The Director is responsible for (a) acting on all suggestions, complaints, and appeals not otherwise resolved, concerning the implementation and administration of E.O. 12356 and implementing directives, and (b) deciding all appeals from denials of requests for national security information under the Mandatory Review provision of E.O. 12356, when the initial denial was based on continued classification under the Order. When acting on such appeals the Director shall confer, as necessary, with the Offices of the General Counsel, Information Management, and Personnel. The Director may solicit advice from various operating units as required. All suggestions, complaints, or appeals should be addressed to the Director, Office of Security, Room 5044, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

§4a.3 Classification levels.

Information may be classified as national security information by a designated original classifier of the Department when it is determined that the information concerns one or more of the categories prescribed in E.O.

12356 and when the unauthorized disclosure of the information, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security. The levels established by E.O. 12356 (Top Secret, Secret, and Confidential) are the only terms which may be applied to national security information. Except as provided by statute, no other terms shall be used within the Department of Commerce in conjunction with any of the three classification levels.

§4a.4 Classification authority.

Authority to originally classify information as Secret or Confidential may be exercised only by the Secretary of Commerce and by officials to whom such authority is specifically delegated. No official of the Department of Commerce is authorized to originally classify information as Top Secret.

§4a.5 Duration of classification.

Information shall remain classified as long as its unauthorized disclosure would result in damage to the national security. When it can be determined a specific date or event for declassification shall be set by the original classification authority at the time the information is originally classified. Automatic declassification markings applied under predecessor executive orders shall remain valid unless the classification is extended by an authorized declassification authority. Information classified under predecessor orders and marked for declassification review shall remain classified until reviewed for declassification under the provisions of E.O. 12356 governing systematic review or mandatory review for declassification.

Subpart B—Declassification

§4a.6 General.

Information that continues to meet the classification requirements prescribed in E.O. 12356 despite the passage of time will continue to be safeguarded. However, information which is properly classified at the time it is developed may not necessarily require protection indefinitely. National security information over which the Department of Commerce exercises final

classification jurisdiction shall be declassified or downgraded as soon as national security considerations permit. When information is determined to be no longer damaging to the national security, it may continue to be exempt from public disclosure by law. If so, when the information is declassified the declassification authority shall indicate that all or portions of the information become FOR OFFICIAL USE ONLY and shall cite the authority which permits nondisclosure.

§4a.7 Systematic review for declassification.

Classified information constituting permanently valuable records of the Government, as defined by U.S.C. 2103, that is in the possession and control of the Department of Commerce or of the Archivist of the United States, shall be systematically reviewed for declassification. This review shall be in accordance with systematic review guidelines authorized by the Secretary of Commerce.

§4a.8 Mandatory review for declassification.

(a) *Requests.* Classified information under the jurisdiction of the Department of Commerce shall be reviewed for declassification upon receipt of a request by a United States citizen or permanent resident alien, a Federal agency, or a state or local government. A request for mandatory review of classified information shall be submitted in writing and describe the information with sufficient specificity to locate it with a reasonable amount of effort. Request shall be submitted to the Director, Office of Security, U.S. Department of Commerce, Room 5044, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

(b) *Processing requirements.* (1) The Director, Office of Security, shall acknowledge receipt of the request directly to the requester. When a request does not satisfy the conditions of paragraph (a) of this section, the requester shall be notified that unless additional identifying information is provided, no further action will be taken. The request shall be forwarded to the operating unit or office which originated the information or which has primary

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interest in the subject matter. The unit or office assigned action shall review the information within twenty working days as prescribed below.

(2) The action office shall determine whether, under the declassification provisions of the Department of Commerce National Security Information Manual, the entire document or portions thereof may be declassified. The action office shall also determine whether, if the document or portions are declassified, withholding the information is otherwise warranted under applicable statutes. Declassification of the information shall be accomplished by a designated declassification authority. Upon declassification the information shall be remarked. If the information may not be released in whole or in part, the reviewing official shall provide the reasons for denial by citing the applicable provision of section 1.3 of E.O. 12356. When the classification is a derivative decision based on classified source material of another Federal agency, the action office shall provide the information to the originator for review.

(3) The action office shall also determine if declassified information is otherwise available for public release under the Freedom of Information Act. If the information is not releasable, the reviewing official shall advise the Director, Office of Security, that the information has been declassified but that it is exempt from disclosure, citing the appropriate exemption of the Freedom of Information Act and applicable regulations.

(4) If the request for declassification is denied in whole or in part, the requester shall be notified of the right to appeal the determination within sixty days and of the procedures for such an appeal. If declassified information remains exempt from disclosure under the Freedom of Information Act, the requester shall be advised of those appellate procedures. All denials of information under the Freedom of Information Act must be approved by the Office of the Assistant General Counsel for Administration.

(c) *Fees.* If the request requires the rendering of services for which fees may be charged, the unit assigned action may calculate the anticipated

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amount of fees to be charged and ascertain the requester's willingness to pay the allowable charges as a precondition to taking further action on the request in accordance with §4.9 of Department of Commerce Freedom of Information Act rules and §4b.11 of the Department's Privacy Act rules.

(d) *Right of appeal.* (1) A requester may appeal to the Director, Office of Security, when the requested information is not declassified and released in whole. The Director shall determine, within thirty days after receipt of an appeal, whether continued classification of the requested information is required in whole or in part, notify the requester of his determination, and make available to the requester any information determined to be releasable. If continued classification is required under the provisions of this manual, the requester shall be notified of the final determination and of the reasons for denial.

(2) During the declassification review of information under appeal the Director, Office of Security, may overrule previous determinations in whole or in part when, in his judgment, continued protection in the interest of national security is no longer required. If the Director determines that the information no longer requires classification, it shall be declassified and, unless it is otherwise exempt from disclosure, released to the requester. The Director shall advise the original reviewing Commerce office or unit of his decision.

§4a.9 Requests under the Privacy Act and the Freedom of Information Act involving classified records.

(a) The Freedom of Information Act (FOIA), Title 5 U.S.C. 552(b)(1) and the Privacy Act of 1974 (PA), Title 5 U.S.C. 552a(k)(1), authorize withholding of records from public availability which are "(1) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (2) are in fact properly classified pursuant to such Executive order."

(b) Under the FOIA a determination on an initial request must be made within ten working days after receipt of the request. A determination on an

appeal to an initial denial must be made within twenty working days after receipt of an FOIA appeal; or for a PA appeal, within thirty working days. Time limits are mandatory for an FOIA request, but are permissive for a PA request. Except for unusual circumstances, failure to make a determination within the stated time limits means that a requester has exhausted the administrative remedies and may bring suit immediately.

(c) Persons who request information under the provisions of these Acts, and whose requests are denied on appeal, may petition the courts to enjoin the Department of Commerce from withholding the record and, in this event, burden is on the Department of Commerce to sustain its actions.

(d) To assure that PA/FOIA requests involving classified records are subjected to a thorough classification review and that a response is made within the specified time limits, the procedures in paragraphs (e) and (f) shall apply as well as those of DAO 205-12 "Public Information," DAO 205-14 "Processing Requests Under the Freedom of Information Act," and DAO 205-15 "Implementing the Privacy Act of 1974."

(e) Initial requests involving classified records:

(1) The office determined to have primary interest shall conduct a declassification review of the information as prescribed in §4a.8(b) (2), (3), and (4).

(2) If the information is subsequently declassified, the action office shall consult with the Office of the Assistant General Counsel for Administration to determine releasability with consideration only for the legality of release within the purview of PA/FOIA.

(3) If the record warrants continued classification, the action office shall coordinate with the Office of the Assistant General Counsel for Administration and so advise the requester, and further advise the requester of the right of appeal.

(4) If the classification review cannot be completed within the prescribed time limit, due to unusual circumstances, the action office shall advise the requester. An extension of time shall be arranged in accordance

with the FOIA and implementing Commerce PA/FOIA rules.

(f) Receipt of an appeal for reconsideration of denial of a classified record under PA/FOIA: Appeals under this section shall be addressed to the General Counsel who shall refer the record(s) to the Director, Office of Security, for a declassification review. The Director may overrule previous determinations in whole or in part when, in his judgment, continued protection in the interest of national security is no longer required. If the information under review no longer requires classification, it shall be declassified. The Director shall advise the General Counsel of his decision.

§4a.10 Presidential information.

Information originated by the President, by the White House Staff, by committees, commissions, or boards appointed by the President, or by others specifically providing advice and counsel to a President or acting on behalf of a President is exempted from the provisions of mandatory review for declassification, except as consistent with applicable laws that pertain to presidential papers or records.

§4a.11 Foreign government information.

Requests for mandatory review for declassification of foreign government information shall be processed as prescribed in §4a.8(b). Consultation with the foreign source of the information through appropriate channels may be required prior to final action on the request.

§4a.12 Public availability of declassified information.

A fundamental policy of the Department of Commerce is to make information available to the public to the maximum extent permitted by law. Information which is declassified, for any reason, loses its protective status in the interest of national security. Accordingly, declassified information shall be handled in every respect on the same basis as all other unclassified information.

Subpart C—Access to Classified Information

§ 4a.13 Access by persons outside the Executive branch.

Department of Commerce classified information may be made available to persons outside the Executive Branch provided that (a) they are engaged in historical research projects or previously have occupied policy-making positions to which they were appointed by the President, or (b) the information is necessary for their performance of a function related to a contract or other agreement with the U.S. Government. The Director, Office of Security, shall determine, prior to the release of classified information under this provision, the propriety of such action in the interest of national security and obtain assurance of the recipient's trustworthiness and need to know.

§ 4a.14 Access by industrial, educational, and commercial entities.

Bidders, contractors, grantees, educational, scientific or industrial organizations may receive classified information under the procedures prescribed in the Department of Defense Industrial Security Manual.

§ 4a.15 Access by historical researchers and former presidential appointees.

(a) Persons who are engaged in historical research projects or who have previously occupied policy-making positions to which they were appointed by the President may be authorized access to classified information provided that the head of the component with classification jurisdiction over the information:

- (1) Makes a written determination that access is consistent with the interests of national security;
- (2) Is assured by the Director, Office of Security, that the requestors have an appropriate determination of trustworthiness as a precondition to access;
- (3) Obtains written agreements from requestors to safeguard the information to which they are given access in accordance with these regulations;
- (4) Obtains written consent to a review by the Department of Commerce of their resultant notes and manu-

scripts for the purpose of determining that no classified information is contained therein; and

(5) Limits access granted to former Presidential appointees to items that the person originated, reviewed, signed, or received while serving as a Presidential appointee.

(b) The material requested should be clearly identified so that it can be located and compiled with a reasonable amount of effort. If the access requested by historical researchers or former Presidential appointees requires the rendering of services for which fair and equitable fees may be charged, the requestor shall be notified.

(c) The provisions of this section apply only to classified information, or any part of it, originated by the Department of Commerce or information that is now in the sole custody of the Department. Otherwise, the researcher shall be referred to the classifying agency. Operating units providing information under this section shall maintain custody of classified information at a Commerce facility.

§ 4a.16 Access by foreign nationals, foreign governments, international organizations and immigrant aliens.

Foreign nationals employed by the Department of Commerce may be granted access to classified information originated within the Department only for the specific classified project to which they are assigned and only after they have met those requirements set forth in DAO 207-3, "Security Requirements for Research Associates, Guest Workers and Trainees," and Appendix B of DAO 207-4, "Security and Suitability Investigations of Personnel." If a need for access by foreign nationals (other than employees) is indicated, the Director, Office of Security, shall be consulted for decision on a case-by-case basis.

PART 4b—PRIVACY ACT

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- 4b.1 Purpose and scope.
- 4b.2 Definitions.
- 4b.3 Procedures for inquiries pertaining to individual records in a record system.