Subtitle B—Other Regulations Relating to National Defense
## CHAPTER XII—DEFENSE LOGISTICS AGENCY

### SUBCHAPTER A [RESERVED]

### SUBCHAPTER B—MISCELLANEOUS

<table>
<thead>
<tr>
<th>Part</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1280</td>
<td>Investigating and processing certain noncontractual claims and reporting related litigation</td>
<td>247</td>
</tr>
<tr>
<td>1285</td>
<td>Defense Logistics Agency Freedom of Information Act Program</td>
<td>250</td>
</tr>
<tr>
<td>1288</td>
<td>Registration of privately owned motor vehicles</td>
<td>269</td>
</tr>
<tr>
<td>1290</td>
<td>Preparing and processing minor offenses and violation notices referred to U.S. District Courts</td>
<td>271</td>
</tr>
<tr>
<td>1292</td>
<td>Security of DLA activities and resources</td>
<td>279</td>
</tr>
<tr>
<td>1293</td>
<td>Standards of conduct</td>
<td>280</td>
</tr>
</tbody>
</table>
PART 1280—INVESTIGATING AND PROCESSING CERTAIN NON-CONTRACTUAL CLAIMS AND REPORTING RELATED LITIGATION

Sec. 1280.1 Purpose and scope.
1280.2 Definitions.
1280.3 Significant changes.
1280.4 Responsibilities.
1280.5 Procedures.


SOURCE: 39 FR 19470, June 3, 1974, unless otherwise noted.

§ 1280.1 Purpose and scope.

(a) This part 1280 provides procedures for investigating and processing claims and related litigation:

(1) By civilian and military personnel of DLA for property lost or damaged incident to service (31 U.S.C. 240 through 243).

(2) Incident to use of Government vehicles and other property of the United States not cognizable under other law (10 U.S.C. 2737).

(3) Based on Negligence of Civilian and Military Employees under the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671 through 2680.

(4) In favor of the United States, other than contractual, for loss, damage, or destruction of real or personal property in the possession, custody, or control of DLA.

(b) This part 1280 is applicable to HQ DLA and DLA field activities, except nonappropriated funds and related activities established pursuant to DSAR 1330.2, Open Messes and Other Military Sundry Associations and Funds, and DSAR 1330.4, Civilian Nonappropriated Funds and Related Activities. Claims involving these activities are processed pursuant to the regulations referenced therein.

§ 1280.2 Definitions.

(a) Claims Investigating Officer. A military officer or civilian employee of DLA, appointed in accordance with this part 1280, to investigate and process claims within the purview of this part 1280.

(b) Member of the Army, member of the Navy, member of the Marine Corps, member of the Air Force. Officers and enlisted personnel of these Military Services.

§ 1280.3 Significant changes.

This revision provides current citations to the Army regulations which have superseded those previously prescribed for the processing of some claims. It reflects the new Army claims processing procedures effected upon the reorganization of the Army. Finally, it provides specific procedures for Air Force processed claims.

§ 1280.4 Responsibilities.

(a) DLA field activities. (1) Heads of DLA Primary Level Field Activities are responsible for:

(i) Designating a qualified individual under their command, preferably one experienced in the conduct of investigations, as the Claims Investigating Officer for the activity.

(ii) Authorizing Heads of subordinate activities to appoint Claims Investigating Officers where necessary.

(2) The Commander, DLA Administrative Support Center (DLASC) is responsible for designating a qualified individual, preferably one experienced in the conduct of investigations, as the Claims Investigating Officer for DLASC and HQ DLA.

(3) Claims Investigating Officers are responsible for the expeditious conduct of all investigations and the processing of reports in accordance with appropriate Departmental regulations as prescribed by this part 1280. To ensure prompt investigation of every incident while witnesses are available, and before damage has been repaired, the duties of personnel as Claims Investigating Officers will ordinarily have priority over any other assignments they may have.

(4) The Counsel, DLA Field Activities are responsible for:
§ 1280.5

(a) Claims by military and civilian personnel of DLA for property lost or damaged incident to service (31 U.S.C. 240 through 243). (1) The Claims Investigating Officer will conduct his investigation and prepare all necessary forms and reports in accordance with the appropriate portions of AR 27–20 where the claimant is a member of the Army or a DLA civilian employee; JAGINST 5800.7A where the claimant is a member of the Navy or Marine Corps; or AFM 112–1 where the claimant is a member of the Air Force.

(b) Claims incident to the use of Government property not cognizable under any other law (10 U.S.C. 2737). (1) The Claims Investigating Officer will conduct his investigation and prepare all necessary forms and reports in accordance with the appropriate portions of AR 27–20 where the claimant is a member of the Army or a DLA civilian employee; JAGINST 5800.7A where the claimant is a member of the Navy or Marine Corps; or AFM 112–1 where the claimant is a member of the Air Force.

(b) Claims incident to the use of Government property not cognizable under any other law (10 U.S.C. 2737). (2) The completed report will be forwarded by the Claims Investigating Officer to the Counsel for his activity or, if the activity has no Counsel, to the next higher echelon having such a position.

(c) Claims under the Federal Tort Claims Act arising from negligence of DLA military or civilian personnel. (1) The Claims Investigating Officer will conduct his investigation and prepare all necessary action to assure that it is complete and in accordance with the appropriate regulation. He will forward the report together with his comments and recommendations to one of the following activities for settlement. Where the incident giving rise to the claim was occasioned by an act or omission of:

(i) DLA civilian personnel. Counsel, DLA.

(ii) A member of the Army. The Staff Judge Advocate designated in AR 27–20, appendix F, as the Area Claims Authority where the claim arose.

(iii) A member of the Navy or Marine Corps. The Director of the Navy Law Center in the Naval District in which the incident giving rise to the claim occurred.

(iv) A member of the Air Force. The Base Staff Judge Advocate of the Air Force Base nearest the place where the incident giving rise to the claim occurred.

(c) Claims under the Federal Tort Claims Act arising from negligence of DLA military or civilian personnel. (1) The Claims Investigating Officer will conduct his investigation and prepare...
all necessary forms and reports in accordance with the appropriate portions of AR 27–20 where the claim involves a member of the Army or a DLA civilian employee; JAGINST 5800.7A where the claim involves a member of the Navy or Marine Corps; or AFM 112–1 where the claim involves a member of the Air Force.

(2) The completed report of investigation will be forwarded by the Claims Investigating Officer to one of the following activities for settlement. Where the incident giving rise to the claim was occasioned by an act or omission of:

(i) DLA civilian personnel or a member of the Army. The Staff Judge Advocate designated in AR 27–20, appendix F, as the Area Claims Authority where the incident giving rise to the claim occurred.

(ii) A member of the Navy or Marine Corps. The Director of the Navy Law Center in the Naval District in which the incident giving rise to the claim occurred.

(iii) A member of the Air Force. The Base Staff Judge Advocate of the Air Force Base nearest the place where the incident giving rise to the claim occurred.

(d) Tort claims in favor of the United States for damage to or loss or destruction of DLA property, or property in its custody or control. These claims will be investigated and processed in accordance with the provisions of AR 27–40, Chapter 5, except:

(i) The duties of the claims officer will be performed by the Claims Investigating Officer.

(ii) The duties of the Staff Judge Advocate will be performed by Counsel, except where the property is a GSA motor pool system vehicle (see paragraph (e) of this section).

(iii) The reports of the Claims Investigating Officer will be furnished direct to Counsel for his activity or, if his activity has no Counsel, to the next higher echelon having such a position.

(iv) With respect to reports referred to them, Counsel are authorized to give receipts for any payments received and to execute releases where payment in full is received, except where the property is a GSA motor pool system vehicle (see paragraph (e) of this section).

Offers of compromise will be processed pursuant to DSAM 7000.1, chapter 12, section V, paragraph 120502.

(v) Where payment in full is not received after reasonable efforts have been made to collect the claim administratively, Counsel will refer the case directly to the U.S. Attorney unless:

(a) The amount of the claim exceeds $10,000, in which event the case will be referred to Counsel, DLA.

(b) The amount of the debt is less than $250; or the record clearly shows that the debtor is unable to pay; or the debtor cannot be located; in which event the file may be closed and the debt treated as an uncollectable which does not have to be referred to the General Accounting Office.

(2) If, at any stage of the processing of a claim under this paragraph (d), a claim is filed against the Government arising out of the same incident, or it becomes apparent that one will be filed, the claim under this paragraph (d) will be treated as a counterclaim, and included under the report filed in accordance with the applicable paragraph of this part 1280.

(e) Claims involving GSA motor pool system vehicles. (1) Where a motor pool system vehicle issued to a DLA activity is involved in an accident giving rise to a claim under the Federal Tort Claims Act, the claim will be handled pursuant to paragraph (c) of this section.

(2) In the event of damage to a motor pool system vehicle which is not due to the fault of the operator, Counsel receiving the report will submit the report to GSA’s Regional Counsel for the region that issued the vehicle pursuant to the Federal Property Management Regulation, §101–39.805. Damages to motor pool system vehicles caused by the negligence of vehicle operator employed by DLA or caused by the negligence or misconduct of any other officer or employee of DLA are reimbursed to General Services Administration (GSA). Determination affixing responsibility will be made by the Counsel to which the report is referred, after considering the views of GSA.

(f) Reporting legal proceedings. (1) All process and pleadings served on any personnel or activity of DLA, and related to a claim covered by this part
1280 or involving an incident which may give rise to a claim covered by this part 1280, together with other immediately available data concerning the commencement of legal proceedings, will be promptly referred to Counsel for the activity involved, or, if the activity has no Counsel, to the next higher echelon having such a position.

(2) Any Military Service member or civilian employee of DLA (or his personal representative) against whom a domestic civil action or proceeding is brought for damage to property, or for personal injury or death, on account of his operation of a motor vehicle (Government- or privately-owned) in the scope of his employment (28 U.S.C. 2679) will:

(i) Upon receipt of process and pleadings or any other information regarding the commencement of such action or proceeding, immediately inform the Head of his activity and Counsel as specified in paragraph (f)(1) of this section.

(ii) Promptly deliver all process and pleadings served upon him, or an attested true copy thereof, to Counsel.

(3) Upon receipt of information or process and pleadings pursuant to paragraph (f)(1) or (2) of this section, Counsel will promptly prepare and process reports in accordance with the appropriate portions of AR 27–40 except that:

(i) If the incident giving rise to the litigation was occasioned by an act or omission of a member of the Navy or Marine Corps, or a member of the Air Force, information and reports required to be furnished to The Judge Advocate General of the Army will be furnished instead to The Judge Advocate General of the Navy and Air Force respectively.

(ii) If the litigation is under the Federal Tort Claims Act and no administrative claim has been filed, Counsel will immediately advise the U.S. Attorney and furnish him a report of all information the activity has with respect to the claim and an affidavit by the Claims Investigating Officer to the effect that no administrative claim has been filed. Two copies of the foregoing will be provided to the appropriate Military Service Judge Advocate General. If an administrative claim has been filed and has been referred to a Military Service, a copy of the process and pleadings and any information not previously furnished will be sent to the appropriate Military Service Judge Advocate General.

### PART 1285—DEFENSE LOGISTICS AGENCY FREEDOM OF INFORMATION ACT PROGRAM

Sec. 1285.1 Purpose and scope.
1285.2 Policy.
1285.3 Definitions.
1285.4 Responsibilities.
1285.5 Procedures.
1285.6 Fees and fee waivers.
1285.7 Reports.

APPENDIX A TO PART 1285—GAINING ACCESS TO DLA RECORDS

AUTHORITY: 5 U.S.C. 552.

SOURCE: 56 FR 65423, Dec. 17, 1991, unless otherwise noted.

§ 1285.1 Purpose and scope.

This rule provides policies and procedures for the DLA implementation of DoD 5400.7–R, DoD Freedom of Information Act Program. It applies to HQ DLA and all DLA field activities and takes precedence over all DLA regulations that supplement the FOIA program. A list of mailing addresses for DLA activities is provided at appendix A to this part.

§ 1285.2 Policy.

(a) General. The public has a right to information concerning the activities of its Government. DLA policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DLA record requested by a member of the public who follows rules established herein shall be withheld only when it is exempt from mandatory public disclosure.
Defense Logistics Agency

§ 1285.2

Under the FOIA. In order that the public may have timely information concerning DLA activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

(b) Control system. A request for records that invokes the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this rule. Any request for DLA records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this rule, unless otherwise required by paragraph (m) of this section.

(c) Compliance with the FOIA. DLA personnel are expected to comply with the FOIA and this rule in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DLA FOIA program and to create conditions that will promote public trust. To promote a positive attitude among DLA personnel, each DLA Primary Level Field Activity (PLFA) will establish education and training programs described in part 286, subpart H, of this title. Training materials, including supplements, will be coordinated with DLA–XAM prior to publication or issuance.

(d) Openness with the public. DLA shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated herein, whether or not the Act is invoked.

(e) Avoidance of procedural obstacles. DLA activities shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DLA records promptly. DLA activities shall provide assistance to requesters to help them understand and comply with procedures established by this rule and any rules published by the DLA PLFA’s.

(f) Prompt action on requests. When a member of the public complies with the procedures established in this rule for obtaining DLA records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days unless a delay is authorized. When a DLA activity has a significant number of requests, e.g., 10 or more, the requests shall be processed in order of receipt. However, this does not preclude an activity from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. A DLA activity may expedite action on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of the activity processing the request.

(g) Public domain. Nonexempt records released under the authority of this rule are considered to be in the public domain. Such records may also be made available in reading rooms to facilitate public access. Exempt records released pursuant to this rule or other statutory or regulatory authority, however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this rule apply if the same individual seeks the records in a private or personal capacity.

(h) Creating a record. (1) There is no obligation to create nor compile a record to satisfy an FOIA request. A DLA activity, however, may compile a new record when doing so would result
in a more useful response to the requester or be less burdensome to the activity provided the requester does not object. The cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. Fee assessments shall be in accordance with §1285.6 of this part and part 286, subpart F, of this title.

(2) With respect to electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, DLA activities should apply a standard of reasonableness. In other words, if the capability exists to respond to the request and the effort would be a business-as-usual approach, then the request should be processed. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business-as-usual approach.

(i) Description of the requested record.

(1) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record that enables DLA to locate the record with a reasonable amount of effort. When a DLA activity receives a request that does not reasonably describe the requested record, it shall notify the requester of the defect. The requester may be asked to provide the type of information outlined in paragraph (i)(2) of this section. Activities are not obligated to act on the request until the requester responds to the specificity letter. When practicable, DLA activities shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

(ii) Description of the requested record.

(1) The following guidelines are provided to deal with “fishing expedition” requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, nonrandom search based on the activity’s filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search. The decision of the DLA activity concerning reasonableness of description must be based on knowledge of its files. If the description enables DLA activity personnel to locate the record with reasonable effort, the description is adequate.

(4) The following guidelines deal with requests for personal records. Ordinarily, when only personal identifiers are provided in connection with a request for records concerning the requester, then only records retrievable by personal identifiers need be searched. The search for such records may be conducted under Privacy Act procedures contained in DLAR 5400.21. No record may be denied that is releasable under the FOIA.

(j) Possession and control. A record must exist and be in the possession and control of DLA at the time of the search to be considered subject to this rule and the FOIA. Mere possession of a record does not presume Agency control. Information created or originated by another activity shall be referred to that activity for release determination and direct response to the requester.

(1) Referring requests. A DLA activity having no responsive records to an FOIA request may refer the request to another DLA activity, DoD component,
or Federal agency if, after consultation with such activity, component, or agency, the intended recipient confirms that it has the requested record. In cases where the DLA activity receiving the request has reason to believe that the existence or nonexistence or the record may in itself be classified, that activity shall consult the DoD component having cognizance over the record in question before referring the request. If the DoD component that is consulted determines that the existence or nonexistence of the record is in itself classified, the requester shall be so notified by the DLA activity originally receiving the request, and no referral shall take place. Otherwise, the request shall be referred to the other DoD component, and the requester shall be notified of any such referral. Any DLA activity receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester.

(2) Referring records. (i) Whenever a record or a portion of a record is, after prior consultation, referred to another DLA activity, DoD component, or to a Government agency outside of the DoD for a release determination and direct response, the requester shall be informed of the referral. Referred records shall only be identified to the extent consistent with security requirements.

(ii) A DLA activity shall refer an FOIA request for a classified record that it holds to another DoD component or agency outside the Department of Defense if the record originated in the other DoD component or outside agency or if the classification is derivative. In this situation, provide the record and a release recommendation on the record with the referral action.

(iii) A DLA activity may refer a request for a record that it originated to another DoD component or agency when the record was created for the use of the other DoD component or agency. The DoD component or agency for which the record was created may have an equally valid interest in withholding the record as the DLA activity that created the record. In such situations, provide the record and a release recommendation on the record with the referral action.

(iv) Within DLA, an activity shall ordinarily refer an FOIA request for a record that it holds but that was originated by another activity or that contains substantial information obtained from another activity to that activity for direct response after coordination and obtaining concurrence from the activity. The requester shall then be notified of such referral. DLA activities shall not, in any case, release or deny such records without prior consultation with the other activity.

(3) On-loan documents. A DLA activity shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records that are on loan to DLA for a specific purpose if the records are restricted from further release and so marked. However if, for investigative or intelligence purposes, the outside agency desires anonymity, a DLA activity may only respond directly to the requester after coordination with the outside agency.

(4) General Accounting Office (GAO) documents. On occasion, the DoD receives FOIA requests for GAO documents containing DoD information. Even though the GAO is outside the executive branch and not subject to the FOIA, all FOIA requests from GAO documents containing DoD information received either from the public or on referral from GAO will be processed under the provisions of the FOIA.

(5) Agencies not subject to the FOIA. A DLA activity may refer an FOIA request for any record that originated in an agency outside the DoD or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the DLA activity must respond to the request.

(6) Time to respond. DLA activities that receive referred requests shall answer them in accordance with the time limits established by the FOIA and this rule. Those time limits shall begin to run upon proper receipt of the referral by the PLFA FOIA manager to respond.

(7) Accumulating fees. Requesters receiving the first two hours of search and the first 100 pages of duplication...
without charge (see part 286, subpart F, of this title) are entitled to such only once per request. Consequently, if a DLA activity, after completing its portion of a request, finds it necessary to refer the request to another DLA activity or another DoD component to action their portion of the request, the referring activity shall inform the recipient of the expended amount of search time and duplication cost to date.

(k) Requests for authentication of records. FOIA requests for authentication of records shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function according to DLA Regulation 5105.1.5 This service, however, is in addition to that required under the FOIA and is not included in the FOIA fee schedule. DLA activities may charge for the service at a rate of $5.20 for each authentication.

(1) Records management. FOIA records shall be maintained and disposed of in accordance with DLA Manual 5015.1.4

(m) Relationship between the FOIA and the Privacy Act. Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records. In some instances, they may cite neither Act but will imply one or both Acts. For these reasons, the following guidelines are provided to ensure that requesters receive the greatest amount of access rights under both Acts:

(1) Requesters who seek records about themselves contained in a Privacy Act system of records and who cite or imply the Privacy Act will have their requests processed under the provisions of the Privacy Act, 5 U.S.C. 552a.

(2) Requesters who seek records about themselves which are not contained in a Privacy Act system of records and who cite or imply the Privacy Act, will have their requests processed under the provisions of the FOIA, since they have no access rights under the Privacy Act.

(3) Requesters who seek records about themselves which are contained in a Privacy Act system of records and who cite or imply the FOIA or both Acts will have their requests processed under the time limits of the FOIA and the exemption and fee provisions of the Privacy Act.

(4) Requesters who seek access to Agency records and who cite or imply the Privacy Act, the FOIA, or both will have their requests processed under the FOIA.

(5) Requesters should be advised in final responses why their request was processed under a particular act.

(n) Reading rooms. (1) DLA activities may provide a facility or room where the public may inspect and copy or have copied the so-called "(a)(2)" material (see §1285.3(b) of this part). At those activities where it is impractical to set up a formal reading room, the FOIA manager will arrange for a review of "(a)(2)" material at a suitable time and location. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from "(a)(2)" materials prior to placement in reading rooms. However, in every case, justification for the deletion must be fully explained in writing. The public's right to inspect first and then decide what is to be copied applies only to "(a)(2)" material. Activities may elect to place other documents in their reading room, including so-called "(a)(1)" material (see §1285.3(a) of this part), as a means to provide public access to such documents and allow the public to first inspect them before copying. When appropriate, the cost of copying may be imposed on the person requesting the material in accordance with §1285.6 of this part and part 286, subpart F, of this title.

(2) "(a)(2)" materials index. Each activity maintaining a reading room shall maintain an index of the "(a)(2)" materials that are issued, adopted, or promulgated after 4 July 1967. No "(a)(2)" materials issued, promulgated, or adopted after 4 July 1967 that are not indexed and either made available or published may be relied upon or used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Each index shall be arranged topically or by descriptive words rather than by case name or words rather than by case name or words rather than by case name or words rather than by case name.

3 See Footnote 2 to §1285.2(l)(4).
4 See Footnote 2 to §1285.2(l)(4).
numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for the convenience of the DLA activity. Such materials issued, promulgated, or adopted before 4 July 1967 need not be indexed but must be made available upon request if not exempted under part 286, subpart C, of this title.

(3) DLA publications and PLFA supplements may, at the discretion of the DLA activity, be regarded as “(a)(2)” material and placed in reading rooms subject to the restrictions in paragraph (o)(2) of this section. Otherwise, requests for publications will be handled according to paragraph (o)(1) of this section.

(o) Publications of DLA regulations, manuals, handbooks, and uncontrolled forms. (1) Since most DLA publications are available to the public through the publications distribution sales outlet, the requester may be referred to that outlet.

(2) Requests for DLA publications which are classified, marked “FOR OFFICIAL USE ONLY,” or have limited distribution statements will be referred to the issuing activity for release determination and, if appropriate, formal denial. Such publications will not be placed in reading rooms. However, where a public reading room also serves as an activity’s library, restricted publications may be maintained provided they are appropriately safeguarded and not commingled with other nonsensitive regulations.

(3) For DoD regulations, manuals, directives, handbooks and similar issuances, the FOIA manager may refer the requester to the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161–2171.

(p) Exemptions. The types of records described in part 286, subpart C, of this title may be withheld in whole or in part from disclosure under the FOIA unless otherwise prescribed by law.

(q) Requests for the examination of DLA records. Only those materials described as “(a)(2)” and “(a)(1)” at the discretion of the PLFA head are subject to the examination clause of the FOIA. Such requests will be submitted directly to the appropriate DLA activity listed in appendix A. FOIA managers will inform requesters of the location and time the requested record may be examined. Requesters may be charged for the cost to reproduce copies subject to the guidelines §1285.6 of this part and part 286, subpart F, of this title.

(r) Requests for copies of records. Individuals seeking copies of DLA records should address their FOIA requests to the FOIA manager of the appropriate activity. Addresses and brief descriptions of functions are included in appendix A to this part.

(s) Requests from private parties. The provisions of the FOIA are reserved for persons with private interests as opposed to Federal Governments seeking official information. Requests from private persons will be made in writing and will clearly show all other addressees within the Federal Government to whom the request was also sent. This procedure will reduce processing time requirements and ensure better inter- and intra-agency coordination. DLA activities are under no obligation to establish procedures to receive hand delivered requests. Release for records to individual requesters is considered public release of information, except as provided for in paragraph (g) of this section and §286.13(a) of this title.

(t) Requests from government officials. Requests from Members of Congress for records on behalf for a Congressional Committee, Subcommittee, or either House sitting as a whole will be processed according to DLA Regulation 5400.12.5 Requests from officials of foreign governments which do not invoke the FOIA shall be referred to HQ DLA–I or the appropriate foreign disclosure channel for processing and the requester so notified. Requests invoking the FOIA from the following government officials will be considered the same as any other requested and processed according to this rule:

(1) Officials of State or local governments.

(2) Members of Congress seeking records on behalf of their constituents.

(3) Officials of foreign governments.

(u) Privileged release to U.S. Government officials. (1) Records determined to

\footnote{See Footnote 2 to §1285.2(1)(4).}
be exempt from public disclosure under one or more of FOIA exemptions may be authenticated and released to U.S. Government officials requesting them on behalf of Federal governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

(i) To a Committee or Subcommittee of Congress or to either House sitting as a whole in accordance with DoD Directive 5400.4.

(ii) To the Federal courts, whenever ordered by officers of the court as necessary for the proper administration of justice. However, receipt of a subpoena duces tecum does not automatically compel disclosure of DLA records. To qualify for privileged release under this section, the subpoena must be signed by the judge of a court of competent jurisdiction. A subpoena which has been sent through FOIA channels and signed by a litigating attorney, a subpoena service agent, or an official of a state or local court will be treated as any other FOIA request and subject to the exemptions in part 286 subpart C, of this title. Consult with Counsel before acting on such subpoenas.

(iii) To other Federal Agencies, both executive and administrative, as determined by the DLA Director or designee.

(2) Disclosure under these privileged release circumstances does not set a precedent for disclosure to the general public under the FOIA.

(3) DLA activities shall inform officials receiving records under the provisions of this paragraph that those records are exempt from public release under the FOIA and are privileged. DLA activities will also advise officials of any special handling instructions. See part 286, subpart D, of this title for marking requirements under privileged release circumstances.

§1285.3 Definitions.

The following terms and meanings shall be applicable:

(a) “(a)(1) material”. Material described in 5 U.S.C. 552(a)(1) consisting of descriptions of central and field organizations and, to the extent that they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

(b) “(a)(2) material”. Material described in 5 U.S.C. 552(a)(2) encompassing:

(1) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications.

(2) Statements of policy and interpretations that have been adopted by the agency and are not published in the FEDERAL REGISTER.

(3) Administrative staff manuals and instructions, or portions thereof, that establish DLA policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties or to instructions relating only to the internal management of the DLA activities. Examples of manuals and instructions not normally made available include but are not limited to the following:

(i) Those issued for audit, investigation, and inspection purposes or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(ii) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

(c) Administrative appeal. A request made under the FOIA by a member of the general public asking the appellate authority to reverse an initial denial authority’s decision to withhold all or part of a requested record, to review a “no record found” determination, to reverse a decision to deny a request for waiver or reduction of fees, or to review a category determination for fee assessment purposes.

(d) Agency record. (1) The products of data compilation, such as all books, papers, maps and photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States.
Defense Logistics Agency

§ 1285.3

States Government under Federal law in connection with the transaction of public business and in DLA’s possession and control at the time the FOIA request is made.

(2) The following are not included within the definition of the word “record”:

(i) Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value or value as evidence.

(ii) Administrative tools by which records are created, stored, and retrieved, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of a DLA activity. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium, are not agency records. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software.) Exceptions to this position are outlined in paragraph (d)(3) of this section.

(iii) Anything that is not a tangible or documentary record, such as an individual’s memory or oral communication.

(iv) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee and not distributed to other agency employees for their official use.

(v) Information stored within a computer for which there is no existing computer program for retrieval of the requested information.

(3) In some instances, computer software may have to be treated as an agency record and processed under the FOIA. These situations are rare and shall be treated on a case-by-case basis. Examples of when computer software may have to be treated as an agency record are:

(i) When the data is embedded within the software and cannot be extracted without the software. In this situation, both the data and the software must be reviewed for release or denial under the FOIA.

(ii) Where the software itself reveals information about organizations, policies, functions, decisions, or procedures of a DLA activity, such as computer models used to forecast budget outlays, calculate retirement system costs, or optimization models on travel costs.

(iii) See part 286, subpart C, of this title for guidance on release determinations of computer software.

(4) A record must exist and be in the possession and control of DLA at the time of the request to be considered subject to this rule and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

(5) If unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials are available to the public through an established distribution system with or without charge, the provisions of 5 U.S.C. 552(a)(3) normally do not apply, and requests for such need not be processed under the FOIA. Normally, documents disclosed to the public by publication in the FEDERAL REGISTER also require no processing under the FOIA. In such cases, DLA activities should direct the requester to the appropriate source to obtain the record.

(e) Appellate authority. The Director, DLA, or his designee, except for fee waivers and category determinations. The appellate authority for such appeals is the Staff Director, Office of Administration, HQ DLA.

(f) DLA activity. An element of DLA authorized to receive and act independently on FOIA requests. A DLA activity has its own FOIA manager, initial denial authority, and office of counsel.

(g) Electronic data. Those records and information which are created, stored, and retrievable by electronic means. This does not include computer software, which is the tool by which to create, store, or retrieve electronic data. See paragraphs (d)(2)(ii) and (d)(3) of this section for a discussion of computer software.

(h) FOIA request. A written request for records made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from the law, that either explicitly or implicitly invokes the FOIA, DoD 5400.7-R, DLAR 5400.14,
§ 1285.4 Responsibilities.

(a) The Staff Director, Administration, HQ DLA–X: (1) Has overall responsibility for establishment and implementation of the DLA FOIA program, providing guidance and instructions to PLFA’s and PSE’s. (2) Designates a FOIA manager to administer the DLA FOIA program. (3) Serves as the point of contact for referring members of the public to the proper DLA source for Agency records. (4) Serves as appellate authority on fee waivers and category determinations. (5) Serve as initial denial authority for record denials where more than one PSE is involved or where a PSE has made a determination that the requested record cannot be found. (6) Submits required reports to the Office of the Assistant Secretary of Defense, Public Affairs. (7) Collects and deposits fees for FOIA services performed at HQ DLA and DASC.

(b) The General counsel, HQ DLA–G: (1) Provides legal advice and assistance to HQ DLA PSE’s and, where appropriate, PLFA’s in determining decisions to withhold records. (2) Processes appeals to the Director, DLA, of denials to provide records or “no record” determinations. (3) Coordinates denial actions with Office of the General Counsel, DoD, and the Department of Justice, as appropriate. (4) Ensures that case files of FOIA appeals are maintained for 6 years after final agency decision.

(c) The Staff Director, Office of Public Affairs, HQ DLA–B, serves as a coordinating office for the release of information to the news media where potential for controversy exists.

(d) The Staff Director, Office of Congressional Affairs, HQ DLA–Y, serves as a coordinating office on final responses to FOIA requests from members of the Congress.

(e) The heads of the DLA principal staff elements (PSE’s): (1) Appoint an individual to serve as FOIA monitor. Letters of appointment will be forwarded to DLA–XAM. (2) Forward to DLA–XAM any FOIA request received directly from the public so that the request may be administratively controlled. (3) Ensures that provisions of this regulation are followed in processing requests for records from the public.
(4) Coordinate requests with other
HQ DLA staff elements to the extent
considered necessary.
(5) Coordinate any proposed denial
with the General Counsel.
(6) Serve as initial denial authority.
(7) Ensure that FOIA case files of de-
nials are maintained for 6 years and
that full releases are maintained for 2
years.
(8) Make initial determinations to re-
lease records or designate individuals
to make such determinations.

(f) The PSE FOIA monitors: (1) Proces-
and control all FOIA requests received
from DLA–XAM.
(2) Make sure established suspenses
are met.
(3) Request extensions of time from
DLA–XAM when necessary and within
the limits of §1285.5(j) of this part.
(4) Gather cost estimates when re-
quested.
(5) Ensure costs for processing each
Freedom of Information Act request
are properly recorded.
(6) Coordinate proposed full and par-
tial denials with DLA–XAM prior to
signature by the PSE director. For-
ward a copy of the final response and
cost information to DLA–XAM.

(g) The heads of DLA primary level
field activities (PLFA’s): (1) Designate a
FOIA manager to administer the DLA
FOIA program within the PLFA. For-
ward the name, address, and telephone
number of the manager to DLA–XAM.
(2) Ensure that the provisions of this
regulation are followed in processing
requests for records from members of
the public.
(3) Provide facilities where members
of the public may examine and copy
the following documents:
   (i) DLAH 5805.17, DLA Organization
       Directory.
   (ii) DLAH 5025.18, DLA Index of Pub-
       lications.
   (iii) DLAM 5015.1, Files Maintenance
       and Disposition.
   (iv) Copies of local directories or in-
       dexes.
   (v) Any other available “(a)(1)” or
       “(a)(2)” material.

(h) Freedom of Information Act man-
gers at all levels: (1) Establish pro-
cedures to receive, control, process, and
screen FOIA requests. To provide for
rapid retrieval of information, FOIA
managers will maintain a central log
of all incoming FOIA requests.
(2) Review requests to determine if
they meet the requirements of 5 U.S.C.
552. Determine category of the re-
quester before assigning the request for
search. Provide instructions to the
searching office on fees and time limits
for response.
(3) Consult with requesters, where
necessary, to determine requester cat-
gory and to resolve fee issues.
(4) Establish training and education
program for those personnel who may
be involved in responding to FOIA re-
quests.
(5) Approve requests for formal ex-
tensions of time and notify requesters
in writing of the extension.
(6) Grant or deny requests for fee
waivers or requester category deter-
minations and provide DLA–XAM with
a copy of each such denial.
(7) Establish procedures to ensure
that §1285.5(1) of this part regarding
consultation with submitters of infor-
mation is complied with.
§ 1285.5 Procedures.

(a) FOIA channels. If DLA personnel receive a FOIA request directly from the public that has not been logged in and processed through the FOIA office, they will immediately forward it to the local FOIA manager.

(b) Central log system. Each FOIA manager will maintain a central log of FOIA requests received within the activity to ensure compliance with the time limits and accurate cost accounting, fee assessment, and reporting.

(c) Time limit. FOIA requests must be responded to within 10 business days after proper receipt, except in unusual circumstances outlined in paragraph (j) of this section. A request is considered properly received on the date the FOIA manager receives it provided the request has been reasonably described and the requester has either agreed to pay assessable fees or has provided sufficient justification for a fee waiver.

(d) Screening requests. (1) Before assigning a request for search, the FOIA manager will screen the request for defects in the description, the requester category, and the issue of fees. FOIA managers will notify requesters of any such defects and, wherever possible, offer assistance to help remedy the defects. If the FOIA manager must consult with the requester on any of the following issues, then the request is not considered to be properly received and the 10-day time limit does not begin or resume until the requester has satisfactorily addressed the issue.

(i) Payments in arrears. If a requester has failed to pay fees for a previous request, then the FOIA manager need not process the current request until the requester pays the delinquent amount. In such situations, the FOIA manager will notify the requester of the defect and provide an opportunity to forward payment along with any assessable interest. At that time, the FOIA manager may, at his or her discretion, demand that the requester also pay an estimated fee for the current request.

(ii) Faulty description. If the request is not reasonably described, the FOIA manager will notify the requester of the defect and advise that a search cannot be initiated without more specific information. In making such determinations, FOIA managers may consult with offices of primary interest to determine the details that are needed to conduct a search. See also paragraph (f)(2) of this section and §1285.2(i) of this part.

(iii) Requester category and fees. The FOIA manager will analyze the request to determine the category of the requester. If the category of the requester is different than that claimed by the requester, the FOIA manager will:

(A) Notify the requester that he or she should provide additional justification to warrant the category claimed and that a search for responsive records will not be initiated until agreement has been attained relative
to the category of the requester. Absent further category justification from the requester and within a reasonable period of time (i.e., 30 calendar days), the FOIA manager shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights.

(B) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the FOIA manager. Requesters must submit a fee declaration appropriate for the following categories:

(1) Commercial. Requesters must indicate a willingness to pay all search, review, and duplication costs.

(2) Educational or noncommercial scientific institution or news media. Requesters must indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(3) All others. Requesters must indicate a willingness to pay assessable search and duplication costs if more than two hours of search effort or 100 pages of records are desired.

(iv) Justification for fee waivers. If the requester has asked for a fee waiver but failed to provide a justification, FOIA managers will ask requesters to address the fee waiver criteria in part 286, subpart F, of this title before further processing the request. FOIA managers are reminded that with some types of records, a final decision cannot be made on waiver until after the records have been surfaced, reviewed, and the public benefit and previous public availability assessed.

(2) In cases where there is disagreement on the category of the requester or there is lack of justification for fee waiver, the FOIA manager may process the request without further contacting the requester if he or she believes it can be processed within the automatic $15 waiver limit.

(e) Providing estimates. In the situations described by paragraphs (d)(1)(iii) and (d)(1)(iv) of this section, DLA activities must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among DLA activities and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should actual costs exceed the actual amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester’s agreed amount shall not be charged without the requester’s agreement.

(f) Initial determinations—(1) Reasons for not releasing a record. There are seven reasons for not complying with a request for a record:

(i) The request is transferred to another DLA activity, DOD component, or to another Federal agency.

(ii) The DLA activity determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record. Responding officials will advise requesters of the right to appeal such determinations. See paragraph (i)(5) of this section for details on processing “no record” responses.

(iii) A record has not been described with sufficient particularity to enable the DLA activity to locate it by conducting a reasonable search.

(iv) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this rule.
(v) The request is withdrawn by the requester.
(vi) The information requested is not a record within the meaning of the FOIA and this rule.
(vii) The record is denied in accordance with procedures set forth in the FOIA and this rule.

(2) Reasonably segregable portions. Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not reasonable to segregate portions of the record for release.

(h) Preparing documents for public release—(1) Material containing For Official Use Only marks. When a determination has been made that a FOUO document may be fully released to a requester under any public information program, the FOUO markings will be removed from the requester’s copy prior to release. In cases where a person seeks access to his or her own record and the record is marked FOUO to protect that person’s personal or proprietary interests, the FOUO markings will be deleted from the requester’s copy prior to release. In cases where a person seeks access to his or her own record and the record is marked FOUO to protect that person’s personal or proprietary interests, the FOUO markings will be deleted from the requester’s copy prior to release. In cases where a person seeks access to his or her own record and the record is marked FOUO to protect that person’s personal or proprietary interests, the FOUO markings will be deleted from the requester’s copy prior to release.

(2) Material containing classification markings. The procedures in paragraph (h)(1) of this section apply to classified documents with the exception that the classified portions will be cut out rather than blackened, taped, or whitened out. The classification markings on the requester’s copy will be deleted prior to release.

(i) Response to requester—(1) Time limits. Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 working days after receipt of the request by the FOIA manager. When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with procedural requirements.

(2) Acknowledging date of receipt. When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

(3) Billing. When fees are being levied, the response to the requester will contain a billing paragraph. Responding officials will advise requesters to make checks or money orders payable to the United States Treasury and forward them to the FOIA manager of the FLFA that incurred the expense. FOIA managers will notify DLA–XAM of names and addresses of requesters who have failed to pay after a second billing has been mailed and 30 days have elapsed without payment.

(4) Full and partial denials. (i) When a request for a record is denied in whole or in part on the basis of one or more of the exemptions in part 286, subpart C, of this title the initial denial authority shall inform the requester in writing and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemption(s) on which the denial is based. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable Executive Order criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to the Director, DLA.

(ii) FOIA managers shall forward a copy of each letter of denial to DLA–XAM, Cameron Station, Alexandria,
Defense Logistics Agency

§ 1285.5

Virginia 22304–6100. Do not include attachments, the incoming request, or any backup material.

(5) Providing “no record” responses. (i) If no documents can be located in response to a FOIA request, the initial denial authority will so advise the requester. Requesters will also be advised that, if they consider the response to be adverse, they may file an appeal within 60 calendar days from the date of the response. Requesters are to be advised to address appeals to the local FOIA manager and include the case number and reasons why they believe the DLA activity should have records on the subject matter.

(ii) Before a formal “no record” response is issued, OPI will verify that the requester has adequately described the record. If additional details will aid the search, then the requester will be asked to provide those details. See paragraph (d)(1)(ii) of this section and §1285.2(i) of this part for procedures for resolving inadequate descriptions.

(iii) In cases where the requested record has been destroyed, the initial denial authority will confirm that the record was retained for the period authorized in DLAM 5015.1 before issuing a formal response. In responding to requesters in these cases, advise the requester that the records were properly destroyed according to Agency rules for record disposition and give the right to appeal as outlined in paragraph (i)(5)(i) of this section. However, do not ask the requester to provide reasons why the activity should have the records.

(iv) Upon receipt of an appeal, the FOIA manager will direct that a second search be conducted using any information supplied by the requester. If the second search produces no documents, the appeal will be forwarded to HQ DLA–G, Cameron Station, Alexandria, Virginia 22304–6100, along with a copy of the case file. The FOIA manager will include the cost information and an explanation of the method of search and the types of offices searched. In cases where the “no record” response was issued because the records have been destroyed, the FOIA manager will verify that the records were destroyed as provided for in DLAM 5015.1 and provide a statement to that effect.

(v) FOIA managers will ensure that a copy of each “no record” response letter is forwarded to DLA–XAM, Cameron Station, Alexandria, Virginia 22304–6100. Do not include attachments, the incoming request, or any backup material.

(6) Coordination. OPI’s will ensure that the proposed response is fully coordinated with offices having an interest in the request. Proposed responses to FOIA requests from members of the Congress will be coordinated with DLA–Y or the local Congressional Affairs focal point.

(j) Extensions of time—(1) Formal extensions. In unusual circumstances, when additional time is needed to respond, the FOIA manager will acknowledge the request in writing within the 10-day period, describe the circumstances requiring the delay, and indicate the anticipated date for substantive response that may not exceed 10 additional working days. Such extensions will be approved on a case-by-case basis. In these unusual cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester with a request that he agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. Since the requester still retains the right to treat this delay as a de facto denial with full administrative remedies, such extensions should be issued only when essential. The unusual circumstances that may be cited to justify delay are:

(i) Location. The requested record is located in whole or in part at places other than the office processing the request.

(ii) Volume. The request requires the collection and evaluation of a substantial number of records.

(iii) Consultation. Consultation is required with other DoD components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part.


(2) Informal extensions. Where practical and expedient, the FOIA manager or official designated to respond may negotiate with the requester and arrange for an informal extension. Such extensions may be appropriate in instances where the records have to be ordered from a record repository; where the record has been sent out for commercial printing and is not expected back before the 10-day time has elapsed; and similar circumstances.

(k) Misdirected requests. Misdirected requests shall be forwarded promptly to the FOIA manager of the DLA activity, DoD component, or Federal agency with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the FOIA manager of the FLFA that controls the records requested.

(i) Records of contractors and other non-U.S. government sources. (1) Executive Order 12600 of 23 June 1987 (52 FR 23781) establishes predisclosure notification procedures for confidential commercial information. When a request is received for a record that was obtained from a contractor or other non-U.S. Government source or for a record containing information clearly identified as having been provided by a contractor or other non-U.S. Government source, the source of the record or information (also known as “the submitter” for matters pertaining to proprietary data under 5 U.S.C. 552(b)(4)) (see §286.13(a)(4) of this title) shall be notified promptly of that request and afforded reasonable time (e.g., 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. The following procedures will be followed:

(ii) When a substantial issue has been raised, the DLA activity may seek additional information from the source and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved.

(m) File of initial denials. Copies of all initial denials shall be maintained by each DLA activity in a form suitable
for rapid retrieval, periodic statistical compilation, and management evaluation.

(n) Appeals—(1) General—(i) Appeals to record denials. Requesters denied access to records under the provisions of part 286, subpart C, of this title may appeal such determinations to the Director, DLA. The appeal should be accompanied by a copy of the letter denying the initial request and contain the basis for disagreement with the initial refusal.

(ii) Appeals to a “no record” finding. Requesters have the right to appeal any “no record” finding to the FOIA manager of the activity that issued the finding. The letter of appeal should include the case number and, where appropriate, reasons why the requester believes the activity should have records on the subject matter. Using the information supplied by the requester, the FOIA manager will direct that a second search be conducted. If the second search produces no documents, the appeal will be forwarded to HQ DLA–G, Cameron Station, Alexandria, Virginia 22304–6100, along with a copy of the case file. The FOIA manager will include information on the amount of time spent on the request and provide an explanation of the method of search and the types of offices searched.

(iii) Appeals to fee waiver denials or requester category decisions. Requesters may appeal an initial determination regarding placement in a certain fee assessment category or waiver or re- duction of fees when disclosure serves the public interest. Requesters will include a basis for disagreement and submit the appeal to the Staff Director, Office of Administration (Attn: DLA–XAM), Cameron Station, Alexandria, Virginia 22304–6100.

(2) Time limits—(i) Time limits to file appeals. The requester shall be advised to file an appeal so that it reaches the appellate authority no later than 20 calendar days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation. In cases where the requester is provided several incremental determinations for a single request, the

§ 1285.5

for the appeal shall not begin until the requester receives the last such notification.

(ii) Time of receipt. An FOIA appeal is considered received by DLA when it reaches DLA–G or, in the case of fee or requester category appeals, when it reaches DLA–XAM. Misdirected appeals should be referred expeditiously to the appropriate office.

(iii) Time limits to decide appeals. Final determinations on appeals normally shall be made within 20 working days after receipt.

(iv) Delay in responding to an appeal. (A) If additional time is needed due to the unusual circumstances described in paragraph (j) of this section, the final decision may be delayed for the number of working days (not to exceed 10), that were not used as additional time for responding to the initial request.

(B) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in paragraph (j) of this section, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. DLA shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

(C) When the appellate authority or the authority’s representative must consult with the requester over an issue not previously settled, such as agreement to pay fees for documents previously denied, then any delays on the requester’s part will not count toward the 20-day time limit.

(3) Response to the requester. (i) When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of
§ 1285.6 Fees and fee waivers.

The rules and rates published in part 286, subpart F of this title apply to this rule. For purposes of computer search, DLA has established rates of $20 per minute of central processing unit time for mainframe computer use and $20 per hour of wall clock time for personal computer use. These rates represent average operational costs and may be used when the actual computer cost cannot be determined.

§ 1285.7 Reports.

The reporting requirement outlined in this rule is assigned Report Control Symbol DD–PA(A)1365 and will be prepared according to part 286, subpart G, of this title.

APPENDIX A TO PART 1285—GAINING ACCESS TO DLA RECORDS

I. General

The Defense Logistics Agency was established pursuant to authority vested in the Secretary of Defense and is an agency of DoD under the direction, authority, and control of the Assistant Secretary of Defense (Production and Logistics) and is subject to DoD policies, directives, and instructions. DLA is made up of a headquarters and 22 Primary Level Field Activities (PLFAs). DLA does not have a central repository for its records.
**Defense Logistics Agency**

FOIA requests, therefore, should be addressed to the FOIA Office of the DLA activity that has custody of the record desired. In answering inquiries regarding FOIA requests, DLA personnel will assist requesters in determining the correct DLA activity to address their requests. If there is uncertainty as to the ownership of the DLA record desired, the requester may be referred to the FOIA manager of the DLA activity most likely to have the record or to HQ DLA-XAM.

**II. Description of DLA’s Central and Field Organization**

A. HQ Defense Logistics Agency, Cameron Station, Alexandria, Virginia 22304-6100

The headquarters is organized by broad functional area and includes the following offices and directorates:

- Office of the Director.
- Executive Director, Contracting.
- Executive Director, Supply Operations.
- Executive Director, Technical and Logistics Services.
- Executive Director, Contract Administration.
- Executive Director, Quality Assurance.
- Executive Director, Program and Technical Support.
  - Staff Director, Congressional Affairs.
  - Staff Director, Public Affairs.
  - Staff Director, Command Security.
  - Staff Director, Administration.
  - Staff Director, Civilian Personnel.
  - Staff Director, Contracting Integrity.
  - Staff Director, Military Personnel.
  - Staff Director, Small and Disadvantaged Business Utilization.
  - Staff Director, Installation Services and Environmental Protection.
  - Assistant Director, Information Systems and Technology.
  - Assistant Director, Policy and Plans.
  - General Counsel.
  - Comptroller.

B. The PLFA's.

The 22 PLFA's are organized into six supply centers, four depots, six service centers, and six contract districts.

1. **Supply centers.** The six supply centers are responsible for materiel management of assigned commodities and items of supply relating to food, clothing, textiles, medical, chemical, petroleum, industrial, construction, electronics, and general items of supply. The six supply centers are:
   a. Defense Construction Supply Center (DCSC). Buys and manages construction materials, automotive, and construction equipment components, and many repair parts used by the Military Services and other Federal agencies. Manages items ranging from common commercial items such as lumber and plumbing accessories to complex repair parts for mechanical, construction, and automotive equipment, and for military aircraft, surface ships, submarines, combat vehicles, and missile systems.
   b. Defense Electronics Supply Center (DESC). Responsible for the acquisition, management, and supply of more than one-half million electronic components such as resistors, capacitors, tubes, transformers, microcircuits, and components for various communications and weapons systems.
   c. Defense Fuel Supply Center (DFSC). Buys and manages industrial items such as bearings, ferrous and nonferrous metals, electrical wire, gasket material, and certain mineral ores and precious metals.
   d. Defense Industrial Supply Center (DISC). Buys and manages food, clothing, and medical supplies for all the armed services, some Federal agencies and authorized foreign governments.
   e. Defense Personnel Support Center (DPSC). Buys and manages industrial items such as electrical hardware, materials handling equipment, kitchen and laundry equipment, woodworking and metalworking machines, photographic supplies, and precision measuring instruments.
   f. Defense General Supply Center (DGSC). Buys and manages such categories of materials as electrical hardware, materials handling equipment, kitchen and laundry equipment, woodworking and metalworking machines, photographic supplies, and precision measuring instruments.

2. **Depots.** DLA depots are responsible for the receipt, storage, and distribution of DLA-managed materiel. The principal depots are:
   a. Defense Distribution Region West (DDRW).
   b. Defense Distribution Region East (DDRE).
   d. Defense Depot Ogden (DDOU).

3. **Service centers.** DLA operates six service centers which provide technical and logistics services. The service centers are:
   a. Defense Logistics Services Center (DLSC). Responsible for maintenance of the Federal Supply Catalog System, including the development and dissemination of cataloging and item intelligence data to the Military Departments and other authorized customers.
   b. Defense Reutilization and Marketing Service (DRMS). The central clearinghouse for the reutilization, donation, sale, or disposal of DoD-owned excess property, including scrap and waste.
   c. Defense Industrial Plant Equipment Center (DIPEC). Manages the reserve of DoD-owned industrial plant equipment. The center repairs, rebuilds, and updates equipment to avoid new procurement costs.
   d. DLA Administrative Support Center (DASC). Provides general administrative support to designated DLA activities.
   e. Defense National Stockpile Center (DNSC). Maintains the national reserve of...
strategic materials stored for use in event of war or other national emergency.

f. DLA Systems Automation Center (DSAC). Develops and maintains DLA’s automated and computerized systems.

4. Contract districts. Six districts, each responsible for contracts covering a multistate or specialized area, administer materiel contracts after they are awarded by the military services, defense agencies, some civil agencies, and certain foreign governments. The districts are:

Defense Contract Management District Northeast (DCMNDN),
Defense Contract Management District Mid Atlantic (DCMDMA),
Defense Contract Management District North Central (DCMDC),
Defense Contract Management District South (DCMDS),
Defense Contract Management District West (DCMDW),

III. Requester Requirements

A. Addressing Requests

Address requests to the DLA PLFA most likely to hold the records (see paragraph V of this appendix for mailing addresses of FOIA managers). If the PLFA is indeterminable, address requests to HQ DLA-XAM for proper routing. Requests must be in writing.

B. Description of Records

Provide a reasonable description of the documents you are seeking. If you have detailed information which would help reduce the search time involved, please include it in your request. If you have a document which references the DLA record you seek, include a copy of that document.

C. Fees and fee waivers

State your willingness to pay fees above the $15 automatic waiver or provide a justification for waiver of all or part of the costs. Waiver requests must address with specificity each of the fee waiver elements in part 286, subpart F, of this title.

IV. Availability of DLA Publications

Unrestricted DLA regulations, manuals, and handbooks may be purchased from the DLA publications sales outlet, DLA Handbook 5225.1. Defense Logistics Agency Index of Publications, is published quarterly and may be used to help you identify publications of interest to you. Orders for this and other nonrestricted publications may be placed through DASC-PD, Cameron Station, Alexandria, VA 22304-6130. That office will advise you of cost before completing your order.
Defense Logistics Agency


PART 1288—REGISTRATION OF PRIVATELY OWNED MOTOR VEHICLES

§ 1288.1 Purpose and scope.
To prescribe policy and procedures for the registration, inspection, and marking of privately owned vehicles (POV) on Defense Logistics Agency (DLA) activities. This regulation is applicable to individuals serving in or employed by the Defense Logistics Agency, and to all other individuals subject to motor vehicle registration requirements set forth in this part 1288 and DLAR 5720.1/AR 190–5/OPNAVINST 11200.5B/AFR 125–14/MCO 5110.1B, Military Police Motor Vehicle Traffic Supervision.

§ 1288.2 Policy.
(a) The operation of a POV on a DLA activity constitutes a conditional privilege extended by the Head of the activity. The Heads of DLA primary level field activities (PLFA’s) have the authority to supplement this regulation to implement additional controls and restraints warranted by existing conditions at a PLFA. For example, commanders of depots and supply centers may impose searches of vehicles as warranted to reduce pilferage, and protect Government interests.
(b) POV’s permanently registered for operation on a DLA activity will be identified by use of one of the decals prescribed in this part 1288 (appendices A and B).
(c) The DLA vehicle decal will be valid for a period of 3 years from the year and month of issue.
(d) Activities will use DLA Form 1454, Vehicle Registration/Driver Record, as the basic vehicle registration and driver record.
(e) DLA tenant activities will comply with host installation policies and procedures for registering POV’s.

§ 1288.3 Definitions.
Terms used in this part 1288 are contained in DLAR 5720.1.

§ 1288.4 Responsibilities.
(a) HQ DLA. (1) The command security officer, DLA (DLA–T) will provide staff supervision and assistance to DLA activities on matters concerning this part 1288.
(2) Procure, issue, and control inspector general (IG) vehicle decals in accordance with § 1288.6 of this part, with the exception of the 3-year validation requirement. (Vehicles bearing such decals will be permitted entry to all DLA activities.)
(b) The heads of DLA primary level field activities will:
(1) Insure that personnel adhere to the provisions of this part 1288 when implemented.
(2) Procure, issue, and control vehicle decals in accordance with this DLAR.
(3) Periodically inform personnel of the requirements of this DLAR, DLAR 5720.1, and local requirements concerning the motor vehicle registration program.
(4) Activity/tenant employees are not considered visitors and will not be issued visitor passes. Employees operating loaner/rental vehicles may be temporarily registered in accordance with DLAR 5720.1, paragraph 3–2c.

§ 1288.5 Procedures.
(a) Issuance of DLA POV decal and 3-year validation sticker. (1) One decal will be affixed to the left front bumper (operator’s side) of a four-wheel vehicle. An additional decal may be placed on the rear bumper of the vehicle. For vehicles not equipped with bumpers and two-wheeled vehicles, the placement of decals will be determined locally.
§ 1288.6 Forms and reports.

(a) DLA form 1454 will be prepared at the time of initial registration of the vehicle and will remain valid for as long as the registrant retains ownership of the vehicle and complies with registration requirements. A Privacy Act statement for use in conjunction with DLA form 1454 will be made available to the individual supplying data on the form.

(b) Data blocks 3, 4, and 14 on DLA form 1454 will be entered in ink; remaining entries will be in pencil.

(c) One copy of DLA form 1454 will also serve as the driver record of the registrant.

(d) Upon permanent change of station of the military service registrant, activity clearance procedures will provide for DLA form 1454 to be included in the registrant’s military personnel folder for transmittal to the gaining activity. DLA forms 1454 for transferring civilian personnel will be forwarded to the security officer of the gaining activity.

(e) The DLA form 1454 for military personnel being discharged or separated will be forwarded to the appropriate personnel office for inclusion in the records folder for subsequent retirement.

APPENDIX A TO PART 1288—DECAL SPECIFICATIONS

A. The design format of the standard DLA decal to be used for identifying POVs permanently registered for operation on DLA activities is shown in enclosure 2. The IG decal will be of the same design and color as that prescribed for the standard DLA decal except that the registration letter/number scheme will consist of the letters “IG” followed by a number. Standard DLA decals may be procured from the U.S. Disciplinary Barracks, USDB, Fort Leavenworth, Kans. 66027, which is an approved Federal printing plant. Existing stocks of decals with “DSA” inscribed will be used until exhausted.

B. The following specifications apply to the separate elements of the decal:

1. Basic construction. Decal will meet Federal Specification L-5300A, 7 Jan 70, type I, class 4, reflectivity 1.

2. Colors:
   a. Background—Silver.
   b. DLA emblem, field activity name, and scroll, the letters DLA, and year/date—Black.
   c. Registration letters/numbers:
      (1) Mandatory categories:
         (a) Officer personnel—Blue.
         (b) Enlisted personnel—Red.
         (c) Civilian employees—Green.
Defense Logistics Agency

(2) The following additional colors will be used to categorize registration further:
(a) Noncommissioned officer personnel—Brown.
(b) Civilian employees (nonappropriated fund), Red Cross, concessionaires, contractors, and other similar categories—Black.
3. Registration letters/numbers. For each registration category a combination of letters and number(s) separated by the DLA emblem will be used. The number-letter system will progress from AA–1 to AA–2, and so on, to AA–99, from AB–1 to AB–99, eventually from AZ–1 to AZ–99, and so on from ZZ–1 to ZZ–99.

4. Dimensions:
   a. Maximum size: 3 inches by 6 inches. For economy a reduced size decal may be used on POV’s to include those with less than four wheels.
   b. Registration letters and numerals: 1¼ to 1½ inches in height.
   c. DLA emblem letters: 1⅛ inches to 1¼ inches in height.
   d. DLA letters: ½ inch to ¾ inch in height.
   e. Activity designation scroll and lettering: See appendix B.

PART 1290—PREPARING AND PROCESSING MINOR OFFENSES AND VIOLATION NOTICES REFERRED TO U.S. DISTRICT COURTS

APPENDIX B—Ticket Sample—A Parking Violation
APPENDIX C—Ticket Sample—A Moving Violation
APPENDIX D—Ticket Sample—A Nontraffic Violation

AUTHORITY: Department of Defense Instruction 6055.4; 18 U.S.C. 13, 3401, and 3402.

1Reference (a) may be purchased from the Commander, U.S. Army AG Publications Center, 2800 Eastern Blvd., Baltimore, MD 21220; reference (b) from the Defense Logistics Agency (DASC–IP), Cameron Station, Alexandria, VA 22314; references (c), (d), and (e) from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.
§ 1290.1 References.
(a) DLAR 5720.1/AR 190–5/OPNAVINST 11290.5B/AFR 125–14/MCO 5110.1B, Motor Vehicle Traffic Supervision.
(b) DLAR 5710.1, Authority of Military Commanders To Issue Security Orders and Regulations for the Protection of Property or Places Under Their Command.
(c) Sections 1, 3401 and 3402, title 18, U.S.C.
(d) Rules of procedures for the Trial of Minor Offenses before United States Magistrates.

§ 1290.2 Purpose and scope.
(a) This part 1290 implements DoD Instruction 6055.4, Department of Defense Traffic Safety Program, and sets forth basic objectives and procedures applicable to implementation of the Federal Magistrate System by DLA. This part 1290 is applicable to HQ DLA, Defense Supply Centers (DSC’s), less Defense Fuel Supply Center and Defense Industrial Supply Center, and to Defense Depots, less Defense Depot Mechanicsburg. DLA activities/personnel tenant on other DoD activities will abide by the requirements of the host.
(b) This part 1290 provides Heads of DLA primary level field activities (PLFAs) with a means of exercising effective control over violators who are not otherwise under their jurisdiction.

§ 1290.3 Policy.
(a) It is the policy of HQ DLA that the Heads of DLA PLFAs will take such steps as are necessary to prevent offenses. Emphasis will be placed on prevention rather than apprehension and prosecution of offenders.
(b) The procedures outlined in this part 1290 may, at the discretion of the Head of the activity concerned, be invoked in lieu of the provisions of the Uniform Code of Military Justice (UCMJ) to deal with minor offenses of a civil nature, other than violations of state traffic laws, committed by military personnel. These procedures may also be invoked to deal with nontraffic minor offenses committed by civilian personnel.

§ 1290.4 Definitions.
For the purpose of this part 1290 the following definitions apply:
This part 1290 supersedes part 1290 April 26, 1972.
(a) Law Enforcement Personnel. Persons authorized by the Head of the PLFA to direct, regulate, control traffic; to make apprehensions or arrests for violations of traffic regulations; or to issue citations or tickets. Personnel so designated will include the Command Security Officer and all other personnel in 080, 083, 085, or 1800 series positions.
(b) Minor Federal Offenses. Those offenses for which the authorized penalty does not exceed imprisonment for a period of 1 year, or a fine of not more than $1000, or both (18 U.S.C. 3401f).
(c) Petty Federal Offenses. Those offenses for which the authorized penalty does not exceed imprisonment for a period of 6 months or a fine of not more than $500, or both (18 U.S.C. 1(3)).
NOTE: A petty offense is a type of minor offense.
(d) Violation Notice. DD Form 1805, Violation Notice, which will be used to refer all petty offenses to the U.S. Magistrate/District Courts for disposition.
NOTE: A complaint, made under oath on forms provided by the magistrate, is the prescribed form for charging minor offenses other than petty offenses.

§ 1290.5 Background.
(a) DoD Instruction 6055.4 requires that all traffic violations occurring on DoD installations be referred to the appropriate United States Magistrate, or State or local system magistrate, in the interest of impartial judicial determination and effective law enforcement. Exceptions will be made only for those rare violations in which military discipline is the paramount consideration, or where the Federal court system having jurisdiction has notified the PLFA commander it will not accept certain offenses for disposition.
(b) Generally, the Federal Magistrate System applies state traffic laws and
appropriate Federal laws to all personnel while on Federal property (section 13, title 18 U.S.C., Assimilative Crimes Act).

§ 1290.6 Significant changes.
This revision incorporates the DoD requirement for referral of traffic violations occurring on military installations to the Federal or local magistrate.

§ 1290.7 Responsibilities.
(a) HQ DLA. (1) The Command Security Officer, DLA (DLA–T) will:
   (i) Exercise staff supervision over the Magistrate system within DLA.
   (ii) Provide guidance and assistance to DLA activities concerning administrative and procedural aspects of this part 1290.
   (2) The Counsel, DLA (DLA–G) will provide guidance and assistance to DLA activities concerning legal aspects of this part 1290.
   (b) The Heads of DLA Primary Level Field Activities will:
      (1) Develop and put into effect the necessary regulatory and supervisory procedures to implement this part 1290.
      (2) Ensure implementing directives authorize law enforcement/security force (080, 083, 085 and 1800 series) personnel to issue DD Form 1805.
      (3) Periodically publish in the PLFA Daily or Weekly Bulletin, a listing of offenses for which mail-in procedures apply, with the amount of the fine for each, and a listing of offenses requiring mandatory appearance of the violator before the U.S. Magistrate. The listings will indicate that they are not necessarily all inclusive and that they are subject to change. A copy of the listings will be provided to the local Union representatives.

§ 1290.8 Procedures.
(a) The U.S. Magistrate Court Provides DLA with:
   (1) The means to process and dispose of certain categories of minor offenses by mail. Under this system, U.S. Magistrate and District Courts will, by local court rule, preset fines for the bulk of petty violations (Federal or Assimilated) and permit persons charged with such violations, who do not contest the charge nor wish to have a court hearing, to pay their fines by using mail-in, preaddressed, postage paid envelopes furnished to them with the violation notice.
   (2) Efficient, minimal commitment of judicial and clerical time by using uniform procedures which centralize the collection of fines, the scheduling of mandatory hearings or hearings where violators request them, and the keeping of violator records.
   (3) A simple but sure method of accounting for fines collected and tickets issued.
   (4) Impartial enforcement of minor offense laws.
(b) Court Appearances—(1) Mandatory Appearances. (i) As required by the Administrative Office of the United States Courts, each District Court will determine, by local court rule, those offenses requiring mandatory appearance of violators. PLFA Counsels will coordinate with local magistrates or district courts and secure a court approved list of offenses requiring mandatory appearance of violators before the local U.S. Magistrate.
   (ii) Mandatory appearance offense categories normally include:
      (A) Indictable offenses.
      (B) Offenses resulting in accidents.
      (C) Operation of motor vehicle while under the influence of intoxicating alcohol or a narcotic or habit producing or mind altering drug, or permitting another person who is under the influence of intoxicating alcohol, or a narcotic or habit producing or mind altering drug to operate a motor vehicle owned by the defendant or in his/her custody or control.
      (D) Reckless driving or speeding.
   (2) Voluntary Appearances—(i) Requested by violators at the time DD Form 1805 is issued. (A) Personnel issuing DD Form 1805 will refer violator for hearings before U.S. Magistrates in each instance where a hearing is requested by the violator.
      (B) Command security officers will provide security force personnel with necessary information to facilitate scheduling violators to appear before U.S. Magistrates. Box B of the DD Form 1805 will be marked by the issuing official for each violator requesting a hearing. Additionally procedures set forth in appendix A will be
accomplished by the official issuing violation notice.
  (ii) Requested by violators by mail. (A) Voluntary appearance procedures are also available for violators who are not present at the time a DD Form 1805 is issued (i.e., parking violations) or who subsequently decide to voluntarily appear before a U.S. Magistrate rather than pay the fine indicated in the DD Form 1805.
  (B) Violators who use the mail-in procedure to voluntarily appear before a U.S. Magistrate must follow the instructions in Box B of the DD Form 1805 (violator copy). The violator will be notified by the clerk of the District Court of the time and place to appear for the scheduled hearing.

§ 1290.9 Forms and reports.

(a) General information on preparation and issue of DD Form 1805. (1) The U.S. Magistrate system is based on use of a four-ply ticket designed to provide legal notice to violators and records required by the court, law enforcement authorities, and, if appropriate, the state motor vehicle departments. The DD Form 1805 is printed on chemically carbonized paper and prenumbered in series for accounting control. Heads of DLA primary level field activities are responsible for maintaining accountability for each ticket issued and stocks on hand.

(2) DLA field activity Counsels will coordinate with the U.S. Magistrate of the judicial district in which the activity is located and maintain the information listed below:
  (i) List of petty offenses for which mail-in procedures are authorized and the amount of the fine for each specific offense. The District Court address will be prestamped on the violator’s copy of the DD Form 1805 by the applicable issuing authority.
  (ii) List of minor offenses requiring mandatory appearance of the violator before the magistrate. The name and location of the magistrate before whom violators will appear. Schedule will be coordinated with nearest Military Service activity and appearance will be conducted jointly whenever possible.

(b) Issue procedures for DD Form 1805.
  (1) Information entered on the DD Form 1805 is dependent upon two considerations:
    (i) The type of violation, i.e., parking, (such as blocking a fire lane) moving traffic violation, or nontraffic offenses.
    (ii) Whether the offense cited requires the mandatory appearance of the violator before a U.S. Magistrate.
  (2) Preparation and disposition of DD Form 1805:
    (i) See illustration in appendix B for petty offenses where the mail-in fine procedures are authorized.
    (A) The amount of the fine for a specific offense must be recorded in the lower right corner of the DD Form 1805. This amount will always be predetermined by the U.S. Magistrate and provided to on duty enforcement personnel by the activity security officer or equivalent authority. When violation notices are issued for an offense (e.g., parking violation) and the offender is absent, all entries concerning the violator will be left blank.
    (B) Disposition of DD Form 1805 will be as follows:
      (1) The fourth copy (envelope) will be issued to the violator or placed on the vehicle of the violator.
      (2) Copies one (white copy), two (yellow copy), and three (pink copy) will be returned to the Security Officer’s office. The Security Officer will forward copies one and two, by letter of transmittal, to the appropriate U.S. District Court.
      (3) Copy three will be filed at the Security Office or equivalent issuing authority. DLA Form 635, Security/Criminal Incident Report, will be annotated with each traffic offense.
    (ii) When DD Form 1805 is used to cite personnel for mail-in type violations, the appropriate supervisor will be provided an information copy of DLA Form 635, Security/Criminal Incident Report, denoting the date, time, place, and type of violation, and the amount of fine assessed.
    (iii) Heads of DLA primary level field activities or their representative will not accept or otherwise collect any fines or keep records of fines paid or not paid. They also will take no action concerning nonpayment delinquencies.
except where warrants are subsequently issued for the violator concerned by the appropriate court authorities.

(iv) See illustrations in appendices C and D for minor offenses requiring the mandatory appearance of violators before the U.S. Magistrate:

(A) Mail-in fine procedures will not apply in mandatory appearance cases. The law enforcement authority issuing a violation notice for an offense requiring mandatory appearance of the violator, will place a check mark in “Box A”, DD Form 1805. The name and location of the U.S. Magistrate before whom the violator must appear will be inserted on the line below “United States District Court” as shown in appendix C. The date and time of the initial appearance will be entered in the space provided in “Box A”. It is the violator’s responsibility to verify the date, time, and place of required court appearances.

(B) Disposition of DD Form 1805 will be as follows:

(1) The fourth copy (envelope) will be issued to the violator.

(2) Copies one (white copy), two (yellow copy), and three (pink copy) will be returned to the Security Officer’s office. The Security Officer will forward copies one and two, by transmittal as soon as possible, to the magistrate before whom the violator is scheduled to appear.

(3) Copy three will be filed in the office of the Security Officer or equivalent issuing authority.

(C) When DD Form 1805 is used to cite personnel for mandatory appearance type offenses, the individual’s supervisor will be provided an information copy of DLA Form 635, denoting the date, time, place, and type of violation, and the date the violator is scheduled to appear before the U.S. Magistrate.

(v) Additional information governing preparation of DD Form 1805 is provided as appendix A.

APPENDICES TO PART 1290

APPENDIX A—PREPARATION GUIDE FOR DD FORM 1805, VIOLATION NOTICE

All violations will require:

Last four digits of the Social Security Number of the Issuing guard/police officer (placed in space marked “Officer No.”). Date of notice (is also violation date unless otherwise shown) and time. Description of violation, including place noted. Violation code number and issuing location code number (as determined by local Magistrate/District Court). Examples are shown at appendices B, C, and D.

In addition to above items

Parking offenses require: Vehicle description (make, color, body type), licensing state, auto license number; and, if violator is present: Driver permit number, driver address, driver’s name (all of above items and); moving traffic offenses require: Birth date and sex, race (if it appears on driver’s permit), height and weight.

Nontraffic offenses require: Statute violated, person’s name, person’s address, birth date, and sex; and, if applicable: Race, height, and weight.

All mailable disposition offenses—amount of fine (collateral).

All mandatory court offenses—Above data, as appropriate, and the place of court (i.e., Magistrate Court Address), the date and time of appearance (if known by officer), and check mark in Box ‘A’.
PART 1292—SECURITY OF DLA ACTIVITIES AND RESOURCES

Sec.
1292.1 Purpose and scope.
1292.2 Policy.
1292.3 Background.
1292.4 Responsibilities.
1292.5 Procedures.

APPENDIX A TO PART 1292—SECTION 21 OF THE INTERNAL SECURITY ACT OF 1950


SOURCE: 46 FR 13216, Feb. 20, 1981, unless otherwise noted.

§ 1292.1 Purpose and scope.

"To establish policy, assign responsibilities, and prescribe procedures for the issuance of security regulations and orders by Heads of DLA activities. This part 1292 implements DoD Directive 5200.8, Security of Military Installations and Resources, and is applicable to HQ DLA, DLA field activities and property/places subject to the jurisdiction or administration of the Defense Logistics Agency.

§ 1292.2 Policy.

(a) Military Heads of DLA field activities are authorized to issue or approve necessary security regulations and orders for the protection of property and places under their jurisdiction/administration. Regulations and orders for the protection of property and personnel of subordinate activities headed by civilians shall be promulgated by the military commander in the chain of command immediately above such subordinate activity.

(b) Regulations and orders for the protection of property and personnel of primary level field activities (PLFAs) headed by civilians, and subordinate activities of such PLFAs which likewise are headed by civilians, shall be promulgated by the Director, DLA/Deputy Director, CAS.

(c) Heads of DLA field activities that are tenants on a military reservation, post, camp, station, installation, base, or Government-owned or leased facility administered by another command or agency are responsible for protection of property and places under their command and may issue security regulations and orders in fulfillment of their responsibility to protect property and places under their jurisdiction and administration. However, separate security regulations and orders should not be issued when the host has issued security regulations and orders that afford protection to the DLA activity.

(d) Detailed physical security and emergency plans developed in conjunction with these security regulations and orders will be as prescribed by DLAM 5710.1, Physical Security Manual, and DLA War and Emergency Support Plan (WESP), part II, Annex A.

§ 1292.3 Background.

Section 21 of the Internal Security Act of 1950 (appendix A) authorizes the Secretary of Defense to designate military commanders to promulgate or approve regulations and orders for the protection of property and places under their command. DoD Directive 5200.8 designates military commanders of Army, Navy, Air Force, and Defense Agency activities as having authority to promulgate regulations and orders pursuant to the Internal Security Act of 1950.

§ 1292.4 Responsibilities.

(a) HQ DLA. (1) The Director, DLA/Deputy Director/Deputy Director, CAS will issue necessary security regulations and orders for PLFAs headed by civilians.

(2) The Command Security Officer, DLA (DLA-T) will:

(i) Provide technical staff guidance on the issuance of security regulations and orders.

(ii) Keep the Director, DLA informed of violations of regulations/orders as reported.

(b) Field Activities. (1) The Heads of Primary Level Field Activities will:

(i) Publish a physical security plan which provides proper and economical use of personnel and equipment to prevent or minimize loss or damage from theft, espionage, sabotage, and other criminal or disruptive activities.

(ii) Report violations of security regulations and orders to HQ DLA, ATTN: DLA-T, in accordance with DLAR 5705.1, Reporting of Security and Criminal Violations.
§ 1292.5

(2) The Military Heads of DLA field activities will issue security regulations and orders as necessary for the protection of places and property under their jurisdiction pursuant to the provisions of this part 1292 and other pertinent directives.

§ 1292.5 Procedures.

(a) Security regulations and orders will be promulgated by any of the following means:

(1) Written directives of the activity Head.

(2) Signs and similar media.

(3) Orally, when required by a contingency/emergency.

(b) Written directives and orders will contain so much of the following statement as is pertinent:

This order (directive, bulletin, etc.) is issued pursuant to section 21, Internal Security Act of 1950, 50 U.S.C. 797, DoD Directive 5200.8, DLAR 5710.1, (directive issued by the Head of a DLA field activity subordinate to HQ DLA).

(c) Signs used as the sole vehicle for issuing a security regulation or order must contain a recitation of the authority under which issued and the title of the authorized official who issued the security regulation or order. DLAM 5710.1, chapter 3, contains instructions on the exact wording of such signs.

(d) Oral orders will include a statement which clearly indicates the authority for issuance similar to the provisions of paragraph (b) of this section.

(e) Written security orders and regulations will be posted in conspicuous and appropriate places to ensure widest dissemination. The posting of a general security regulation/order, or a listing of applicable directives, will suffice provided it cites the authority to issue such directive. The posting of voluminous, individual security regulations and orders will be avoided.

APPENDIX A TO PART 1292—SECTION 21 OF THE INTERNAL SECURITY ACT OF 1950

797. Security regulations and orders; penalty for violation

(a) Whoever willfully shall violate any such regulation or order as, pursuant to lawful authority, shall be or has been promulgated or approved by the Secretary of Defense, or by any military commander designated by the Secretary of Defense, or by the Director of the National Advisory Committee for Aeronautics, for the protection or security of military or naval aircraft, airports, airport facilities, vessels, harbors, ports, piers, waterfront facilities, bases, forts, posts, laboratories, stations, vehicles, equipment, explosives, or other property or places subject to the jurisdiction, administration, or in the custody of the Department of Defense, any Department or agency of which said Department consists, or any officer or employee of said Department or agency, or of the National Advisory Committee for Aeronautics or any officer or employee thereof, relating to fire hazards, fire protection, lighting, machinery, guard service, disrepair, disuse or other unsatisfactory conditions thereon, or the ingress thereto or egress or removal of persons therefrom, or otherwise providing for safeguarding the same against destruction, loss, or injury by accident or by enemy action, sabotage or other subversive actions, shall be guilty of a misdemeanor and upon conviction thereof shall be liable to a fine of not to exceed $5,000 or to imprisonment for not more than one year or both.

(b) Every such regulation or order shall be posted in conspicuous and appropriate places. Sept. 23, 1950, c. 1024, Title I, Par. 21, 64 Stat. 1065.

PART 1293—STANDARDS OF CONDUCT

1293.1 Reference.
1293.2 Purpose and scope.
1293.3 Policy.
1293.4 Definitions.
1293.5 Significant changes.
1293.6 Responsibilities.
1293.7 Procedures.

APPENDIXES TO PART 1293

APPENDIX A—LAWS AFFECTING DLA PERSONNEL

APPENDIX B—CODE OF ETHICS FOR GOVERNMENT SERVICE—Pub. L. 96–303

APPENDIX C—ADDITIONAL GUIDANCE ON GRATUITIES, REIMBURSEMENTS, AND OTHER BENEFITS FROM OUTSIDE SOURCES

APPENDIX D—EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REPORT (SF 278)

APPENDIX E—REQUIREMENTS FOR SUBMISSION OF DD FORM 1555, STATEMENT OF AFFILIATIONS AND FINANCIAL INTERESTS

APPENDIX F—REPORTING PROCEDURES FOR DOD AND DEFENSE RELATED EMPLOYMENT PROVISIONS

APPENDIX G—ADMINISTRATIVE ENFORCEMENT


SOURCE: 53 FR 45462, Nov. 10, 1988, unless otherwise noted.
§ 1293.1 References.
(a) DLAR 1005.1, Decorations and Gifts from Foreign Governments.
(b) DLAR 1430.12, Civilian Employee Development and Training.
(c) DLAR 5035.1, Fund-Raising Within the Defense Logistics Agency.
(d) DLAR 5400.13, Clearance of Information for Public Release.
(e) DLAR 5500.4, Policies Governing Participation of DLA and Its Personnel in Activities of Private Associations.

§ 1293.2 Purpose and scope.
(a) Part 1293 prescribes standards of conduct required of all DLA personnel, military and civilian, regardless of grade or assignment. It also establishes criteria and procedures for reports required of certain individuals who have left Federal service and of former employees of defense contractors presently employed by DLA.
(b) Close adherence to the standards of conduct will ensure compliance with the high ethical standards demanded of all public employees. Violations of the standards prescribed in this regulation, or by Federal laws, including the laws described in enclosure 1, may result in criminal and/or administrative sanctions. Accordingly, all DLA personnel should become familiar with these standards.
(c) The reporting procedures for defense related employment are applicable to former military officers and civilian employees of DLA and to former employees of defense contractors presently employed by DLA.
(d) All retired regular officers are also required to file a statement of employment with the Military Department in which they hold a retired status.
(e) This DLAR is applicable to HQ DLA and all DLA field activities and implements DoD Directive 5500.7, Standards of Conduct.

§ 1293.3 Policy.
(a) General requirements. (1) Government employment is a public trust which requires that loyalty to country, ethical principles, and the law be placed above private gain and other interests. All DLA personnel must conduct themselves, both on and off the job, in such a manner as to avoid the existence or appearance of a conflict of interest between their official responsibilities and their personal affairs.
(2) DLA personnel shall become familiar with the scope of, authority for, and limitations on the activities for which they are responsible. DLA personnel also shall acquire a general knowledge of the statutory standards of conduct prohibitions and restrictions. The most commonly encountered of these provisions are summarized in appendix A, and are laws dealing generally with conflicts of interest and postemployment activities.
(3) If DLA personnel are unsure whether a proposed action or decision is proper because it may be contrary to law or regulation, they shall consult the Designated Agency Ethics Official, or Deputy Ethics Official, for guidance. The individuals are identified in §1293.4.
(4) DLA personnel shall not take or recommend any action or make or recommend any expenditure of funds known or believed to be in violation of Federal laws, Executive Orders, or applicable directives, instructions, or regulations.
(5) Practices that may be accepted in the private business world may not be acceptable for DLA personnel. As public employees, all DLA personnel are accountable for the manner in which they perform their official responsibilities.
(6) DLA personnel shall strictly adhere to the DLA program of equal opportunity regardless of race, color, religion, sex, age, national origin, or handicap.
(7) DLA personnel shall avoid any action, whether or not specifically prohibited by part 1293, which might result in or reasonably be expected to create the appearance of:
(i) Using public office for private gain.
(ii) Giving preferential treatment to any person or entity.
(iii) Impeding Government efficiency or economy.
(iv) Losing complete independence or impartiality.
(v) Making a Government decision outside official channels.
(vi) Affecting adversely the confidence of the public in the integrity of the Government.

(b) Information to personnel. (1) All new civilian employees and military personnel newly assigned to DLA will be provided a copy of part 1293 upon their entrance to duty.

(2) DLA personnel shall be reminded at least semiannually of their duty to comply with the required standards of conduct. Appropriate means of accomplishing these reminders include notices, circulation of part 1293 to employees, briefings, or any other means which serve to remind employees of their ethical responsibilities.

(3) Copies of the Code of Ethics for Government Service (appendix B) shall be displayed in appropriate areas of DLA occupied buildings in which 20 or more persons are regularly employed. (Code of Ethics posters are self-service supply items and may be obtained under NSN 7690–01–099–8167.)

(4) All DLA employees (military and civilian) who leave Federal service shall be informed of the restrictions on the postemployment activities of former Federal employees.

(c) Conflicts of interest—(1) Affiliations and Outside Associations. (i) DLA personnel shall not engage in any personal, business, or professional activity which conflicts with the interests of the Government they serve through the duties and responsibilities of their DLA positions. This prohibition applies to all DLA employees, regardless of whether they are required to file a financial disclosure report. In the event a conflict, or potential conflict of interest arises, it shall be promptly reported and resolved in accordance with §1293.7(b).

(ii) Membership or activity of DLA personnel in non-Governmental associations or organizations must not be incompatible with their official Government positions (see DLAR 5500.4).1

(iii) DLA personnel shall not knowingly deal, on behalf of the Government, with present or former Government personnel, military or civilian, whose participation in the transaction would be in violation of a statute, regulation, or policy set forth in part 1293.

(2) Financial interests. DLA personnel shall not receive or retain any direct or indirect financial interest which conflicts with the interests of the Government they serve through the duties and responsibilities of their DLA positions. Matters concerning outside employment by DLA personnel are discussed in paragraph (i) of this section. For the purpose of this prohibition, the financial interests of a spouse, minor child, or any household member are treated as the financial interests of the DLA employee. Thus, not only stocks and other similar holdings, but also the wages, salaries, dividends, or any other income of a spouse, minor child, or household member which serve to remind employees of their ethical responsibilities.

(3) Avoiding Actual or the Appearance of Conflicts of Interest. Direct or indirect financial interests in a defense related contractor, in any amount and in any form (stocks, bonds, options, employment of spouse, minor child, or any other household member) may be a prohibited conflict or appearance of a conflict of interest. Outside employment or other outside activity, with or without compensation, regarding possible future employment may also create a conflict or the appearance of a conflict of interest. Discussions with a defense contractor regarding possible future employment may require reporting and disqualification under the procedures set forth in paragraph (k) of

---

1Copies may be obtained, if needed, from Defense Logistics Agency, ATTN: DLA–XPD, Cameron Station, Alexandria, VA 22304–8100.
this section. In these situations, DLA personnel are encouraged to seek advice from the Designated Agency Ethics Official or Deputy Ethics Official to protect not only themselves, but also to avoid embarrassment to DLA.

(4) Assignment of Reserves for training. DLA personnel who assign Reserves for training shall not assign them to duties in which they will obtain information that could be used by them or their private sector employers to gain unfair advantage over civilian competitors. Prior to entering active duty, reservists must disclose to superiors or assignment personnel, sufficient information to ensure that no conflict exists between their duty assignments and their private interests.

(d) Use of DLA Position, Property, Resources, and Information—(1) Using DLA position. DLA personnel are prohibited from using their DLA position to induce, coerce, or in any manner influence any person to provide any benefit, financial or otherwise, to themselves or others.

(2) Use of Civilian and Military Titles or Positions in Connection with Commercial Enterprises. (i) All DLA personnel are prohibited from using their official titles or positions in connection with the promotion of any commercial enterprise or endorsement of any commercial product. This does not preclude author identification for materials published in accordance with DLAR 5400.13.2

(ii) Retired military personnel, and members of Reserve components not on active duty, may use their military titles in connection with commercial enterprises provided that they indicate their Retired or Reserve status. However, if the use of military titles in any way casts discredit on the Military Departments or DoD, or gives the appearance of sponsorship, sanction, endorsement, or approval by a Military Department or DoD, it is prohibited. In addition, a Military Department may further restrict the use of titles, including use by retired military personnel and members of reserve components not on active duty, in overseas areas.

(3) Use of Government property and resources. (i) DLA personnel have a positive duty to protect and conserve Government property and resources and assure that they are used only for official Government business. DLA personnel shall not directly or indirectly use, take, dispose of, or allow the use, taking, or disposing of, Government property including property leased to the Government, for other than official purposes. Government facilities, property, and resources (such as telephones, stationery, stenographic and typing assistance, duplicating and computer equipment) shall be used only for official Government business.

(ii) These provisions do not preclude the use of Government facilities for approved activities in furtherance of DLA community relations, provided they do not interfere with military missions or Government business. Government equipment and clerical support may be authorized for the preparation of papers to be presented to professional associations if appropriate to the mission of the office and approved, in advance, by the Head of the HQ PSE or PLFA.

(iii) All DLA personnel are responsible for using office telecommunications services (telephone, message, data, video, facsimile services, etc.) for official use only. The term official use means service directly in support of Government business or as otherwise approved by the Head of the PSE or PLFA, or their designee, as being in the best interest of the Government.

(A) DLA office telecommunications services are resources provided to conduct business directly in support of the Government.

(B) DLA shall pay only for the official uses of DLA telecommunications services.

(C) Where available and practicable, steps shall be taken to ensure user accountability (i.e., call verification, call restriction, other telecommunications service features).

(D) Employees who make unofficial use of DLA office telecommunications services are subject to appropriate disciplinary action.

(4) Using inside information. DLA personnel shall not directly or indirectly use information obtained as a result of their DLA position to further a private
gain for themselves or others if that information is not generally available to the public. This prohibition continues even after a DLA employee leaves Federal service.

(5) Release of acquisition information. All releases of acquisition information shall be in accordance with authorized procedures. DLA personnel are prohibited from making an unauthorized disclosure of any information concerning proposed acquisitions or purchases by DLA, or the identity of any contractor, unless the contractor's identity has been made public under established procedures.

(6) Unauthorized statements or commitments with respect to award of contracts. Only contracting officers and their duly authorized representatives acting within their authority are authorized to commit the Government to the award of contracts. Unauthorized DLA personnel are prohibited from making any commitment or promise relating to the award of a contract or from making any representation that reasonably can be construed as such a commitment.

(e) Commercial and charitable solicitations—(1) Commercial Soliciting by DLA Personnel. To eliminate the appearance of coercion, intimidation, or pressure from rank, grade, or position, full-time DLA personnel are prohibited from making personal commercial solicitations or sales to DLA personnel (including their family members) who are junior in rank or grade, or who are under any level of supervision by them, at any time, on or off duty.

(i) This prohibition includes, but is not limited to, the solicitation and sale of insurance, stocks, mutual funds, real estate, and any other commodities, goods, or services.

(ii) This prohibition does not include the sale or lease by individuals of their own personal property or privately-owned residence or to the off-duty employment of DLA personnel as employees in retail stores or other situations not involving solicited sales.

(2) Charitable solicitations by DLA personnel. The high visibility of DLA officials generates requests from charitable and nonprofit organizations to use an official's name and title in conjunction with fund-raising activities. The use of names and titles of DLA officials, even regarding fund-raising activities of charitable organizations, may give an improper impression that the Department of Defense or Defense Logistics Agency endorses the activities of a particular organization, thereby resulting in unauthorized assistance for the organization or sponsors of the activities. The presence of DLA officials may be sought, under the guise of bestowing awards upon the official, to promote attendance at programs. DLA officials shall not allow the use of their names or titles in connection with charitable or nonprofit organizations, subject to the following:

(i) DLA personnel may assist only those charitable programs administered by the Office of Personnel Management under its delegation from the President and those other programs authorized by DLAR 5035.1.

(ii) This prohibition does not preclude speeches before such organizations by DLA officials if the speech is designed to express an official position in a public forum.

(iii) This prohibition does not preclude volunteer efforts on behalf of charitable or nonprofit organizations by individuals who do not use their official titles in relation to solicitations and who do not solicit from individuals or entities with whom they do business in their official capacity.

(f) Other prohibitions—(1) Gambling, betting, and lotteries. While on Government-owned, leased, or controlled property, or otherwise while on duty for the Government, DLA personnel shall not participate in any gambling activity, including a lottery or pool, a game for money or property, and the sale or purchase of a number slip or ticket. The only exceptions are:

(i) Where authorized by law, such as vending stands licensed in accordance with 20 U.S.C. 107a(a)(5) to sell chances for any lottery authorized by state law and conducted by an agency of a state.

(ii) Activities which have been specifically approved by the Director, DLA.

(2) Indebtedness. DLA personnel shall pay their just financial obligations in a timely manner, particularly those imposed by law, such as Federal, state, and local taxes. DLA activities are not
Defense Logistics Agency

§ 1293.3

required to determine the validity or amount of disputed debts.

(g) Gratuities, reimbursements, and other benefits from outside sources—(1) Policy. No matter how innocently tendered and received, the acceptance of gratuities, reimbursements, or other benefits by DLA personnel (including their spouse, minor child, or any household member) from those who have or seek business with the Department of Defense or from those whose business interests are affected by Department of Defense functions, may be a source of embarrassment to the Department of Defense, may affect the objective judgment of the DLA personnel involved, and may impair public confidence in the integrity of the Government.

(2) Bribery and graft. DLA personnel may be subject to criminal penalties if they solicit, accept, or agree to accept anything of value in return for performing or refraining from performing an official act.

(3) General prohibition. Except in the limited circumstances set forth in appendix C, DLA personnel (including their spouse, minor child, or any household member) shall not solicit, accept, or agree to accept any gratuity, reimbursement, or other benefit for themselves, or others, either directly or indirectly from or on behalf of any source that:

(i) Is engaged in or seeks business or financial relations of any sort with any DoD Component.

(ii) Conducts operations or activities that are either regulated by a DoD Component or substantially affected by DoD decisions.

(iii) Has interests that may be substantially affected by the performance or nonperformance of the official duties of DLA personnel.

(iv) Is a foreign government or representative of a foreign government that is engaged in selling to the DoD, where the gratuity is tendered in the context of the foreign government’s commercial activities. (See also paragraph (h)(1) of this section.)

(4) Employees who receive gratuities which may not be accepted under the limited circumstances set forth in appendix C shall promptly report the matter to the Designated Agency Ethics Official or Deputy Ethics Official.

(h) Gifts and donations. (1) Procedures with respect to gifts from foreign governments are set forth in DLAR 1005.1.3

(2) Prohibition of Contributions or Presents to Superiors. DLA personnel shall not solicit a contribution from other DLA personnel for a gift to a superior, make a donation as a gift to a superior, give a gift to a superior, or accept a gift from other DLA personnel subordinate to themselves. This prohibition also applies to gifts, contributions, or donations to immediate family members of a superior. However, this paragraph does not prohibit voluntary gifts of reasonable value or contributions of nominal amounts (or the acceptance thereof) on special occasions such as marriage, illness, transfer, or retirement, provided that any gifts acquired with such contributions will be reasonable in value in view of the occasion.

(i) Outside employment of DLA personnel. (1) DLA personnel shall not engage in outside employment or other outside activity, with or without compensation, that:

(i) Interferes with, or is not compatible with, the performance of their Government duties.

(ii) May reasonably be expected to bring discredit on the Government.

(iii) Is otherwise inconsistent with the requirements of part 1293, including the requirements to avoid actions and situations which reasonably can be expected to create the appearance of conflicts of interests.

(2) Enlisted military personnel on active duty may not be ordered or authorized to leave their post to engage in a civilian pursuit, business, or professional activity if it interferes with the customary or regular employment of local civilians in their art, trade, or profession.

(3) Off-duty employment of military personnel by an entity involved in a strike is permissible if the person was on the payroll of the entity prior to the commencement of the strike, and if the employment is otherwise in conformance with the provisions of part 1293.

2 See footnote 1, to §1293.3(c)(1)(i).
§ 1293.3  After a strike begins and while it continues, no military personnel may accept employment by that involved entity at the strike location.

(4) DLA personnel are encouraged to engage in teaching, lecturing, and writing. However:

(i) DLA personnel shall not, either for or without compensation, engage in activities that are dependent on information obtained as a result of their Government employment, except when:

1. The information has been published or is generally available to the public; or
2. it will be made generally available to the public, and the Director, DLA gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(ii) Employment by a DoD contractor is prohibited unless the circumstances are presented to and approval is obtained from the Designated Agency Ethics Official or Deputy Ethics Official stating that such employment does not constitute either a conflict or the appearance of a conflict of interest between the employee’s duties and the outside employment.

(j) Honoraria. DLA personnel may not accept honoraria for official activities, nor may they suggest charitable contributions in place of honoraria. Even when acting in a personal, rather than official, capacity:

(1) DLA personnel are prohibited from accepting an honorarium of more than $2,000 (excluding travel and subsistence expenses, agent’s fees or commissions) for any appearance, speech, or article;

(2) The acceptance of honoraria from groups doing, or seeking to do business with DLA, presents the potential for a conflict of interest or the appearance of a conflict. Before accepting any honorarium, DLA personnel shall consult the Designated Agency Ethics Official, or Deputy Ethics Official.

(k) Pursuit of outside employment. (1) When a military officer assigned to DLA or a civilian DLA employee leaves Federal service and begins working for a business with which the officer or employee conducted official business, or one which might have been affected by the officer or employee’s performance of official duties, the public may perceive that the public’s interest has been compromised. There is the concern that the former officer or employee may have been more interested in future employment than the diligent performance of official duties and protecting the Government’s interests. Officers and employees must be sensitive to this public perception when considering future employment opportunities and avoid any action which would cause loss of public confidence in their performance of official duties.

(2) DLA personnel shall not perform any official duties, or otherwise participate in any official matter dealing with any organization with which the DLA employee is pursuing employment, has any arrangement concerning future employment, or has a financial interest. Pursuing employment is not limited to firm offers of employment; it includes any action which could reasonably be construed as an indication of interest in future employment, including sending letters or resumes, telephone discussions, or the consideration of unsolicited proposals from a business entity regarding possible future employment.

(3) All DLA personnel who have contact (regardless of who initiated the contact) regarding possible future employment, or have any arrangement concerning future employment with any organization that may be affected by the performance of their official duties shall immediately report the contact to the Designated Agency Ethics Official or Deputy Ethics Official. So long as the decision on future employment with the organization remains open, DLA personnel must disqualify themselves from participating in any manner in any official action involving that organization. Thus, if a DLA employee mails resumes to multiple organizations, that may be affected by the performance of official duties, the DLA employee must report the sending of resumes, disqualify himself/herself from participating in matters involving those organizations until either the organization or the employee specifically terminates the employment possibilities. Disqualification procedures are set forth in §1293.7(c).

(1) Restrictions on the activities of former officers and employees. Laws and regulations impose restrictions on the
activities of individuals who have ceased Federal employment. Violation of some of the laws and regulations may result in criminal prosecution. It is the obligation of each military officer assigned to DLA and each civilian employee, upon ending Federal service, to review the post employment restrictions in making decisions regarding their post employment activities. Appendix A contains a summary of the laws and regulations which deal with the conduct of DLA officers and employees and the restrictions on the activities of former officers and employees.

§ 1293.4 Definitions.
(a) Alternate Agency Ethics Official. An attorney in the DLA Office of General Counsel who shall serve in the absence of the Designated Agency Ethics Official. The attorney shall be appointed by the General Counsel, DLA.
(b) Defense contractor. Any individual, firm, corporation, partnership, association, or other legal entity that enters into a contract directly with the Department of Defense to furnish services, supplies, or both, including construction, to the Department of Defense. Subcontractors are excluded, as are subsidiaries unless they are separate legal entities that contract directly with the Department of Defense in their own names. Foreign governments or representatives of foreign governments that are engaged in selling to the Department of Defense are defense contractors when acting in that context.
(c) DLA personnel. All civilian officers and employees of DLA, including special Government employees, and all active duty military officers (commissioned and warrant) and enlisted members of the Army, Navy, Air Force, and Marine Corps, assigned to DLA.
(d) Deputy ethics officials. The Counsel of each DLA PLFA and the DLA Counsel, Europe are designated as Deputy Ethics Officials.
(e) Designated Agency Ethics Official (DAEO). The General Counsel, DLA is appointed the DLA Designated Agency Ethics Official (DAEO).
(f) Financial interest. Any wages, salaries, interest, dividends, or any other form of income or benefit received or to be received in the future by virtue of the relationship; includes potential benefit, such as preemployment contracts with a potential employer; also includes financial interests of a spouse, minor child, and member of household.
(g) Gratiuity. Any gift, favor, entertainment, hospitality, transportation, loan, or any other tangible item, and any intangible benefits (such as passes, discounts, promotional benefits, vendor training) given or extended to or on behalf of DLA personnel, their spouse, minor child, or member of their household for which fair market value is not paid by the recipient or the U.S. Government.
(h) Honorarium (and all variations). A payment of money or anything of value received by an officer or employee of the Federal Government, if it is accepted as consideration for an appearance, speech, or article. The term does not include payment for or provision of actual travel and subsistence, including transportation, accommodations, and meals of an officer or employee and spouse or aide, and does not include amounts paid or incurred for any agent’s fees or commissions.
(i) Special Government employee. A person who is retained, designated, appointed, or employed to perform, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis. The term also includes a Reserve military officer while on active duty solely for training for any length of time, one who is serving on active duty involuntarily for any length of time, and one who is serving voluntarily on extended active duty for 130 days or less. It does not include enlisted personnel.

§ 1293.5 Significant changes.
Part 1293 has been revised to incorporate changes necessitated by a new DoD Standards of Conduct Regulation and new statutory reporting and postemployment restrictions. The most significant changes relate to the limited circumstances under which DLA personnel can accept gratuities from DoD contractors and in prescribing which employees are required to file DD Forms 1555, Confidential Statement...
Finally, the provisions of law which require reports of certain DLA employees who have left Federal service and are working for certain DoD contractors, as well as certain former DoD contractor employees currently working for DLA, have been incorporated in part 1293 rather than in a separate part, DLAR 7700.3, Reporting Procedures on Defense Related Employment.

§ 1293.6 Responsibilities.

(a) DLA Wide. (1) All DLA Employees will: (i) Become familiar with the standards of conduct set forth in part 1293. (ii) Adhere to the highest standards of honesty and integrity. (iii) Promptly file financial disclosure reports when required by part 1293. (iv) Bring suspected violations of a statute or standards of conduct imposed by part 1293 to the attention of the Designated Agency Ethics Official or Deputy Ethics Official in a timely manner. (v) Report to their immediate supervisor the acceptance of gratuities under the exceptions provisions of appendix C. Failure to submit these reports will be a basis for disciplinary action. (vi) Refuse to participate in any matters which appear to violate the provisions of appendix A, call the appropriate provisions of appendix A to the attention of any retired or former officer or employee with whom they deal, and advise that any apparent violations will have to be referred to the Department of Justice.

(b) HQ DLA. (1) The Heads of HQ DLA Principal Staff Elements will: (i) Remind all personnel in their Directorate/Office at least semiannually of their duty to comply with the required standards of conduct and advise employees that they may obtain clarification of part 1293 from the Office of General Counsel, DLA (DLA–G). (ii) Report promptly all violations of part 1293 and statutes cited herein to the General Counsel, DLA.

(iii) Review and evaluate the DD Forms 1555 filed by their deputies prior to forwarding them to the General Counsel, DLA.

(iv) Assure that required DD Forms 1555 are filed by officers and employees of their element and forwarded to the General Counsel, DLA, in accordance with part 1293.

(2) The Staff Director, Office of Military Personnel, DLA (DLA–M) will: (i) Assure that all military personnel, upon assignment to duty with DLA in the Metropolitan Washington area, are informed of the standards of conduct specified in part 1293, and are furnished a copy.

(ii) Maintain a list of all military officers furnished personnel services by DLA–M who are required to submit a DD Form 1555.

(iii) Assure that all military officers furnished personnel services by DLA–M, upon separation from active duty when assigned to DLA, are informed of the standards of conduct and post employment restrictions governing former military officers, and are furnished copies of available information and guidance relating to service with DLA.

(3) The Commander, DLA Administrative Support Center (DASC) will: (i)

---

4See footnote 1, to §1293.3(c)(1)(i).
Furnish a copy of part 1293 to all civilian personnel receiving personnel services by DASC upon entry to duty.

(ii) Assure that each position description for a civilian employee receiving personnel services from DASC indicates whether the incumbent of that position is required to submit a financial disclosure report (DD Form 1555 or SF 278).

(iii) Maintain a list of all civilian employees in DLA activities furnished personnel service by DASC who are required to submit a financial disclosure report (DD Form 1555 or SF 278).

(iv) Assure that all civilian employees receiving personnel services by DASC, upon their separation from Federal service, are informed of the standards of conduct and post employment restrictions governing former civilian employees, and are furnished copies of available information and guidance.

(4) The General Counsel, DLA will:

(i) Have the authority to modify or supplement any of the enclosures to part 1293 in a manner consistent with the policies set forth in part 1293.

(ii) Provide additional clarification of standards of conduct, post employment restrictions and related laws, rules and regulations, and provide advice and assistance on all matters relating to conflicts of interests.

(iii) Coordinate proper and final disposition of all matters that are not resolved by the supervisor or Deputy Ethics Official relating to matters arising under part 1293.

(iv) Receive, review, approve, and make available to the public all SF 278s required to be filed in accordance with part 1293.

(v) Review reports of violations of the standards of conduct statutes or regulations required to be submitted under paragraphs (c)(2)(ii) and (iii) of this section and assure proper action has been taken.

(ix) Initiate procedures and take action in accordance with appendix G, Administrative Enforcement Provisions.

(x) Initiate and maintain a counseling, education, and training program concerning all ethics, standards of conduct, and post-employment matters.

(xi) Periodically evaluate DLA's ethics program and disclosure reporting systems.

(xii) Appoint the Alternate Agency Ethics Official.

(c) Field activities. Establishment and maintenance of an effective ethics program is a command responsibility. Commanders shall integrate the DLA ethics program into PLFA operations and procedures and provide sufficient resources to enable the Deputy Ethics Official to administer the PLFA ethics program in a positive and effective manner.

(1) Heads of DLA Primary Level Field Activities will:

(i) Assure that all employees, military and civilian, upon their separation from military or Federal service, are informed of the standards of conduct and post employment restrictions governing former military or civilian employees, and are furnished copies of available information and guidance.

(ii) Take action to advise employees that they may obtain clarification of part 1293 from the PLFA Office of Counsel.

(iii) Review and evaluate the DD Forms 1555 submitted by their deputies prior to forwarding them to the General Counsel, DLA.

(iv) Receive and evaluate the DD Forms 1555 submitted by their deputies prior to forwarding them to the General Counsel, DLA.

(2) The Counsel for each DLA PLFA will:

(i) Serve as Deputy Ethics Official and provide advice and assistance on matters relating to standards of conduct, post employment restrictions, and conflicts of interest and related
§ 1293.7

laws, rules, and regulations arising at the activity.

(ii) Issue advice on the applicability of 10 U.S.C. 2397b to personnel assigned to their activity.

(iii) Forward to DLA-G a report of each suspected violation of the standards of conduct statutes or regulations as required under §1293.7(a).

(iv) Provide a summary of all reports of violations of the standards of conduct statutes or regulations and the status of each investigation or other action taken to HQ DLA, ATTN: DLA-G. Such reports shall be furnished semiannually, as of 31 March and 30 September each year, and shall be forwarded to reach HQ DLA no later than 10 calendar days after the reporting date. For those violations that are being reported under other procedures, this reporting requirement may be satisfied by a reference to the identifier of the other procedure. This reporting requirement is assigned report control symbol DLA(SA)2217(G).

(v) Review, approve, and retain DD Forms 1555 for personnel of the activity (except the Head of the PLFA and deputy) and all subordinate DLA activities after review by the supervisor.

(vi) Establish a procedure to identify employees within the activity and subordinate activities who are required by part 1293 to file DD Forms 1555.

(vii) By 10 December of each year, notify DLA-G that all employees of the activity required to file DD Forms 1555 as of 30 September of that year have filed the form, and of any apparent conflicts of interest identified on the forms that have not been resolved.

3. The responsibilities assigned to PLFA Counsel may be delegated to the Counsel of a subordinate activity.

§ 1293.7 Procedures.

(a) Reporting suspected violations. DLA personnel who have information which causes them to believe that a violation of the policies, procedures, or standards set forth in part 1293 or of the statutes listed in appendix A is foreseeable or has occurred shall report the matter promptly to the General Counsel, DLA or PLFA Counsel who shall:

(1) Evaluate the report and obtain such additional information as may be necessary.

(2) Refer the matter for investigation or other action as appropriate, or advise the reporter that no further action will be taken.

(3) Forward a report of the matter and any action taken to the General Counsel, DLA within 30 days.

(b) Resolving violations. The resolution of real, apparent, or potential standards of conduct violations shall be accomplished promptly by one or more measures, such as divestiture of conflicting interests, disqualification for particular assignments, changes in assigned duties, transfer, reassignment, suspension, termination, or other appropriate action, as provided by statute or administrative procedures (see appendix G).

(c) Disqualification or Divestiture Procedures—(1) Affiliations and Financial Interests. (i) Any DLA employee who has affiliations or financial interests (which includes those of their spouse, minor children, or members of their households) which create conflicts of interest or the appearance of conflict of interest with their official duties, must immediately disqualify themselves from any official activities that are related to those affiliations or interests of the entities involved. If the individual cannot adequately perform assigned official duties after such disqualification, divestiture will be required or the individual must be moved from that position. The requirement to remedy the conflict or the appearance of a conflict exists independently of the requirement to file a financial disclosure report.

(ii) Exceptions. (A) DLA personnel need not disqualify themselves for holding shares of a widely-held, diversified mutual fund or regulated investment company. Such holdings are exempt as being too remote or inconsequential to affect the integrity of DLA personnel.

(B) In limited circumstances, the General Counsel, DLA may exempt, under 18 U.S.C. 208(b), certain affiliations and financial interests if they are deemed not substantial enough to affect the integrity of Government services. Written requests for such exemptions will be processed through the appropriate Deputy Ethics Official.
Defense Logistics Agency § 1293.7

(2) Written notice of disqualification must be promptly delivered to the employee’s immediate supervisor, immediate subordinates, and to the Designated Agency Ethics Official or Deputy Agency Ethics Official.

(3) Supervisors shall periodically review disqualification notices to ensure their effectiveness.

(d) Financial disclosure procedures. Many military officers and civilian employees of DLA are subject to one of the financial disclosure reporting systems described below. Persons subject to each are identified below. Detailed instructions on the information to be furnished and the procedures for processing the forms are set out in appendices to this part 1293 and in referenced regulations.

(1) Executive Personnel Financial Disclosure Report (SF 278). (i) The following military officers and civilian employees are required by the Ethics in Government Act of 1978 to file a Standard Form 278 if they have served in an identified position for 61 days or more during the preceding calendar year. These individuals need not file a DD Form 1555.

(A) Civilian employees, including special Government employees, whose positions are classified at GS–16 or above of the General Schedule, or whose basic rate of pay under other pay schedules is equal to or greater than the minimum rate of basic pay fixed for GS–16 (except for GS/GM–15s).

(B) Members of the uniformed services whose pay grade is O–7 or above.

(C) Civilian employees in SES or in any other position determined by the Director of the Office of Government Ethics to be of equal classification to GS–16.

(D) The Designated Agency Ethics Official and Alternate Agency Ethics Official.

(ii) Detailed instructions on the information to be furnished and the procedures for processing the forms are set forth in appendix D.

(2) Statements of Affiliations and Financial Interests (DD Form 1555). (i) The following DLA personnel are required to submit initial and annual Statements of Affiliations and Financial Interests (DD Form 1555), unless they are subject to the Executive Personnel Financial Disclosure Report (SF 278).

(A) PLFA Commanders, Deputy Commanders and Counsel, and PSE Heads and Deputies.

(B) DLA personnel classified at GS/GM–15 or below, or at a comparable pay level under other authority, and members of the military whose pay grade is below O–7 not otherwise required to file under paragraph (d)(2)(i)(A) of this section, whose official duties require the exercise of judgment in making a Government decision or in taking Government action for contracting or procurement, regulating or auditing private or other non-Federal enterprise, or other activities in which the final decision or action may have an economic impact on any non-Federal entity.

(C) DLA personnel, regardless of grade, in the following positions:

(1) Attorneys.

(2) Contracting Officers.

(3) Supervisory Quality Assurance Representatives and Supervisory Quality Assurance Specialists.

(4) Quality Assurance Representative-in-Charge.

(5) Supervisory Procurement Agents and Analysts.

(6) Supervisory Industrial Property Administrators.

(7) Supervisory Industrial Specialists.

(8) Supervisory Industrial Engineers.

(9) Supervisory Property Disposal Specialists and Property Disposal Officers.

(10) Value Engineers and Analysts.

(D) Reserve officers assigned to positions meeting the criteria in paragraphs (d)(2)(i) (B) and (C) of this section.

(E) Other special Government employees as set forth in appendix E.

(ii) Detailed instructions on the information to be furnished and the procedures for processing the forms are set forth in appendix E.

(e) Reporting procedures applicable to former military officers and civilians employees, and to former employees of defense contractors now employed by DLA.

(1) Defense Related Employment (DD Form 1787)–(i) Personnel required to file. The following individuals are required
to file a Report of DoD and Defense Related Employment (DD Form 1787):

(A) A retired former military officer who served on active duty at least 10 years and who held, for any period during that service, the pay grade of O-4 or above, or a former civilian employee whose pay rate at any time during the 3-year period prior to the end of DoD employment was equal to or greater than the minimum rate for a GS-13 (GS-12, step 7) and:

(1) Within the 2-year period immediately following the termination of service or employment with a DoD Component, is employed by a defense contractor who, during the year before the former officer or employee began employment, was awarded $10,000,000 or more in defense contracts; and

(2) Is employed by or performs service for the defense contractor and at any time during a year directly receives compensation of or is salaried at a rate of $25,000 per year or more from the defense contractor ("compensation" is received by a person if it is paid to a business entity with which the person is affiliated in exchange for services rendered by that person).

(B) Each civilian officer and employee of a DoD Component who:

(1) Is employed at a pay rate equal to or greater than the minimum rate for GS-13 (GS-12, step 7), and

(2) Within the 2-year period prior to the effective date of service or employment with the DoD Component, was employed by a defense contractor who, during a year, was awarded $10,000,000 or more in defense contracts, and

(3) Was employed by or performed services for the defense contractor and at any time during that year received compensation of or was salaried at a rate of $25,000 per year or more at any time during employment ("compensation" is received by a person if it is paid to a business entity with which the person is affiliated in exchange for services rendered by the person).

(ii) Detailed instructions concerning this reporting requirement are contained in:

(A) AR 600–50.
(B) SECNAVINST 5370.2.
(C) AFR 30–30.
(D) MCO 5330.3C.

APPENDIX A—LAWS AFFECTING DLA PERSONNEL

I. Caution

Employees and former employees are cautioned that the descriptions of the laws and regulations in this enclosure should not be the only thing relied upon to make decisions regarding their activities. Although the descriptions do provide general guidelines, restrictions are dependent on the specific facts in a particular case. Accordingly, employees and former employees are encouraged to discuss specific cases with the Designated Agency Ethics Official or Deputy Ethics Official in their Office of Counsel, or with private counsel.

II. Conflict of Interest Laws

A. 18 U.S.C. 203

1. Subsection (a) prohibits military officers or civilian employees from directly or indirectly receiving or seeking compensation for services rendered or to be rendered before any department or agency in connection with any contract, claim, controversy or particular matter in which the United States is a party or has a direct and substantial interest. The statute does not apply to enlisted military personnel. The purpose of this law is to reach any situation where the judgment or efficiency of a Government agency might be influenced because of payments or gifts to an officer or employee regardless of whether there is any intent to give preferential treatment in a manner otherwise than provided by law.

2. Subsection (b) makes it unlawful for anyone to offer or to pay the compensation prohibited by subsection (a).

B. 18 U.S.C. 205

1. This law prohibits military officers or civilian employees from acting as an agent or attorney for anyone else before a department, agency, or court in connection with any particular matter in which the United

---

32 CFR Ch. XII (7–1–01 Edition)
Defense Logistics Agency

Pt. 1293, App. A

States is a party or has a direct and substantial interest. The law does not apply to enlisted military personnel.

2. The following exemptions are allowed:
   a. The law does not prohibit military officers or civilian employees from giving testimony under oath; from making statements required to be made under the penalty of perjury or contempt; or, from representing another person, without compensation, in a personnel matter such as a discrimination complaint or disciplinary action.
   b. The law also authorizes a limited waiver of its restrictions and those of section 203 for an officer or employee, including a special Government employee, who represents his or her parents, spouse, or child, or a person or estate he or she serves as a fiduciary. The waiver is available only if approved by the official making appointments to the position. However, the waiver does not allow the officer or employee to represent any person in matters in which the officer or employee has participated personally and substantially or which are the subject of the officer or employee’s official responsibility.
   c. Finally, section 206 gives the head of a department or agency the authority to allow a special Government employee to represent his or her regular employer or other outside organization in the performance of work under a Government grant or contract if the department or agency head certifies and publishes in the FEDERAL REGISTER that the national interest requires such representation.

C. 18 U.S.C. 208

1. Subsection (a) prohibits military officers and civilian personnel from their personal and substantial participation as Government personnel in any particular matter in which they, their spouse, their minor children, their partners, their employers, their prospective employers, or their organizations have a financial interest. “Personal and substantial participation” includes such things as decision, approval, disapproval, recommendation, the rendering of advice, or investigation. A “particular matter” may be less concrete than an actual contract, but is something more specific than rule making or abstract scientific principles. If the individual can reasonably anticipate that his/her Government action, or the decision in which he/she participates or with respect to which he/she advises, will have a direct and predictable effect upon financial interests, then a “particular matter” is involved.

2. Subsection (b) permits a written exemption from subsection (a) if the outside financial interest is deemed in advance not substantial enough to affect the integrity of Government services. Categories of financial interests may also be made nondisqualifying by a regulation published in the FEDERAL REGISTER. Shares of a widely held, diversified mutual fund or regulated investment company have been exempted as being too remote or inconsequential to affect the integrity of the services of Government personnel.

D. 18 U.S.C. 209

Subsection (a) prohibits military officers and civilian employees from receiving, and prohibits anyone from paying them, any money as additional compensation for their Government service. The law does not apply to enlisted military personnel. Subsection (b) permits military officers and civilian employees to participate in a bona fide pension plan or other employee welfare or benefit plan maintained by a former employer. Subsection (c) exempts special Government employees and anyone serving the Government without compensation. Subsection (d) exempts contributions, awards, or other expenses under the Government Employees Training Act. See 5 U.S.C. 4111(a).

E. 10 U.S.C. 2397a

This law applies to DoD employees at pay rates of GS-11 or higher (GS-10, Step 4) and to military officers in pay grades O-4 or higher. These employees must report any contact they have had, or will have, with defense contractors regarding future employment or any contact they have had, or will have, with defense contractors regarding future employment with the defense contractor. These employees must also disqualify themselves from any participation in DoD procurements related to the defense contractor. The penalty for violation is a bar from employment with the defense contractor for up to 10 years after Government service and up to a $10,000 penalty.

III. Restriction on Former Military Officers and Civilian Employees

A. Former Officers and Employees Include the Following Personnel:

1. Full-time civilian employees who have left Federal service.
2. Special Government employees who have left Federal service.
3. Retired military officers released from active duty.
4. Reserve military officers released from active duty. The term does not include enlisted personnel; however, enlisted personnel are subject to the restrictions applicable to retired members of the Armed Forces set forth in subparagraph G.

B. Senior employees are those individuals who have been specifically advised by the Designated Agency Ethics Official that they hold senior employee positions. In general, senior employees within DLA include military officers in pay grades O-7 and above, and most Senior Executive Service (SES) positions.

C. General:
1. Laws and regulations restrict the activities of former officers and employees, establish certain reporting requirements, and, in some cases, restrict employment by former officers and employees with DoD contractors. Violation of some of the laws and regulations may result in criminal prosecution, or civil fines.

2. The purpose of the post employment restrictions is to preclude the actual or apparent use of public office for private gain, and to ensure that the administration of Government is conducted honestly and in an impartial manner.

3. The restrictions are divided into five parts; those applicable to all former officers and employees, those applicable to former senior employees, those applicable to retired military officers, and those applicable to all retired members of the Armed Forces. In addition, the special restrictions applicable to personnel who were engaged in “procurement functions” are set out. Because of the expansive definition of the term “procurement function,” all civilian employees whose grade was GS-12, step 7 or higher, and all military personnel in grades O-4 and above should review the definition of “procurement function” set forth in subparagraph H6i below.

4. In addition to the information contained herein, retired military personnel are encouraged to review parallel regulations of their Military Service:
   b. Navy—SECNAVINST 5370.2H.
   d. Marine Corps—MCO 5330.3C.

5. General professional knowledge acquired while in Federal service generally may be used while employed in the private sector. Laws and regulations do, however, restrict activities of former officers and employees which give the appearance of making unfair use of prior Federal employment and affiliations, or are detrimental to public confidence in the Government. In addition, certain former employees who dealt with DoD contractors may be prohibited from working for those contractors.

D. Restrictions Applicable to all Former Officers and Employees:

1. Permanent bar on representation. (18 U.S.C. 207(a).) Former officers and employees (not including former enlisted personnel) may never represent anyone except the United States or communicate with any Government agency with the intent to influence the United States in any matter with which the former officer or employee was personally and substantially involved while a Government employee, and which involves specific parties where the United States either is a party or has an interest.

   a. This provision is aimed at your activities representing anyone, whether or not you make a personal appearance before the Government. The intent of the provision is to prevent you from “switching sides,” so that information, influence, and access you acquired during Federal service is not subsequently used for improper or unfair advantage in post-employment dealings with the Government.

   b. The matters to which this bar applies are those in which you were involved as a Federal employee. Your involvement as a Federal employee must have been of significance to the matter, or must form the basis for a reasonable appearance that it was significant, and may include involvement by any of your subordinates.

   c. Matters of general application such as general policy or program design are not included in this bar.

   d. The concept of representation is broadly construed and includes any type of communication whose intent is to influence the United States. Representation includes not only acting as another’s attorney or agent, but promotional and contract representations as well. Communications include both oral and written communications.

2. Two-year bar on representation. (18 U.S.C. 207(b)(i).) Former officers and employees (not including enlisted personnel) may not, for a 2-year period after departing from Federal service, represent anyone except the United States in any matter which was pending under the former employee’s official responsibility during the final year of Federal service. The bar includes communicating with any Government agency with intent to influence the United States on the matter.

   a. The only substantive difference between this 2-year bar and the permanent bar described in subparagraph 1. above is the degree of your closeness to, or involvement in, the matter.

   b. The term “official responsibility” refers to the direct administrative or operating authority, whether intermediate or final, either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

3. Exception for Scientific or Technological Information. The permanent bar and 2-year bar do not apply to communications made solely for the purpose of furnishing scientific or technological information if approved by the head of the agency to which the communication is directed.

E. Additional Restrictions Applicable to Former Senior Employees:

1. Two-year bar. (18 U.S.C. 207(b)(ii).) For 2 years after leaving a senior employee position, you may not represent or assist in representing another person by personally appearing at any proceeding before the Government where the matter that is the subject of the proceeding, is one in which you participated personally and substantially while in Federal service.
a. The matters to which this bar applies are those in which you were involved as a Federal employee. Your involvement as a Federal employee must have been of significance to the matter, or must form the basis for a reasonable appearance that it was significant, and may include involvement by any of your subordinates.
b. This restriction does not bar all forms of behind-the-scenes assistance by you, but only assistance in representing or assisting in representing another person while personally present at any type of proceeding.

2. One-year bar. (18 U.S.C. 207(c).) For one year after leaving a senior employee position, you may not represent anyone before your former agency, or have any communication with your former agency on any matter which is pending before or of substantial interest to the agency. This restriction, sometimes called the “no contract” bar, is intended to provide a “cooling-off” period between you and your former agency.
   a. This bar applies regardless of the degree of your involvement with the matter.
   b. The bar applies to all matters, whether or not specific parties are involved, and includes matters of general application such as general policy or program design.
   c. The bar also extends to matters in which your agency has a substantial interest even though the matter may be pending before another agency.
   d. The bar is limited to contracts with your former agency and does not apply Government-wide.
   e. Your former agency is specifically defined. It pertains to former DLA senior employees, the term includes DLA and the DoD lease.
      (1) The Military Departments.
      (2) Defense Mapping Agency.
      (3) Defense Communications Agency.
      (4) Defense Intelligence Agency.
      (5) Defense Nuclear Agency.
      (6) National Security Agency.
   f. There are several exemptions to this one-year bar. The bar does not cover a former senior employee who is: An elected official of a state or local government; an employee of an accredited degree-granting institution of higher education; or, an employee of a nonprofit hospital or medical research organization, provided that the communication, appearance, or representation is on behalf of such government, institution, hospital, or organization. The bar also does not cover purely social or informational communications, the transmission or filing of documents not requiring governmental action, personal matters, representing oneself in any administrative or judicial proceeding, any expression of personal view where the former senior employee has no monetary interest, responses to the former agency’s request for information, or participation as the principal researcher or investigator under Government grants.

F. Additional Restrictions Applicable to Retired Regular Military Officers:

1. Claims against the United States (18 U.S.C. 281)
a. A retired officer of the Armed Forces may not, for two years after release from active duty, act as an agent or attorney for prosecuting or assisting in the prosecution of a claim against the United States:
   (1) Which involves the Military Department in which the officer is retired, or
   (2) Which involves any subject matter with which the officer was directly connected while on active duty.
   b. The penalty for violating this restriction includes civil and criminal sanctions.

2. Selling to the United States (18 U.S.C. 281)
a. A retired officer of the Armed Forces may not, for two years after release from active duty, receive (or agree to receive), either directly or indirectly, any compensation for representing any person in the sale of anything to the United States through the Military Department in which the officer is retired.
   b. The penalty for violating this restriction includes civil and criminal sanctions.

3. Retired Regular Officers
For 3 years after retirement, a retired Regular officer may not, either for himself/herself or for others, sell, contract, or negotiate to sell, any supplies or war materials to the DoD (or any of its components), Coast Guard, National Oceanic and Atmospheric Administration, or Public Health Service.
   a. This 3-year bar does not prohibit all types of employment by, or association with, a company that does business with the Government. The bar is directed only to those activities related to selling which include:
      (1) Signing a bid, proposal, or contract.
      (2) Negotiating a contract.
      (3) Contracting an officer or employee of any of the agencies listed in subparagraph 2.b. above for the purpose of:
         (a) Obtaining or negotiating contracts,
         (b) Negotiating or discussing changes in specifications, price, cost allowance, or other terms of a contract, or
         (c) Settling disputes concerning performance of a contract, or
      (4) Any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefore is subsequently negotiated by another person.
   b. Violations of this bar are punishable by loss of retirement pay for that period of time during which the prohibited activity occurs.

G. Additional Restrictions Applicable to all Retired members of the Armed Forces:

Defense Logistics Agency
Pt. 1293, App. A
1. DoD civilian employment. A retired member of the Armed Forces may not be appointed to a DoD civilian position within 180 days after retirement unless:
   a. The position is approved by the appropriate authority (DoD Directive 1402.1, Employment of Retired Members of the Armed Forces).
   b. The position is one for which an advance hiring pay rate has been authorized by the Office of Personnel Management under 5 U.S.C. 5305, or
   c. A state of national emergency exists.

2. Foreign employment. A retired member of the Armed Forces may not accept any present, emolument, office, title, or employment from any foreign government unless approved by the Secretary of the Military Department concerned and the Secretary of State. The penalty for a violation is loss of retirement pay.

3. Use of military titles. Retired members of the Armed Forces may not use their military title in such a way as to give rise to the appearance of sponsorship, sanction, endorsement, or approval of the Military Service or the DoD in connection with any commercial enterprise. Overseas commanders may further restrict the use of military titles by retired personnel in overseas areas.

b. Civilian employees who served in a Senior Executive Service position or higher, and military officers who served in the pay grade of O-7 or higher, if such individuals during the last 2 years of DoD service:
   a. Acted as a primary representative of the United States in the negotiation with a defense contractor of a defense contract in an amount in excess of $10,000,000 (the actual contractual action taken by the individual must have been in an amount in excess of $10,000,000), or
   b. Acted as a primary representative of the United States in the negotiation of a settlement of an unresolved claim of such a defense contractor in an amount in excess of $10,000,000. An unresolved claim shall be, for the purposes of part 1293 valued by the greater of the amount of the claim or the amount of the settlement.

3. Advice from the designated Agency Ethics Official.
   a. Any person may, before accepting compensation, request that PLFA Counsel or the General Counsel, DLA provide advice on the applicability of 10 U.S.C. 2397b and part 1293 to the acceptance of such compensation.
   b. A request for advice shall be in writing and shall contain all relevant information.
   c. If the PLFA Counsel or General Counsel, DLA receives a request for advice, he shall issue a written opinion in response thereto not later than 30 days after receipt of all relevant information.
   d. If the advice rendered by the PLFA Counsel or General Counsel, DLA states that the law and part 1293 are inapplicable, and that the individual may accept the compensation from the contractor, then there shall be a conclusive presumption that the acceptance of the compensation is not a violation of 10 U.S.C. 2397b.

4. Apparent violations. Apparent violations of these prohibitions shall be referred to the General Counsel, DLA who will review the matter for referral to the DoD Inspector General or the Inspector General of the appropriate Military Department for investigation.

5. Penalties. Pursuant to 10 U.S.C. 2397b(b)(1), individuals who knowingly violate the prohibitions of this section are subject to a civil fine of up to $250,000.

6. Special definitions. For the purpose of subparagraph H of this Appendix, terms used shall have the following meanings:
   a. Armed Forces. The term “Armed Forces” does not include the United States Coast Guard.
   b. Compensation. Includes any payment, gift, benefit, reward, favor, or gratuity which is provided directly or indirectly for services rendered by the person accepting such payment and which has a fair market value in
excess of $250. Compensation shall be deemed indirectly received if it is paid to an entity or person other than the individual, in exchange for services performed by the individual.

c. Contractor-operated facility. Includes any facility leased or loaned by the United States to the contractor by written agreement. It does not include facilities located on a military installation where contractor personnel may work, but which is not either leased or loaned by the United States to the contractor by written agreement.

d. Defense contractor. An entity that: Contracts directly with the Department of Defense to supply the Department of Defense with goods or services; or, controls or is controlled by an entity that contracts directly with the Department of Defense to supply the Department of Defense with goods or services; or, is under common control with an entity that contracts directly with the Department of Defense to supply the Department of Defense with goods or services. The term does not include an affiliate or subsidiary of an entity that contracts directly with the Department of Defense to supply the Department of Defense with goods or services if the affiliate or subsidiary is clearly not engaged in the performance of a defense contract, nor does it include a state or local government.

e. DoD component. The Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Inspector General, and the Defense Agencies, including non-appropriated fund activities.

f. Employee. This term does not include a part-time employee, or a Special Government Employee.

g. Major defense contractor. Any business entity which, during the fiscal year preceding the fiscal year in which compensation was received, was a defense contractor that received defense contracts in a total amount equal to or greater than $10,000,000.

h. Major defense system. A combination of elements that will function together to produce the capability required to fulfill a mission need. Elements may include hardware, equipment, software, or any combination thereof, but excludes construction or other improvements to real property. A system shall be considered a major defense system if: the Department of Defense is responsible for the system and the total expenditures, for research, development, test and evaluation for the system are estimated to exceed $75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement exceeds $300,000,000 (based on fiscal year 1980 constant dollars); or, the system is designated a “major system” by the head of the agency responsible for the system.

1. Majority of working days. The majority of days actually worked during the period, excluding weekends, holidays, days of leave or sick days when the employee did not actually work. A work day on which an individual performed a procurement function includes any day on which the individual worked on that procurement function for any amount of time during that day.

j. Negotiation and settlement. Exchange of views between representatives of the Government and a contractor regarding respective liabilities and responsibilities of the parties on a particular contract or claim. It includes deliberations regarding contract specifications, terms of delivery, allowability of costs, pricing of change orders, etc.

k. Primary Government representative. If more than one Government representative is involved in any particular transaction, it is the Government employee who supervised the Government’s effort in that matter. To act as a “representative” requires personal and substantial participation in the transaction, by personal presence, telephone conversation, or similar involvement with representatives of a contractor.

l. Procurement related function (or “procurement function”). Any function relating to: The negotiation, award, administration, or approval of a contract; the selection of a contractor; the approval of a change in a contract; the performance of quality assurance, operational and developmental testing, the approval of payment, or auditing under a contract; or, the management of a procurement program.

m. Separation of a member of the Armed Forces. A person who is a retired or former member of the Armed Forces shall be considered to have been separated from service in the Department of Defense on the effective date of the person’s discharge or release from active duty.

IV. Other Laws Applicable to DoD Personnel

Engaging in the following activities may subject present and former DLA personnel to criminal or other penalties:

A. Aiding, abetting, counseling, commanding, inducing, or procuring another to commit a crime under any criminal statute (18 U.S.C. 201).

B. Concealing or failing to report to proper authorities the commission of felony under any criminal statute if the person knew of the actual commission of the crime (18 U.S.C. 4).

C. Conspiring with one or more persons to commit a crime under any criminal statute or to defraud the United States, if any party to the conspiracy does any act to effect the object of the conspiracy (18 U.S.C. 371).


I. General

The general prohibition against accepting gratuities, reimbursements, and other benefits from outside sources does not apply to all retired military personnel and regular enlisted personnel (U.S. Constitution, Art. I, Sec. 9, cl. 8). Exceptions to this prohibition are authorized under 57 U.S.C. 908.

II. Union activities of military personnel (10 U.S.C. 976).

III. Violation of merit system principles (5 U.S.C. 2301).


V. Employment of a Regular Navy Officer or a Regular Marine Corps Officer, other than a retired officer, by a person furnishing naval supplies or war materials to the United States (37 U.S.C. 801(a)).

APPENDIX B—CODE OF ETHICS FOR GOVERNMENT SERVICE—PUB. L. 96-303

Any person in Government service should:

I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

II. Uphold the Constitution, laws, and regulations of the United States and of all governments therein and never be a party to their evasion.

III. Give a full day’s labor for a full day’s pay; giving earnest effort and best thought to the performance of duties.

IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or herself or for family members, favors and benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.

VI. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

VII. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.

VIII. Never use any information gained confidentially in the performance of government duties as a means for making private profit.

IX. Expose corruption wherever discovered.

X. Uphold these principles, ever conscious that public office is a public trust.

APPENDIX C—ADDITIONAL GUIDANCE ON GRATUITIES, REIMBURSEMENTS, AND OTHER BENEFITS FROM OUTSIDE SOURCES

I. General

The general prohibition against accepting gratuities, reimbursements, and other benefits from outside sources does not apply to
Defense Logistics Agency

Pt. 1293, App. C

the following. These exceptions shall be applied narrowly in keeping with the prohibition in §1293.3(g).

A. The continued participation in employment eligibility verification plans of a former employee when permitted by law and approved by the General Counsel, DLA, or PLFA Counsel.

B. The acceptance of unsolicited advertising or promotional items that are less than $10 in retail value.

C. The acceptance of trophies, entertainment, prizes, or awards for public service or achievement in an individual, unofficial capacity or given in games or contests that do not relate to official duties and are clearly open to the public generally, or are officially approved for DLA personnel participation.

D. The acceptance of benefits available to the public, such as university scholarships covered by DoD Directive 1322.6, Fellowships, Scholarships, and Grants for Members of the Armed Forces, and free exhibits by DoD contractors at public trade fairs.

E. The acceptance of discounts or concessions realistically available to all DLA personnel, provided that such discounts or concessions are not used to obtain any item for the purpose of resale at a profit.

F. Participation by DLA personnel in civic and community activities that also involve a DoD contractor, when any relationship between DLA personnel and the contractor is indirect; for example, participation in a Little League or Combined Federal Campaign luncheon that is subsidized by a defense contractor.

G. Activities engaged in by DLA personnel with local civic or military leaders as part of authorized community relations programs of DLA.

H. The participation of DLA personnel in widely attended gatherings of mutual interest to Government and industry, sponsored or hosted by industrial, technical, and professional associations (not by individual contractors), provided that they have been approved in accordance with DoD Instruction 5410.20, Public Affairs Relations with Business and Nongovernmental Organizations Representing Business.

I. Situations in which participation by DLA personnel at public ceremonial activities of mutual interest to industry, local communities, and DLA serves the interest of the Government, and acceptance of the invitation is approved by the General Counsel, DLA or PLFA Counsel.

J. When on official Government business and when the DLA personnel reports the circumstances in writing to the immediate supervisor and to the General Counsel, DLA or the PLFA Counsel, as soon as possible:

1. Space available use of previously scheduled ground transportation to or from a DoD contractor’s place of business provided by the contractor for its own employees, and

2. Contractor-provided transportation, meals, or overnight accommodations when arrangements for Government or commercial transportation, meals, or accommodations are clearly impracticable.

K. Attendance or participation of DLA personnel in gatherings, including social events such as receptions, which are hosted by foreign governments (when not acting in their DoD contractor capacity) or international organizations, provided that the acceptance of the invitation is approved by the General Counsel, DLA or PLFA Counsel.

L. Customary exchanges of gratuities between DLA personnel and their friends and relatives or the friends and relatives of their spouse, minor children and members of their household, when the circumstances clearly indicate that it is the relationship, rather than the business of the person concerned, that is the motivating factor for the gratuity and it is clear that the gratuity is not paid for by the United States Government or any DoD contractor.

M. Acceptance of coffee, doughnuts, and similar refreshments of nominal value offered as a normal courtesy incidental to the performance of duty. This exception applies to acceptance on an occasional basis and does not authorize acceptance on a recurring basis.

N. The acceptance of benefits resulting from the business activities of a spouse where it is clear that the benefits are given to the spouse in the normal course of the spouse’s employment or business and have not been given or made more attractive because of the DLA employee’s status. This exception does not, however, alter the requirement for disqualification under §1293.7(c)(1).

O. Acceptance of transportation and related travel expenses from a potential employer in connection with a job interview, provided that prior to departing on the trip:

1. The DLA employee receiving the gratuity notifies his or her immediate supervisor of the travel arrangements.

2. The DLA employee files a written disqualification statement concerning any possible official actions involving the potential employer.

3. The DLA employee submits some evidence that the potential employer offers the same benefits to all similarly situated individuals, not only those employed in the Department of Defense.

P. Situations in which, in the sound judgment of both the individual involved and his or her immediate supervisor, the Government’s interest will be served by DLA personnel participating in activities otherwise prohibited. In any such case, a written report of the circumstances shall be made in advance, or, when an advance report is not possible, within 48 hours, by the individual or supervisor to the General Counsel, DLA or PLFA Counsel.
II. Defense Contracting Training

The guidance in subparagraphs A through C of this section applies whenever defense contractors provide training, orientation, or refresher courses to DLA personnel. These courses range from executive orientation courses in which all expenses are borne by the defense contractor to seminars devoted to technical developments in which the only "gratuity" may be lectures given free of charge.

A. Attendance by DLA employees at training sessions provided by defense contractors is permitted when the contractor's products or systems are provided under contract to DoD, and in order to facilitate the utilization of those products or systems by DLA personnel.

B. When a defense contractor provides training pursuant to a contract, the training itself is not a gratuity. Likewise, meals, lodging, and transportation would not be considered a gratuity if the defense contractor was required to furnish them under the terms of the contract, but would result in reductions to the travel and other expenses normally payable to the employee under the Joint Federal Travel Regulation. However, if the defense contractor, without charge, provides something to DLA personnel which is not required by the contract, the contractor is giving a gratuity to the DLA employee.

C. Attendance at tuition-free training, refresher courses, or other educational meetings offered by a defense contractor (although not required to do so by the terms of a contract) may be authorized when attendance is clearly in the best interests of the Government and meets the following criteria of DLAR 1430.12, Civilian Employee Development and Training:

1. Selection of the DLA employees attending the contractor training will be made by the Government.
2. The unavailability of alternative training sources, and confidence that the contractor provided training will not adversely affect the objectivity of the DLA employee.
3. Approval of the training is at a sufficiently high level to assure the need cannot otherwise reasonably be met and has the concurrence of the General Counsel, DLA or PLFA Counsel.
4. No appreciable cost is incurred by the contractor in order to accommodate attendance by DLA employees.
5. An understanding that the contractor will receive no special consideration or benefit because of the Government's participation.

DLA personnel may not accept either personal reimbursement or in-kind accommodations, subsistence, transportation, or services for expenses incident to official travel, from any source outside the Government except as indicated in subparagraph A through F of this section. In cases where acceptance is authorized, appropriate deductions and acceptance are authorized by the order-issuing authority as being in the overall Government interest. Under these circumstances, an employee may not accept personal reimbursement.

A. A DLA employee who is to be a speaker, panelist, project officer, or other bona fide participant in the activity attended, may accept accommodations, subsistence, transportation, or other services furnished in-kind in connection with official travel when such attendance and acceptance are authorized by the order-issuing authority as being in the overall Government interest. Under these circumstances, an employee may not accept personal reimbursement.

B. When a DLA employee is summoned to testify in an official capacity on behalf of a private party at a judicial proceeding, the appearance will be on official time and travel expenses may be accepted from the court, authority, or party who caused the person to be summoned. In accordance with 5 U.S.C. 5751, the funds may be turned over to the party or paid into the U.S. Treasury as miscellaneous receipts. Any employee appearing on behalf of a private party not in an official capacity must use leave to do so and may retain any fees or expenses.

C. Except as indicated in subparagraphs A and B of this section, DLA personnel may not accept personal reimbursement from any source for expenses incident to official travel, unless authorized by their supervisor consistent with guidance provided by the Designated Agency Ethics Official or Deputy Ethics Official pursuant to 5 U.S.C. 4111 or other statutory authority. Rather reimbursement must be made to the Government by check payable to DLA.

D. DLA personnel may accept travel, or reimbursement for travel expenses from a foreign government as provided in DLAR 1005.1, Decorations and Gifts from Foreign Governments.

E. When accommodations, subsistence, or services in kind are furnished to DLA personnel by non-U.S. Government sources, consistent with this paragraph, appropriate deductions shall be reported and made in the travel, per diem, or other allowance payable.

F. DLA personnel who receive gratuities, or have gratuities received on their behalf, in circumstances not in conformance with

---

Footnote 1: See footnote 1 to §1293.3(c)(1)(ii).
Defense Logistics Agency

§ 1293.7(d)(1). These personnel occupy covered positions.

IV. Ship Launch and Similar Ceremonies

The following guidance applies to ceremonies and gifts associated with the launch or commissioning of a naval vessel, an aircraft or other vehicle, and all similar events:

A. Attendance at Ceremonies

Acceptance of an invitation to attend a ceremony shall be approved by the Head of the PSE or PLFA. Attendance is permitted at appropriate functions incident to the ceremony, such as a dinner preceding the ceremony and the reception following it, as long as the function is not lavish, excessive, or extravagant.

B. Acceptance of Gifts

DLA personnel, their spouses, and their dependent children, who are official participants may accept a tangible thing of value as a gift or memento in connection with the ceremony as long as its retail value does not exceed $100 per family and the cost is not borne by the Government. When a gift exceeds the $100 limit the recipient shall pursue one of the following alternatives:

1. Return the gift to the donor.
2. Retain the gift after reimbursing the donor the full value of the gift.
3. Forward the gift to the Staff Director, Administration (DLA-X) for disposition as a gift to the Government in accordance with statute.

APPENDIX D—EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REPORT (SF 278)

I. DLA Personnel Required to File SF 278

A. DLA personnel required to file a Financial Disclosure Report (SF 278) are listed at §1293.7(d)(1). These personnel occupy covered positions.

B. A person who is nominated to or assumes a covered position is not required to file an SF 278 if the Secretary of Defense or the General Counsel, DLA determines that the person is not reasonably expected to perform the duties of the position for more than 60 days in the calendar year. However, if the person performs the duties of the office or position for more than 60 days in the calendar year, an SF 278 shall be filed within 15 days after the 61st day of duty.

C. A person otherwise required to file an SF 278, but who is expected to perform the duties of the position for less than 130 days in the calendar year, may request a waiver of any or all reporting requirements from the Director, Office of Government Ethics, if the person is not a full-time employee of the Government, is able to provide specially needed services, and does not have outside employment or financial interests likely to create a conflict of interest. A request for a waiver shall be initially submitted to the General Counsel, DLA.

II. Time of Filing

An SF 278 shall be submitted under the circumstances described below.

A. Assumption Report

DLA personnel shall submit a SF 278 to the General Counsel, DLA before assuming a covered position. This requirement does not apply if the individual has left another covered position within 30 days before assuming a new position, or already has filed with respect to nomination for the new position.

B. Annual Report

DLA personnel, including special Government employees, occupying a covered position for more than 60 days during a calendar year shall submit an SF 278 annually. The annual report must be filed with the General Counsel, DLA no later than 15 May unless a written extension is granted.

C. Termination Report

DLA personnel occupying a covered position shall submit an SF 278 to the General Counsel, DLA no sooner than 15 days before and no later than 30 days after the date of departure from that position unless they accept another covered position. The termination report will cover the portion of the present calendar year up to the date of termination and, if the annual report has not yet been filed, the preceding calendar year.

III. Contents of Reports

Instructions for completing SFs 278 are included as part of the report forms. Additional guidance for personnel in covered positions is available from the General Counsel, DLA.

IV. Submission and Review of Reports

A. Reports will be submitted to the General Counsel, DLA. After final review, copies of the reports of military officers assigned to DLA will be forwarded by the General Counsel, DLA to the appropriate Military Department official.

B. Final review of an SF 278 is completed when the General Counsel, DLA has signed the SF 278, indicating that each item is completed and that the report discloses no unresolved conflict or appearance of a conflict of interest under applicable laws and regulations.

1. If the General Counsel, DLA, after reviewing an SF 278, believes additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall
submit the required information directly to the General Counsel, DLA.

2. If the General Counsel, DLA, after reviewing the SF 278, is of the opinion, on the basis of the request, that the reporting person is not in compliance with applicable laws and regulations, the following steps shall be taken:
   a. The person shall be notified in writing of the preliminary determination.
   b. After an opportunity for personal consultation, if practicable, the General Counsel, DLA shall notify the person in writing of the remedial measures that should be taken to bring the person into compliance. The notification shall specify a date by which such measures must be taken, which, except in unusual circumstances, must be taken within 90 days.

   (1) When the General Counsel, DLA determines that a reporting person has fully complied with the remedial measures, a notation to that effect shall be made in the comment section of the SF 378. The General Counsel, DLA shall then sign and date the SF 278 and send written notice of that action to the person.
   (2) If steps assuring compliance with applicable laws and regulations are not taken by the date established, the General Counsel, DLA shall report the matter to the Director, DLA for appropriate action. The Office of Government Ethics and the Attorney General shall also be notified.

3. Remedial action may include the following measures:
   a. Disqualification.
   b. Limitation of duties.
   c. Divestiture.
   d. Transfer or reassignment.
   e. Resignation.
   g. Establishment of a qualified blind trust.

V. Public Availability of SFs 278

A. SFs 278 must be made available for public examination upon request 15 days after the report is filed unless otherwise exempted pursuant to law. Receipt of the report by the General Counsel, DLA for final review constitutes official filing and establishes the date from which the 15 days shall run. In most cases, this means the reports are available to the public before final review is completed. Reporting persons are personally responsible for ensuring that their reports are accurate, complete, and timely.

B. Any request for an SF 278 must be in writing and state:
   1. The person’s name, occupation, and address.
   2. The name and address of any other person or organization on whose behalf the inspection or copy is requested.
   3. That the person is aware that it is unlawful to obtain or use the report for:
      a. Any unlawful purpose.
      b. Any commercial purpose, other than by news and communications media for dissemination to the general public.
      c. Determining or establishing the credit rating of any individual.
      d. Use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

VI. Retention of SFs 278

SFs 278 shall be retained for 6 years from the date of filing.

VII. Penalties

Compliance with the financial disclosure provisions shall be enforced by administrative, civil, or criminal remedies, which include:

A. Action Within the DoD Component

The Director, DLA may take appropriate action, including a change in assigned duties or adverse action, in accordance with applicable law or regulation, against any person who fails to file an SF 278, or who falsifies or fails to report required information.

B. Action by the Attorney General

The General Counsel, DLA is required to refer to the Attorney General the name of any person whom he or she has reasonable cause to believe has failed willfully to file an SF 278 on time or has falsified or failed willfully to file information required to be reported. Such referral does not bar additional administrative or judicial enforcement. The Attorney General may bring a civil action in the U.S. District Courts against any person who knowingly and willfully falsifies or fails to file or report any required information. The court may assess a civil penalty not to exceed $5,000. Knowing or willful falsification of information required to be filed also may result in criminal prosecution under 18 U.S.C. 1001, leading to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both.

C. Misuse of Reports

1. The Attorney General may bring a civil action against a person who obtains or uses an SF 278 filed under the Ethics in Government Act for any of the following reasons:
   a. Any unlawful purpose.
   b. Any commercial purpose, other than by news and communications media for dissemination to the general public.
   c. Determining or establishing the credit rating of any individual.
   d. Directly or indirectly, for the solicitation of money for any political, charitable, or other purpose.

2. The court in which such action is brought may assess a penalty in any amount not to exceed $5,000. This is in addition to any other legal remedy available.
APPENDIX E—REQUIREMENTS FOR SUBMISSION OF DD FORM 1555, STATEMENT OF AFFILIATIONS AND FINANCIAL INTERESTS

I. DLA Personnel Required To Submit Statements

A. DLA personnel required to file Statements of Affiliations and Financial Interests (DD Forms 1555) are those indicated in §1293.4(i).

B. Special Government Employees (as defined in §1293.4(i)).

1. Special Government employees, including Reserve military officers assigned to positions requiring the submission of a DD Form 1555 shall file a DD Form 1555 prior to performing the duties of the position.

2. The following categories of special Government employees are not required to file DD Forms 1555 unless they are specifically notified that they must do so:
   a. Physicians, dentists, and allied medical specialists engaged only in providing service to patients.
   b. Veterinarians providing only veterinary services.
   c. Lecturers participating only in educational activities.
   d. Chaplains performing only religious services.
   e. Individuals in the motion picture and television fields who are utilized only as narrators or actors in DLA productions.
   f. A special Government employee who is not a “consultant” or “expert” as those terms are defined in the Federal Personnel Manual, chapter 304.

II. Review of Positions

Immediate supervisors shall annually review each civilian and military position under their supervision, determine whether the position requires the incumbent to file a DD Form 1555, and notify each employee of the determination. The position description of each position shall state whether or not the incumbent must file a DD Form 1555. Any individual may request a review of the determination requiring submission of a DD Form 1555 from the Deputy Ethics Official. If the position requires the incumbent to file a DD Form 1555, the incumbents shall file a DD Form 1555 prior to performing the duties of the position.

Upon completion of their review and resolution of any conflicts, supervisors will forward the DD Forms 1555 to the General Counsel, DLA. The General Counsel, DLA will review and evaluation. After resolution of any conflict, the DD Forms 1555 will be forwarded to the appropriate Deputy Ethics Official.

A. Heads of Field activities with assigned DLA Counsel.

B. To Whom Submitted

1. HQ DLA.
   a. Heads of PSEs required to file DD Forms 1555 will submit them through the General Counsel, DLA to the Director, DLA.
   b. Deputy Heads of PSEs required to file DD Forms 1555 will submit them to the Head of the PSE for review and evaluation. Upon resolution of any conflict, the DD Forms 1555 will be forwarded to the General Counsel, DLA.
   c. Other officers and employees of HQ DLA, and their management support activities, will submit DD Forms 1555 to their immediate supervisor for review and evaluation. Upon completion of their review and resolution of any conflicts, supervisors will forward the DD Forms 1555 to the General Counsel, DLA.

2. Field activities with assigned DLA Counsel.

   a. Heads of PLFAs required to file DD Forms 1555 will submit them through the General Counsel, DLA to the Director, DLA.
   b. Deputy Heads of PLFAs required to file DD Forms 1555 will submit them to their immediate supervisors for review and evaluation. After resolution of any conflict, the forms will be submitted to the General Counsel, DLA.
   c. Other officers and employees of PLFAs or subordinate activities required to file DD Forms 1555 will submit them to their immediate supervisors for review and evaluation. After resolution of any conflict, the forms will be forwarded to the appropriate Deputy Ethics Official.
   d. Counsel for PLFAs will submit DD Forms 1555 to the Head of the PLFA for review and evaluation. After resolution of any conflict, the forms will be forwarded to the General Counsel, DLA.
   e. Heads of DLA activities subordinate to PLFAs, when required to file DD Forms 1555, will submit the forms to the Head of the PLFA, who will review and evaluate, and forward to the appropriate Deputy Ethics Official after resolution of any conflict.

III. Manner of Submission

A. Time of Submission

1. Employees will file a DD Form 1555 for review and approval prior to performing the duties of a position that requires filing of a DD Form 1555. Reserve Officers shall file the form upon reporting for duty. If an employee has filed a DD Form 1555 by virtue of a previous position, a copy of the previously submitted form may be submitted to the new supervisor for review rather than filing a new DD Form 1555.

2. DD Forms 1555 shall annually be filed by 31 October each year for all affiliations and financial interests as of the 30th of September of that year. Even if no changes occur from the previous year, a new and complete DD Form 1555 is required to be filed each year.

3. Excusable Delay. When required by reason of duty assignment or infirmity, a supervisor may grant an extension of time with concurrence of the DAEO or Deputy Ethics Official. Any extension in excess of 30 days requires the concurrence of the Designated Agency Ethics Official. Any late DD Forms 1555 shall include appropriate notation of any extension of time granted hereunder.

B. To Whom Submitted

1. HQ DLA.
   a. Heads of PSEs required to file DD Forms 1555 will submit them through the General Counsel, DLA to the Director, DLA.
   b. Deputy Heads of PSEs required to file DD Forms 1555 will submit them to the Head of the PSE for review and evaluation. After resolution of any conflict, the DD Forms 1555 will be forwarded to the General Counsel, DLA.
   c. Other officers and employees of HQ DLA, and their management support activities, will submit DD Forms 1555 to their immediate supervisor for review and evaluation. Upon completion of their review and resolution of any conflicts, supervisors will forward the DD Forms 1555 to the General Counsel, DLA.

2. Field activities with assigned DLA Counsel.

   a. Heads of PLFAs required to file DD Forms 1555 will submit them through the General Counsel, DLA to the Director, DLA.
   b. Deputy Heads of PLFAs required to file DD Forms 1555 will submit them to their immediate supervisors for review and evaluation. After resolution of any conflict, the forms will be submitted to the General Counsel, DLA.
   c. Other officers and employees of PLFAs or subordinate activities required to file DD Forms 1555 will submit them to their immediate supervisors for review and evaluation. After resolution of any conflict, the forms will be forwarded to the appropriate Deputy Ethics Official.
   d. Counsel for PLFAs will submit DD Forms 1555 to the Head of the PLFA for review and evaluation. After resolution of any conflict, the forms will be forwarded to the General Counsel, DLA.
   e. Heads of DLA activities subordinate to PLFAs, when required to file DD Forms 1555, will submit the forms to the Head of the PLFA, who will review and evaluate, and forward to the appropriate Deputy Ethics Official after resolution of any conflict.
f. Counsel for DLA activities subordinate to a PLFA will submit DD Forms 1555 to the activity Head for review, evaluation, and resolution of any conflict. The forms will be forwarded to the Counsel of the PLFA.

3. Management Support Activities. a. Heads of Management Support Activities will submit DD Forms 1555 to their immediate supervisors for review and evaluation. After resolution of any conflict, the forms will be submitted to the General Counsel, DLA.

b. Other officers and employees of Management Support Activities will submit them to their immediate supervisors for review and evaluation. After resolution of any conflict, the forms will be forwarded to the Deputy Ethics Official of the PLFA providing personnel services to the Management Support Activity.

4. Detailed employees. Agreements with other DoD Component agencies must contain a requirement that the other Component agency shall, within 60 days, forward to the General Counsel, DLA a copy of the detailed individual’s DD Form 1555, if required, and notice concerning the disposition of any conflict or apparent conflict of interest indicated.

C. Content of Report

1. Instructions for completing the DD Form 1555 are included as part of the form. Additional guidance may be obtained from the Designated Agency Ethics Official or Deputy Ethics Official.

2. The interest of a spouse, minor child, or any member of the employee’s household shall be reported as if it were the interest of the employee. The interests of a spouse need not be reported if the employee and spouse have:

   a. A final decree of separation.
   b. An interim or interlocutory decree, or
   c. A separation agreement formally executed by the employee and spouse in anticipation of its incorporation into a final decree of divorce or separation.

3. DLA personnel are not required to submit on a DD Form 1555 any information relating to their connection with or interest in a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization, or a similar organization not conducted as a business for profit. However, educational or other institutions doing research and development or related work involving grants of money or contracts with the Government must be reported.

4. Ownership of personal savings or checking accounts in financial institutions, shares in credit unions or savings and loan associations, life or property insurance policies and shares in widely held diversified mutual funds or regulated investment companies need not be reported.

5. An employee need not disclose the assets of, sources of income of, or transactions of, a trust if:

   a. The trust is a qualified blind or qualified diversified trust certified by the Office of Government Ethics and is otherwise reported on the DD Form 1555 by name of trust and date of execution, or
   b. The trust is an “excepted” trust, defined as follows:

      1. A trust that was not created by the DLA employee, or the employee’s spouse, or dependent child;
      2. A trust that consists of withholdings or sources of income of which the officer or employee, or spouse, or dependent child have no knowledge, and
      3. Which is disclosed as an asset or income source on the report.

6. DLA personnel shall request submission on their behalf of required information known only to other persons; for example, holdings of spouse or other members of the household, executor of any estate, or trustee. The submissions may be made with a request for confidentiality that will be honored even if it includes a limitation on disclosure to the DLA employee concerned.

D. Confidentiality of DD Forms 1555 of DLA personnel. Each DD Form 1555 shall be held in confidence. Information from a DD Form 1555 may not be disclosed except as the Designated Agency Ethics Official or the Office of Government Ethics may determine for good cause. Persons designated to review the DD Forms 1555 are responsible for maintaining the statements in confidence and shall not allow access to or disclosure from the DD Forms 1555 except to carry out the purpose of part 1293.

E. Effect of statements on other requirements. The DD Form 1555 required of DLA personnel is in addition to, and not in substitution for, any similar requirement imposed by statute, Executive Order, or regulation. Submission of a DD Form 1555 does not permit DLA personnel to participate in matters in which their participation is prohibited by statute, Executive Order, or regulation.

F. Review of DD Forms 1555. 1. The filing employee’s immediate supervisor reviews the DD Form 1555 to evaluate whether there is a conflict or apparent conflict between the employee’s private financial interests and his or her official responsibilities. The immediate supervisor records the results of the evaluation in block 13. Heads of PSEs and PLFAs will perform the initial review of their deputies’ DD Forms 1555 before forwarding them to the General Counsel, DLA. Heads of PLFAs perform the initial review of the PLFA Counsel’s forms. After review and completion of the supervisor’s statement, the DD Form 1555 should be forwarded to the Designated Agency Ethics Official or Deputy Ethics Official, as appropriate, for final review and filing.
Defense Logistics Agency

2. DD Forms 1555 shall be reviewed to assure that:
   a. Each item is completed, and
   b. No interest or position disclosed on the form violates or appears to violate any of the following:
      (1) Any applicable provision of chapter 11 of title 18 of the United States Code (part I).
      (3) Executive Order 11222 as amended, and any regulations promulgated thereunder.
      (4) Any other related statute or regulation applicable to the employees of the agency.
   3. The supervisor need not audit the report to ascertain whether the disclosures are correct; disclosures are to be taken at “face value” unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. The supervisor’s signature shall signify that he or she has found that the information in the report discloses no conflict of interest under applicable laws and regulations and that the report fulfills the requirements set out in IIIP2, above.
   4. If the supervisor believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted.
   5. Whenever the supervisor’s review of a DD Form 1555 discloses a conflict or an apparent conflict of interest, the employee concerned will be given an opportunity to explain the conflict or apparent conflict to the immediate supervisor. Resolution of a conflict or apparent conflict will be made under §1293.7(b). If the conflict or apparent conflict cannot be resolved by the supervisor, it will be forwarded, along with a copy of the employee’s current position description, to the Designated Agency Ethics Official or Deputy Ethics Official, as appropriate, for resolution.
   6. If the supervisor concludes that the report is completed properly and that no item violates, or appears to violate, applicable statute or regulation, then such official shall sign and date the report.
   G. Remedial action.
      1. Whenever the designated Agency Ethics Official or Deputy Ethics Official concludes that the filing individual is not in compliance with applicable laws or regulations, the Designated Agency Ethics Official or Deputy Ethics Official shall do the following:
         a. Notify the reporting individual of the preliminary determination.
         b. Afford the reporting individual an opportunity for personal consultation, if practicable.
         c. Determine what remedial action should be taken to bring the reporting individual into compliance.
         d. Notify the reporting individual of the remedial action required, indicating a date by which that action must be taken.
   2. Except in unusual situations, which must be documented fully to the satisfaction of the appropriate ethics official, remedial action shall be completed within 90 days from the date the reporting individual was notified that the action is required.
   3. Remedial action includes any of the following measures:
      a. Disqualification.
      b. Limitation of duties.
      c. Divestiture.
      d. Transfer or reassignment.
      e. Resignation.
      g. Establishment of a qualified blind trust.
   4. When the ethics official determines that a reporting person has complied fully with the remedial measures, a notation to that effect shall be made in the comment section of the DD Form 1555. The ethics official then shall sign and date the form and send written notice of that action to the reporting individual.
   5. If steps ensuring compliance with applicable laws and regulation are not taken by the date established, the ethics official shall report the matter to the General Counsel, DLA for appropriate action.
   H. Retention of statements. DD Forms 1555 shall be retained for 6 years from the date of filing.

APPENDIX F—REPORTING PROCEDURES FOR DOD AND DEFENSE RELATED EMPLOYMENT

1. Personnel Required To File

The following military officers and civilian employees are required to file a Report of DoD and Defense Related Employment (DD Form 1555): A. A retired military officer who served on active duty at least 10 years and who held, for any period during that service, the pay grade of O–4 or above, or a former civilian employee whose pay rate at any time during the 3-year period prior to the end of DoD employment was equal to or greater than the minimum rate for a GS–13 (GS–12, step 7), and who:
Pt. 1293, App. F

1. Within the 2-year period immediately following the termination of service or employment with a DoD Component, is employed by a defense contractor who, during the year before the former officer or employee began employment, was awarded $10,000,000 or more in defense contracts; and
2. Is employed by or performs services for the defense contractor and at any time during a year directly receives compensation of or is salaried at a rate of $25,000 per year or more from the defense contractor (compensation is received by a person if it is paid to a business entity with which the person is affiliated in exchange for services rendered by that person).

B. Each civilian employee of a DoD Component who:
1. Is employed at a pay rate equal to or greater than the minimum rate for GS-13 (GS-12, step 7).
2. Within the 2-year period prior to the effective date of service or employment with the DoD Component, was employed by a defense contractor who, during a year, was awarded $10,000,000 or more in defense contracts, and
3. Was employed by or performed services for the defense contractor and at any time during that year received compensation from or was salaried at a rate of $25,000 per year or more at any time during employment (compensation) is received by a person if it is paid to a business entity with which the person is affiliated in exchange for services rendered by the person).

II. Content of Report

Instructions for completing DD Forms 1787 are included as part of the form. A DD Form 1787 appears at the end of this appendix. Additional guidance for personnel required to file is available from the Designated Agency Ethics Officer (DAEO) or Deputy Ethics Official.

III. Submission and Review of Reports

A. Time of Filing
1. Current military officers and civilian employees shall file a DD Form 1787 within 30 days after entering employment or service with any DoD Component.
2. Former officers and employees shall file an initial report within 90 days after the date on which the individual began employment with the defense contractor.
3. Former officers and employees shall file subsequent reports each time, during the 2-year period after service or employment with the DoD Component ended, that the person’s duties with the defense contractor significantly changes or the person begins employment with another defense contractor. Such reports shall be filed within 30 days after the date of the change.

B. Submission
1. Civilians shall submit their reports to the General Counsel, DLA
2. Former military officers shall submit their report in accordance with the procedures set forth in the following:
   a. Army—AR 600–50, Standards of Conduct for Department of the Army personnel.
3. The General Counsel, DLA shall review DD Forms 1787 to assure that:
   a. Each item is completed, and
   b. No interest or position disclosed on the form violates or appears to violate the following:
      3. E.O. 11223 as amended, and any regulations promulgated thereunder.
      4. Any other related statute or regulation applicable to the employees of DLA.
4. The reports need not be audited to ascertain whether the disclosures are correct; disclosures are to be taken at “face value” unless there is a patent omission or ambiguity or the General Counsel, DLA has independent knowledge of matters outside the report.
5. If the General Counsel, DLA believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the General Counsel, DLA.
6. If the General Counsel, DLA concludes that the report is completed properly and that no item violates, or appears to violate, applicable statute or regulation, then the reports shall be signed and dated.

IV. Remedial Action

A. If the General Counsel, DLA concludes that the filing individual is not in compliance with applicable laws or regulations, he shall:
1. Notify the reporting individual in writing of the preliminary determination;
2. Afford the reporting individual an opportunity for personal consultation, if practicable;
3. Determine what remedial action should be taken to bring the reporting individual into compliance; and
4. Notify the reporting individual in writing of the remedial action required, indicating a date by which that action must be taken.
B. Except in unusual situations, which must be fully documented to the satisfaction of the General Counsel, DLA, remedial action shall be completed within 90 days from the date the reporting individual was notified that the action is required.
C. Remedial steps may include the following measures:
1. Disqualification.
2. Limitation of duties.
3. Divestiture.
4. Transfer or reassignment.
5. Resignation.
7. Establishment of a qualified blind trust.
D. When the General Counsel, DLA determines that a reporting person has fully complied with the remedial measures, a notation to that effect shall be made in the comment section of the DD Form 1787. The General Counsel, DLA shall then sign and date the DD Form 1787 and send written notice of that action to the reporting individual.
E. If steps assuring compliance with applicable laws and regulations are not taken by the date established, appropriate remedial action shall be instituted. The Office of Government Ethics shall be notified of the remedial action taken.

V. Public Availability of Reports

DD Forms 1787 must be made available for public examination upon request 15 days after the report is filed unless otherwise exempted pursuant to law. Receipt of the report for final review constitutes official filing and establishes the date from which the 15 days shall run. In most cases, this means the reports are available to the public before final review is completed. Reporting persons are personally responsible for ensuring that their reports are accurate, complete, and timely.

VI. Retention of Reports

DD Forms 1787 shall be retained for 6 years from the date of filing.

VII. Penalties

A. Administrative penalties

Any individual failing to file a report or falsifying or failing to file required information, may be subject to any appropriate personnel or other action in accordance with applicable law or regulation, including adverse action. Administrative penalty of up to $10,000 may also be imposed.

B. Criminal Liability

Any individual who knowingly or willfully falsifies information on a report required to be filed under this subpart may also be subject to criminal prosecution under 18 U.S.C. 1001.

APPENDIX G—ADMINISTRATIVE ENFORCEMENT PROVISIONS

I. Applicability and Scope

A. These provisions shall apply to all DLA Activities.
B. This appendix is adopted pursuant to 18 U.S.C. 207 and 10 U.S.C. 2397, 2397a, and 2397c which require the Department of Defense to develop administrative procedures for the review and disposition of reported violations of post employment restrictions and reporting requirements.
C. The procedures set forth in this appendix may be used, at the discretion of the General Counsel, DLA, to accomplish administrative enforcement of all statutes and regulations which would require or allow their use.

II. Policy

A. Administrative Procedure Act (APA)

In cases in which an APA hearing is required by statute, APA rules shall be used.

B. Rules of Evidence

In the discretion of the hearing examiner, the rules of evidence may be relaxed from those established in the Federal Rules of Evidence. Evidence must be relevant and material to be considered.

C. Burden of Proof

The DLA bears the burden of proof. A violation must be established by substantial evidence.

D. Protection of Privacy

The privacy of suspected individuals or entities shall be protected by safeguarding information concerning allegations and evidence, especially before initiation of administrative disciplinary action.

E. Reporting Suspected Violations

1. If any DLA officer or employee has reason to suspect that an individual or entity has violated a statute or regulation referred to in part 1293 the suspicion shall be reported immediately to the General Counsel, DLA or to the Counsel of the PLFA affected.
2. If other individuals have reason to suspect that an individual or entity has violated a statute or regulation, the suspicion may be reported to any DoD officer or employee.

III. Responsibilities

A. The General Counsel, DLA, shall:
1. Administer the provisions of this appendix.
2. Receive reports of alleged violations from the Inspector General, Department of Defense (IG, DoD).
IV. Procedures

A. Initiation of Administrative Disciplinary Action

1. Administrative disciplinary actions are initiated by providing suspected individuals or entities with notice of the report of a violation and notice of the intention to begin administrative disciplinary proceedings at least 20 calendar days prior to the beginning of such proceedings.

2. When hearings are required by statute, a hearing shall be conducted before imposition of administrative disciplinary sanctions unless the suspected individual or entity waives the hearing in writing in accordance with subparagraphs D2e and f, of this section IV.

3. When hearings are not required by statute, a hearing may be requested in writing by the suspected individual or entity in accordance with subparagraphs D2e and f, of this section IV.

B. Content of Notice

Notice to initiate administrative disciplinary proceedings shall include the following:

1. A statement of allegations, and the basis thereof, sufficiently detailed to enable the suspected individual or entity to prepare an adequate defense.

2. Notification of the right to a hearing when a hearing is required by statute.

3. The procedure for waiving the right to appear at the hearing when a hearing is required by statute.

4. A copy of a written waiver that shall include a statement that the signer understands that the signer has the right to appear at a hearing and that administrative disciplinary sanctions may be imposed even if the signer does not appear at a hearing.

5. When a hearing is not required by statute, a statement to the effect that if the suspected individual or entity fails to request such a hearing in writing, the DLA may initiate administrative disciplinary action which may result in imposition of administrative disciplinary sanctions.

6. The procedure for requesting a hearing when a hearing is not required by statute.

7. Notice that the failure to appear at a scheduled hearing shall constitute a constructive waiver of the right to appear at the hearing.

8. The date, time, and place of a scheduled hearing; however, suspected individuals or entities shall be scheduled to appear for hearings in the Federal judicial district in which the individual or entity resides or in the Federal judicial district in which the alleged violation occurred.

9. A statement of hearing rights in accordance with subparagraphs D2c and d, of this section IV.

10. A copy of these Administrative Enforcement Provisions.
C. Hearing Examiners

1. Hearing examiners shall be attorneys with not less than 3 years experience in the practice of law subsequent to admission to the bar.

2. A hearing examiner shall be impartial. An individual who has participated in the decisions to initiate proceedings shall not serve as a hearing examiner in those proceedings.

3. In cases not subject to the APA, the General Counsel, DLA, shall appoint a hearing examiner.

4. In cases subject to the APA, Administrative Law Judges (ALJ) shall be used as hearing examiners. The General Counsel, DLA, shall forward a written request to the Office of Administrative Law Judges, Office of Personnel Management. (See 5 U.S.C. 3344.) The request shall contain the following:
   a. The requisite authority requiring an APA hearing for the particular statutory violation.
   b. The status of the case.
   c. The tentative hearing data.
   d. The point of contact within the DLA.
   e. An acknowledgment that the request is being made on a reimbursable, intermittent basis.

D. Hearings

1. The hearing examiner shall have the power to do the following:
   a. Administer oaths and affirmations.
   b. Issue subpoenas authorized by law.
   c. Rule on offers of proof and receive relevant evidence.
   d. Take depositions or have depositions taken when justice shall be served.
   e. Regulate the course of the hearing.
   f. Hold conferences for the settlement or simplification of the issues by comment from the suspected individual or entity and the Government representative.
   g. Dispose of procedural requests or similar matters.
   h. Make decisions, in writing, on the merits of the particular case, as well as written recommendations of administrative disciplinary sanctions.

2. Suspected individuals and entities shall have hearing rights which include the following:
   a. The right to self representation, or to be represented by counsel.
   b. The right to introduce evidence and witnesses and the right to examine adverse witnesses.
   c. The right to stipulate to facts.
   d. The right to present oral argument.
   e. The right to receive a transcript or recording of the proceedings upon request.
   f. Additional rights that may be in the Administrative Procedure Act, if applicable.

3. Before the hearing examiner makes a decision, or the General Counsel, DLA, makes an appeal decision, the suspected individual or entity and the Government representative may submit the following material for consideration:
   a. Proposed findings and conclusions.
   b. Exceptions to the decisions of the hearing examiner, or to the tentative decisions of the GC, OSD.
   c. Supporting reasons for the exceptions or proposed findings or conclusions.

4. The record shall reflect the ruling on each finding, conclusion, or exception. All decisions by the hearing examiner or the General Counsel, DLA, shall be a part of the record, along with the reasons and basis for such findings and decisions.

E. Appeals

1. Within 20 days following the date on the report and recommendations from the hearing examiner, the suspected individual or entity may file an appeal with the General Counsel, DLA. An appeal shall be in writing, and shall set forth all errors of act, law, or both, together with the reasons, alleged to exist in the report from the hearing examiner.

2. Extensions of time to file an appeal may be granted at the discretion of the General Counsel, DLA, upon receipt of written request for an extension from the individual or entity concerned.

3. The General Counsel, DLA shall make a written appeal decision if any appeal is submitted timely, after reviewing the report of findings of facts, the decision, and recommendations from the hearing examiner.

4. If the appeal decision is not in accordance with the report of findings of facts, the decision, or recommendations from the hearing examiner, the reasons shall be specified.

5. The decision of the General Counsel, DLA, shall be the final administrative determination. The appeal decision shall be mailed to the suspected individual or entity along with a statement, if applicable, that the individual or entity may seek judicial review of the administrative determinations.

F. Administrative Sanctions

1. The General Counsel, DLA, may take appropriate disciplinary action when indicated by the outcome of a case involving a violation of Title 18 U.S.C., 207 by:
   a. Prohibiting the individual or entity from making on behalf of any other person except the United States, any formal or informal appearance before, or any oral or written communication with the intent to influence, to the Department of Defense, its officers or employees, on any matter of business for a period not to exceed 5 years. This may be enforced by directing DoD officers and employees to refuse to participate in any such appearance, or to accept any such communication.
b. Barring the individual or entity from employment by the Department of Defense for a period not to exceed 5 years.

2. The General Counsel, DLA, may take appropriate disciplinary action whenever indicated by the outcome of a case involving violations of 10 U.S.C. 2397, 2397a, or 2397c by:
   a. Imposing and administrative penalty, not to exceed $10,000.
   b. With respect to violations of 10 U.S.C. 2397a, imposing an additional administrative penalty of a particular amount if the individual is determined to have accepted or continued employment with a defense contractor during the 10-year period beginning with the date of separation from Government service.

3. The General Counsel, DLA, may take other appropriate disciplinary action when indicated by the outcome of a case in accordance with the laws or regulations violated.

G. Judicial Review

Any individual or entity found in violation as described, and against whom an administrative sanction is imposed, may seek judicial review of the final administrative determination.
# CHAPTER XVI—SELECTIVE SERVICE SYSTEM

<table>
<thead>
<tr>
<th>Part</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1600–1601</td>
<td>[Reserved]</td>
</tr>
<tr>
<td>1602</td>
<td>Definitions</td>
</tr>
<tr>
<td>1605</td>
<td>Selective Service System organization</td>
</tr>
<tr>
<td>1609</td>
<td>Uncompensated personnel</td>
</tr>
<tr>
<td>1615</td>
<td>Administration of registration</td>
</tr>
<tr>
<td>1618</td>
<td>Notice to registrants</td>
</tr>
<tr>
<td>1621</td>
<td>Duty of registrants</td>
</tr>
<tr>
<td>1624</td>
<td>Inductions</td>
</tr>
<tr>
<td>1627</td>
<td>Volunteers for induction</td>
</tr>
<tr>
<td>1630</td>
<td>Classification rules</td>
</tr>
<tr>
<td>1633</td>
<td>Administration of classification</td>
</tr>
<tr>
<td>1636</td>
<td>Classification of conscientious objectors</td>
</tr>
<tr>
<td>1639</td>
<td>Classification of registrants preparing for the Ministry</td>
</tr>
<tr>
<td>1642</td>
<td>Classification of registrants deferred because of hardship to dependents</td>
</tr>
<tr>
<td>1645</td>
<td>Classification of ministers of religion</td>
</tr>
<tr>
<td>1648</td>
<td>Classification by local board</td>
</tr>
<tr>
<td>1651</td>
<td>Classification by District Appeal Board</td>
</tr>
<tr>
<td>1653</td>
<td>Appeal to the President</td>
</tr>
<tr>
<td>1656</td>
<td>Alternative service</td>
</tr>
<tr>
<td>1657</td>
<td>Overseas registrant processing</td>
</tr>
<tr>
<td>1659</td>
<td>Extraordinary expenses of registrants</td>
</tr>
<tr>
<td>1662</td>
<td>Freedom of Information Act (FOIA) procedures</td>
</tr>
<tr>
<td>1665</td>
<td>Privacy Act procedures</td>
</tr>
<tr>
<td>1690</td>
<td>[Reserved]</td>
</tr>
<tr>
<td>1697</td>
<td>Salary offset</td>
</tr>
<tr>
<td>1698</td>
<td>Advisory opinions</td>
</tr>
<tr>
<td>1699</td>
<td>Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by Selective Service System</td>
</tr>
</tbody>
</table>

Cross References: Regulation governing standards for discharge under the Selective Service Act of 1948: See part 41 of this title.
§ 1602.1 Definitions to govern.

The definitions contained in section 16 of the Military Selective Service Act, and the definitions contained in this part shall govern in the interpretation of the regulations of this chapter.

§ 1602.2 Administrative classification.


[52 FR 24454, July 1, 1987]

§ 1602.3 Aliens and nationals.

(a) The term alien means any person who is not a citizen or national of the United States.

(b) The term national of the United States means:

(1) A citizen of the United States, or

(2) A person, though not a citizen of the United States, who owes allegiance to the United States.

§ 1602.4 Area office.

The Selective Service Office which is responsible for all administrative and operational support for the one or more local boards within its jurisdiction.

§ 1602.5 Area office staff.

The compensated employees, civilian and military, of the Selective Service System employed in an area office will be referred to as the area office staff.

§ 1602.6 Board.

The word board when used alone, unless the context otherwise indicates, includes a local board, district appeal board, and the National Appeal Board and panels thereof.

§ 1602.7 Classification.

Classification is the exercise of the power to determine claims or questions with respect to inclusion for or exemption or deferment from training and service under Selective Service Law.

§ 1602.8 Classifying authority.

The term classifying authority refers to any official or board who is authorized in §1633.1 to classify a registrant.

§ 1602.9 Computation of time.

Unless otherwise specified the period of days allowed a registrant or other person to perform any act or duty required of him shall be counted as beginning on the day following that on which the notice is issued.

§ 1602.10 County.

The word county includes, where applicable, counties, independent cities, and similar subdivisions, such as the independent cities of Virginia and the parishes of Louisiana.

§ 1602.11 District appeal board.

A district appeal board or a panel thereof of the Selective Service System is a group of not less than three civilian members appointed by the President to act on cases of registrants in...
§ 1602.12  accords with the provisions of part 1651 of this chapter.
[52 FR 24454, July 1, 1987]

§ 1602.12 Governor.
    The word Governor includes, where applicable, the Governor of each of the States of the United States, the Mayor of the District of Columbia, the Governor of Puerto Rico, the Governor of the Virgin Islands, and the Governor of Guam.

§ 1602.13 Judgmental Classification.
    A classification action relating to a registrant’s claim for Class 1–A–O, 1–O, 2–D, 3–A, or 4–D.

§ 1602.14 Local board.
    A local board or a panel thereof of the Selective Service System is a group of not less than three civilian members appointed by the President after nomination by a Governor to act on cases of registrants in accord with the provisions of part 1648 of this chapter.
[52 FR 24454, July 1, 1987]

§ 1602.15 Local board of jurisdiction.
    The local board of jurisdiction is the local board to which a registrant is assigned and which has authority, in accord with the provisions of this chapter, to determine his claim or to issue to him an order. His local board and registrant’s local board refer to the local board of jurisdiction.
[52 FR 24454, July 1, 1987]

§ 1602.16 MEPS.
    A Military Entrance Processing Station is a military installation to which registrants are ordered to report for examination or induction.

§ 1602.17 Military service.
    The term military service includes service in the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

§ 1602.18 National Appeal Board.
    The National Appeal Board or a panel thereof of the Selective Service System is a group of not less than three civilian members appointed by the President to act on cases of registrants in accord with the provisions of part 1653 of this chapter.
[52 FR 24454, July 1, 1987]

§ 1602.19 Numbers.
    Cardinal numbers may be expressed by Arabic or Roman symbols.

§ 1602.20 Registrant.
    A registrant is a person registered under the Selective Service Law.

§ 1602.21 Selective Service Law.
    The term Selective Service Law includes the Military Selective Service Act, all rules and regulations issued thereunder, and Proclamations of the President pertaining to registration under that Act.

§ 1602.22 Singular and plural.
    Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular, except where the context clearly indicates otherwise.

§ 1602.23 State.
    The word State includes, where applicable, the several States of the United States, the City of New York, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

§ 1602.24 Claim.
    A claim is a request for postponement of induction or classification into a class other than 1–A.
[52 FR 24454, July 1, 1987]

§ 1602.25 Director.
    Director is the Director of Selective Service.
[52 FR 24454, July 1, 1987]

PART 1605—SELECTIVE SERVICE SYSTEM ORGANIZATION

NATIONAL ADMINISTRATION

Sec. 1605.1 Director of Selective Service.
1605.6 National Appeal Board.

REGION ADMINISTRATION
1605.7 Region Manager.
§ 1605.6

National Appeal Board.

(a) There is hereby created and established within the Selective Service System a civilian agency of appeal which shall be known as the National Appeal Board. The President shall appoint not less than three members to the National Appeal Board, and he shall designate one member as chairman.

(b) The President shall appoint members of the National Appeal Board from among citizens of the United States who:

(1) Are not active or retired members of the Armed Forces or any reserve component thereof;

(2) Have not served as a member of the National Appeal Board for a period of more than five years;

(3) Are at least 18 years of age;

(4) Are able to devote sufficient time to duties of the Board; and

necessary for carrying out the functions of the Selective Service System.

(c) To obligate and authorize expenditures from funds appropriated for carrying out the functions of the Selective Service System.

(d) To appoint and to fix, in accordance with provisions of chapter 51 and subchapter III of chapter 53 of title 5 U.S.C., relating to classification and General Schedule pay rates, the compensation of such officers, agents, and employees as shall be necessary for carrying out the functions of the Selective Service System.

(e) To procure such space as he may deem necessary for carrying out the functions of the Selective Service System by lease pursuant to existing statutes.

(f) To obtain by purchase, loan, or gift such equipment, supplies, printing, binding, and blankbook work for the Selective Service System as he may deem necessary to carry out the functions of the Selective Service System.

(g) To perform such other duties as shall be required of him under the Selective Service Law or which may be delegated to him by the President.

(h) To delegate any of his authority to such officers, agents, or persons as he may designate and to provide for the subdelegation of any such authority.
§ 1605.7

(5) Are willing to fairly and uniformly apply Selective Service Law.

(c)(1) A majority of the members of the board shall constitute a quorum for the transaction of business, and a majority of the members present at any meeting at which a quorum is present, shall decide any question.

(2) The National Appeal Board may sit en banc, or upon the request of the Director or as determined by the chairman of the National Appeal Board, in panels, each panel to consist of at least three members. The Chairman of the National Appeal Board shall designate the members of each panel and he shall designate one member of each panel as chairman. A majority of the members of a panel shall constitute a quorum for the transaction of business, and a majority of the members present at any meeting at which a quorum is present, shall decide any question. Each panel of the National Appeal Board shall have full authority to act on all cases assigned to it.

(3) The National Appeal Board or a panel thereof shall hold meetings in Washington, DC, and upon request of the Director or as determined by the Chairman of the National Appeal Board, at any other place.

(d) The National Appeal Board or panel thereof shall classify each registrant whose classification has been appealed to the President under part 1653 of this chapter.

(e) No member of the National Appeal Board shall act on the case of a registrant who is the member’s first cousin or closer relation either by blood, marriage, or adoption, or who is the member’s employer, employee or fellow employee or stands in the relationship of superior or subordinate of the member in connection with any employment, or is a partner or close business associate of the member, or is a fellow member or employee of the National Appeal Board. A member of the National Appeal Board must disqualify himself in any matter in which we would be restricted for any reason in making an impartial decision.

(f) Each member of the National Appeal Board while on the business of the National Appeal Board away from his home or regular place of business shall receive actual travel expenses and per diem in lieu of subsistence in accordance with rates established by Federal Travel Regulations.

(g) The Director shall pay the expenses of the members of the National Appeal Board in accord with applicable Federal Travel Regulations and shall furnish that Board and its panels necessary personnel, suitable office space, necessary facilities and services.

[52 FR 8890, Mar. 20, 1987]

REGION ADMINISTRATION

§ 1605.7 Region Manager.

(a) Subject to the direction and control of the Director of Selective Service, the Region Manager of Selective Service for each region shall be in immediate charge of the Region Headquarters and shall be responsible for carrying out the region functions of the Selective Service System in the various States assigned to the region.

(b) The Region Manager will perform such duties as are prescribed by the Director of Selective Service.

§ 1605.8 Staff of Region Headquarters for Selective Service.

(a) Subject to applicable law, and within the limits of available funds, the staff of each region for Selective Service shall consist of as many officers, either military or civilian, as shall be authorized by the Director of Selective Service.

(b) In accordance with limitations imposed by the Director of Selective Service, the Region Manager is authorized to appoint such civilian personnel as he considers are required in the operation of the Region Headquarters.

STATE ADMINISTRATION

§ 1605.11 Governor.

The Governor is authorized to recommend a person to be appointed by the President as State Director of Selective Service for his State, who shall represent the Governor in all Selective Service matters.

§ 1605.12 State Director of Selective Service.

(a) The State Director of Selective Service for each State, subject to the direction and control of the Director of
Selective Service, shall be in immediate charge of the State Headquarters for Selective Service in his State. The State Headquarters for Selective Service shall be an office of record for Selective Service operations only, and no records other than Selective Service records shall be maintained in such office.

(b) The State Director of Selective Service will perform such duties as are prescribed by the Director of Selective Service.

§ 1605.13 Staff of State Headquarters for Selective Service.

(a) Subject to applicable law and within the limits of available funds, the staff of each State Headquarters for Selective Service shall consist of as many officers, either military or civilian, as shall be authorized by the Director of Selective Service.

(b) In accordance with limitations imposed by the Director of Selective Service, the State Director of Selective Service is authorized to appoint such civilian personnel as he considers are required in the operation of the State Headquarters for Selective Service.

§ 1605.14 State Director of Selective Service for New York City.

The Governor of the State of New York is authorized to recommend a person to be appointed by the President as State Director of Selective Service for New York City, who shall represent the Governor in all Selective Service matters within the City of New York. Subject to the direction and control of the Director of Selective Service, the State Director of Selective Service for New York City shall be in immediate charge of the State Headquarters for Selective Service for New York City and shall perform such duties as are prescribed by the Director of Selective Service. The State Director of Selective Service for the State of New York shall have jurisdiction in Selective Service matters within the City of New York. The State headquarters of Selective Service for New York City shall be an office of record for Selective Service operations only, and no records other than Selective Service records shall be maintained in such office.

§ 1605.21 Area.

The Director of Selective Service shall establish one or more district appeal boards in each of the Federal Judicial Districts in the several states of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. The Director of Selective Service may establish panels of appeal boards.

§ 1605.22 Composition and appointment of district appeal boards.

The Director of Selective Service will prescribe the number of members for the district appeal boards. The President shall appoint members of district appeal boards from among citizens of the United States who are residents of the area for which the respective boards have jurisdiction. The Director of Selective Service shall furnish necessary personnel, suitable office space, facilities and services to support each district appeal board.

§ 1605.23 Designation.

The Director of Selective Service shall assign each district appeal board within a Federal Judicial District a specific identification by which it shall be known. If a district appeal board consists of more than one panel, each panel shall have a specific identifying number. Such numbers shall be assigned in numerical sequence beginning with numeral 1.

§ 1605.24 Jurisdiction.

The district appeal board shall have jurisdiction to review and to affirm or change any local board decision appealed to it when:

(a) An appeal is submitted by a registrant from a local board in its area; or

(b) An appeal is submitted to it from a local board not in the appeal board area by a registrant whose principal place of employment or residence is located within the jurisdiction of the appeal board; or

(c) An appeal is submitted or transferred to it by the Director of Selective Service to assure the fair and equitable administration of the Law.
§ 1605.25   Disqualification.
   (a) No member of a district appeal board shall act on the case of a registrant who is the member's first cousin or closer relation, either by blood, marriage, or adoption, or who is the member's employer, employee, or fellow employee, or stands in the relationship of superior or subordinate of the member in connection with any employment, or is a partner or close business associate of the member, or is a fellow member or employee of the board.
   (b) A member of a district appeal board must disqualify himself in any matter in which he would be restricted for any reason in making an impartial decision.
   (c) Whenever a quorum of the district appeal board or a panel thereof cannot act on the case of a registrant that it has been assigned, and there is no other panel of the district appeal board to which the case may be transferred, the district appeal board shall transmit such case to the director of Selective Service for transfer to another district appeal board.

§ 1605.26   Organization and meetings.
   Each district appeal board, or panel thereof, shall elect a chairman and a vice-chairman at least every two years. A majority of the members of the board when present at any meeting shall constitute a quorum for the transaction of business. A majority of the members present at any meeting at which a quorum is present shall decide any question. Every member, unless disqualified, shall vote on every question or classification. In case of a tie vote on a question or classification, the board shall postpone action until the next meeting. If the question or classification remains unresolved at the next meeting, the file will be transferred for classification in accord with §1605.25(c). If any member is absent so long as to hamper the work of the board, the chairman, a member of the board or panel concerned, or an area office employee shall report that fact to the Director of Selective Service and such action as appropriate shall be taken. If, through death, resignation, or other causes, the membership of the board falls below the prescribed number of members, the board or panel shall continue to function, provided a quorum of the prescribed membership is present at each official meeting.

§ 1605.27   Minutes of meetings.
   A Selective Service compensated employee will keep the minutes of each appeal board meeting. In the absence of a compensated employee the minutes will be kept by an appeal board member.

§ 1605.28   Signing official papers.
   Official documents issued and minutes of meetings maintained by a district appeal board may be signed by any member of the board, or by any compensated employee of the Selective Service System authorized to perform administrative duties for the board, except when otherwise prescribed by the Director of Selective Service.

LOCAL BOARDS

§ 1605.51   Area.
   (a) The Director of Selective Service shall divide each State into local board areas and establish local boards. There shall be at least one local board in each county except where the Director of Selective Service establishes an inter-county board. When more than one local board is established within the same geographical jurisdiction, registrants residing in that area will be assigned among the boards as prescribed by the Director of Selective Service. The Director of Selective Service may establish panels of local boards.
   (b) [Reserved]
   [47 FR 4644, Feb. 1, 1982, as amended at 52 FR 24454, July 1, 1987]

§ 1605.52   Composition of local boards.
   The Director of Selective Service shall prescribe the number of members of local boards.

§ 1605.53   Designation.
   The Director of Selective Service shall assign each local board within a State a specific identifying number by which it shall be known. Such identifying numbers shall be assigned in numerical sequence beginning with the numeral 1.
§ 1605.54 Jurisdiction.

The local board shall have full authority to perform all acts within its jurisdiction authorized by law, to include the acting on any claim presented to it when:

(a) The claim is submitted by a registrant who is assigned to it; or

(b) The claim is transferred to it from another board in the manner provided in these regulations; or

(c) The claim is submitted or transferred to it by the Director of Selective Service to assure the fair and equitable administration of the Law.

§ 1605.55 Disqualification.

(a) No member of a local board shall act on the case of a registrant who is the member’s first cousin or closer relation, either by blood, marriage, or adoption, or who is the member’s employer, employee, or fellow employee, or stands in the relationship of superior or subordinate of the member in connection with any employment, or is a partner or close business associate of the member, or a fellow member or employee of the area office.

(b) A member of the local board must disqualify himself in any matter in which he would be restricted, for any reason, in making an impartial decision.

(c) Whenever a quorum of a local board cannot act on the case of a registrant, the area office supervisor shall cause such case to be transferred to another board within the area office. In those instances where only one board exists in an area office, the case should be transmitted to the nearest area office for transfer to a board under its jurisdiction.

§ 1605.56 Organization and meetings.

Each local board shall elect a chairman and vice-chairman at least every two years. A majority of the membership of the board shall constitute a quorum for the transaction of business. A majority of the members present at any meeting at which a quorum is present shall decide any question or classification. Every member present, unless disqualified, shall vote on every question or classification. In case of a tie vote on any question or classification, the board shall postpone action on the question or classification until it can be decided by a majority vote at the next meeting. If the question or classification remains unresolved at the next meeting, the file will be transferred for classification in accord with §1605.55(c). If any member is absent so long as to hamper the work of the board, the chairman, a member of the board, or a Selective Service compensated employee shall report that fact to the Director of Selective Service and appropriate action shall be taken. If through death, resignation, or other cause, the membership of a board falls below the prescribed number, it shall continue to function provided a quorum of the prescribed membership is present at each official meeting.

§ 1605.58 Minutes of meetings.

A compensated employee of the appropriate area office will keep the minutes of each meeting of a local board. In the absence of a compensated employee the minutes will be kept by a board member.

§ 1605.59 Signing official papers.

Official papers issued by a local board may be signed by any member of the board or compensated employee of the area office, or any compensated employee of the Selective Service System whose official duties require him to perform administrative duties at the area office except when otherwise prescribed by the Director of Selective Service.

AREA OFFICE ADMINISTRATION

§ 1605.60 Area.

(a) The Director of Selective Service shall prescribe the number of area offices to be established and shall define the boundaries thereof.

(b) The area office shall be an office of record and responsible for all administrative and operational support of the one or more local boards within its jurisdiction.

§ 1605.61 Staff of area offices for selective service.

Subject to applicable law and within the limits of available funds, the staff of each area office shall consist of as many compensated employees, either
§ 1605.81 Interpreters.

(a) The local board, district appeal board and the National Selective Service Appeal Board are authorized to use interpreters when necessary.

(b) The following oath shall be administered by a member of the board or a compensated employee of the System to an interpreter each time he or she interprets:

Do you swear (or affirm) that you will truly interpret in the matter now in hearing?

(c) Any interpreter who fails to respond in the affirmative shall not be permitted to function in this capacity.

[47 FR 4644, Feb. 1, 1982, as amended at 52 FR 24454, July 1, 1987]

PART 1609—UNCOMPENSATED PERSONNEL

Sec.
1609.1 Uncompensated positions.
1609.2 Citizenship.
1609.3 Eligibility.
1609.4 Oath of office.
1609.5 Suspension.
1609.6 Removal.
1609.7 Use of information.


SOURCE: 47 FR 4647, Feb. 1, 1982, unless otherwise noted.

§ 1609.1 Uncompensated positions.

Members of civilian review boards, local boards, and district appeal boards and all other persons volunteering their services to assist in the administration of the Selective Service Law shall be uncompensated. No person serving without compensation shall accept remuneration from any source for services rendered in connection with Selective Service matters.

[52 FR 24454, July 1, 1987]

§ 1609.2 Citizenship.

No person shall be appointed to any uncompensated position in the Selective Service System who is not a citizen of the United States.

§ 1609.3 Eligibility.

(a) The President, upon the recommendation of the respective Governors, will consider for appointment as a member of a local board, any person who:

(1) Is within the age limits prescribed by the Military Selective Service Act; and

(2) Is a citizen of the United States; and

(3) Is a resident of the county in which the local board has jurisdiction; and

(4) Is not an active or retired member of the Armed Forces or any reserve component thereof; and

(5) Has not served as a member of a Selective Service board for a period of more than 20 years; and

(6) Is able to perform such duties as necessary during standby status; and

(7) Is able to devote sufficient time to board affairs; and

(8) Is willing to fairly and uniformly apply Selective Service Law.

(b) The President, upon the recommendation of the Director of Selective Service, will consider for appointment as a member of a district appeal board any person who:

(1) Is within the age limits prescribed by the Military Selective Service Act; and

(2) Is a citizen of the United States; and

(3) Is a resident of the Federal Judicial District in which the district appeal board has jurisdiction; and

(4) Is not an active or retired member of the Armed Forces or any reserve component thereof; and

(5) Has not served as a member of a Selective Service board for a period of more than 20 years; and

(6) Is able to perform such duties as necessary during standby status; and

(7) Is able to devote sufficient time to the district appeal board affairs; and

(8) Is willing to fairly and uniformly apply Selective Service Law.
§ 1609.4 Oath of office.

Every person who undertakes to render voluntary uncompensated service in the administration of the Selective Service Law shall execute an Oath of Office and Waiver of Pay before he enters upon his duties.

§ 1609.5 Suspension.

The Director of Selective Service may suspend from duty any uncompensated person engaged in the administration of the Selective Service Law pending his consideration of the advisability of removing such person.

§ 1609.6 Removal.

(a) The Director of Selective Service may remove any uncompensated person engaged in the administration of the Selective Service Law.

(b) The Governor may recommend to the Director of Selective Service the removal, for cause, of the State Director or any uncompensated person engaged in the administration of the Selective Service Law in his State. The Director of Selective Service shall make such investigation of the Governor’s recommendation as he deems necessary, and upon completion of his investigation, he shall take such action as he deems proper.

§ 1609.7 Use of information.

Any information or records obtained by compensated or uncompensated personnel during the performance of their official duties, including proceedings before the boards, shall be restricted to official use by the personnel of the Selective Service System except as specifically authorized by law.

PART 1615—ADMINISTRATION OF REGISTRATION

Sec.

1615.1 Registration.

1615.2 Responsibility of Director of Selective Service in registration.

1615.3 Registration procedures.

1615.4 Duty of persons required to register.

1615.5 Persons not to be registered.

1615.6 Selective service number.

1615.7 Evidence of registration.

1615.8 Cancellation of registration.

1615.9 Registration card or form.
§ 1615.2 Responsibility of Director of Selective Service in registration.

Whenever the President by proclamation or other public notice fixes a day or days for registration, the Director of Selective Service shall take the necessary steps to prepare for registration and, on the day or days fixed, shall supervise the registration of those persons required to present themselves for and submit to registration. The Director of Selective Service shall also arrange for and supervise the registration of those persons who present themselves for registration at times other than on the day or days fixed for any registration.

§ 1615.3 Registration procedures.

Persons required by selective service law and the Proclamation of the President to register shall be registered in accord with procedures prescribed by the Director of Selective Service.

§ 1615.4 Duty of persons required to register.

A person required by selective service law to register has the duty:
(a) To complete the registration process by a method prescribed by the Director of Selective Service and to record thereon his name, date of birth, sex, Social Security Account Number (SSAN), current mailing address, permanent residence, telephone number, date signed, and signature, if requested; and
(b) To submit for inspection, upon request, evidence of his identity to a person authorized to accept the registration information. Evidence of identity may be a birth certificate, motor vehicle operator’s license, student’s identification card, United States Passport, or a similar document.


§ 1615.5 Persons not to be registered.

No person who is not required by selective service law or the Proclamation of the President to register shall be registered.

§ 1615.6 Selective service number.

Every registrant shall be given a selective service number. The Social Security Account Number will not be used for this purpose.

§ 1615.7 Evidence of registration.

The Director of Selective Service shall issue to each registrant written evidence of his registration. The Director of Selective Service will replace that evidence upon written request of the registrant, but such request will not be granted more often than once in any period of six months.

§ 1615.8 Cancellation of registration.

The Director of Selective Service may cancel the registration of any particular registrant or of a registrant who comes within a specified group of registrants.

§ 1615.9 Registration card or form.

For the purposes of these regulations, the terms Registration Card and Registration Form are synonymous.

PART 1618—NOTICE TO REGISTRANTS

Sec.
1618.1 Abandonment of rights or privileges.
1618.2 Filing of documents.
1618.4 Transmission of orders and other official papers to registrants.


SOURCE: 47 FR 4648, Feb. 1, 1982, unless otherwise noted.

§ 1618.1 Abandonment of rights or privileges.

If a registrant fails to claim and exercise any right or privilege within the required time, he shall be deemed to have abandoned the right or privilege unless the Director of Selective Service, for good cause, waives the time limit.

§ 1618.2 Filing of documents.

A document other than a registration card received by an element of the Selective Service System will be considered to have been filed on the date that it is received: Provided, That a document that is received which was transmitted by the United States Postal Service (USPS) and was enclosed in a
cover that bears a legible USPS postmark date will be deemed to have been received on that date.

§ 1618.4 Transmission of orders and other official papers to registrants.

Personnel of the Selective Service System will transmit orders or other official papers addressed to a registrant by handing them to him personally or mailing them to him to the current mailing address last reported by him in writing to the Selective Service System.

PART 1621—DUTY OF REGISTRANTS

Sec.
1621.1 Reporting by registrants of their current status.
1621.2 Duty to report for and submit to induction.
1621.3 Duty to report for and submit to examination.


§ 1621.1 Reporting by registrants of their current status.

Until otherwise notified by the Director of Selective Service, it is the duty of every registrant who registered after July 1, 1980:

(a) To notify the System within 10 days of any change in the following items of information that he provided on his registration form: name, current mailing address and permanent residence address; and

(b) To submit to the classifying authority, all information concerning his status within 10 days after the date on which the classifying authority makes him a request therefor, or within such longer period as may be fixed by the classifying authority; and

(c) Who has a postponement of induction, or has been deferred or exempted from training and service, to notify the System immediately of any changes in facts or circumstances relating to the postponement, deferment or exemption; and

(d) Who has a postponement of examination, to notify the System immediately of any changes in facts or circumstances relating to the postponement.

[52 FR 24454, July 1, 1987]

§ 1621.2 Duty to report for and submit to induction.

When the Director of Selective Service orders a registrant for induction, it shall be the duty of the registrant to report for and submit to induction at the time and place ordered unless the order has been canceled. If the time when the registrant is ordered to report for induction is postponed, it shall be the continuing duty of the registrant to report for and submit to induction at such time and place as he may be reordered. Regardless of the time when or the circumstances under which a registrant fails to report for induction when it is his duty to do so, it shall thereafter be his continuing duty from day to day to report for and submit to induction at the place specified in the order to report for induction.

[47 FR 4648, Feb. 1, 1982]

§ 1621.3 Duty to report for and submit to examination.

When the Director orders a registrant for examination, it shall be the duty of the registrant to report for and submit to examination at the time and place ordered unless the order has been canceled. If the time when the registrant is ordered to report for examination is postponed, it shall be the continuing duty of the registrant to report for and submit to examination at such time and place as he may be reordered. Regardless of the time when, or the circumstances under which a registrant fails to report for examination when it is his duty to do so, it shall thereafter be his continuing duty from day to day to report for and submit to examination at the place specified in the order to report for examination.

[52 FR 8890, Mar. 20, 1987]

PART 1624—INDUCTIONS

Sec.
1624.1 Random selection procedures for induction.
1624.2 Issuance of induction orders.
1624.3 Age selection groups.
1624.4 Selection and/or rescheduling of registrants for induction.
1624.5 Order to report for induction.
1624.6 Postponement of induction.
§ 1624.1 Random selection procedures for induction.

(a) The Director of Selective Service shall from time to time establish a random selection sequence for induction by a drawing to be conducted in the place and on a date the Director shall fix. The random selection method shall use 365 days, or when appropriate, 366 days to represent the birthdays (month and day only) of all registrants who, during the specified calendar year(s) attain their 18th year of birth. The drawing, commencing with the first day selected, and continuing until all 365 days or, when appropriate 366 days are drawn, shall be accomplished impartially. The random sequence number thus determined for any registrant shall apply to him so long as he remains subject to induction for military training and service by random selection.

(b) The date of birth of the registrant that appears on his Selective Service Registration Record on the day before the lottery is conducted to establish his random selection sequence will be conclusive as to his date of birth in all matters pertaining to his relations with the Selective Service System.

§ 1624.2 Issuance of induction orders.

The Director of Selective Service, upon receipt of a call from the Secretary of Defense for persons to be inducted into the Armed Forces in accord with §1624.4, shall issue orders to report for induction to registrants whose registration records are in the master computer file at the beginning of any day on which orders are issued. Orders shall be issued in such numbers and at such times as will assure that such call or requisition is filled. The names contained in the Selective Service System data base on a given day will constitute the valid list of registrants from which induction orders can be issued on that day.

§ 1624.3 Age selection groups.

Age selection groups are established as follows:

(a) The age 20 selection group for each calendar year consists of registrants who have attained or will attain the age of 20 in that year.

(b) The age 21 selection group for each calendar year consists of registrants who have attained or will attain the age of 21 in that year and, in like manner, each age selection group will be so designated through age group 25.

(c) The age 26 through 34 selection groups consist of registrants who meet the following three criteria:

(1) They have attained or will attain the age of 26 through 34, respectively, during the calendar year; and

(2) They have been previously ordered to report for induction but have not been inducted; and

(3) They have been classified in one of the following classes:

(i) Class 1–D–D.

(ii) Class 2–D.

(iii) Class 3–A.

(iv) Class 4–B.

(v) Class 4–F.

(d) The age 19 selection group for each calendar year consists of registrants who have attained the age of 19 in that year.

(e) The age 18 selection group shall consist of registrants who have attained the age of 18 years and six months and who have not attained the age of 19 years in the order of their dates of birth with the oldest being selected first.

§ 1624.4 Selection and/or rescheduling of registrants for induction.

A registrant in Class 1–A or a registrant subsequently classified 1–A–0 shall be selected and ordered or rescheduled to report for induction in the following categories and in the order indicated: Provided, That a registrant who has been identified in accord with the procedures prescribed by the Director of Selective Service as one who will become a member of one of the following categories on the next January 1, may, prior to January 1, be selected.
Selective Service System § 1624.6

and ordered to report for induction on a date after January 1 as a member of such category. 
(a) Volunteers for induction in the order in which they volunteered. 
(b) Registrants whose postponements have expired in the order of expiration. 
(c) Registrants who previously have been ordered to report for induction and whose exemptions or deferments have expired, in the order of their random sequence number (RSN) established by random selection procedures in accord with §1624.1. 
(d) Registrants in the age 20 selection group for the current calendar year in the order of their random sequence number (RSN) established by random selection procedures in accord with §1624.1. 
(e) Registrants in each succeeding age selection group commencing with age 21 selection group and terminating with the age 34 selection group, in turn, within the group, in the order of their random sequence number (RSN) established by random selection procedures in accord with §1624.1. 
(f) Registrants in the age 19 selection group for the current calendar year in the order of their random sequence number (RSN) established by random selection procedures in accord with §1624.1. 
(g) Registrants in the age 18 year and six months selection group and who have not attained the age of 19 in the order of their date of birth with the oldest being selected first. 

§ 1624.5 Order to report for induction. 
(a) Immediately upon determining which persons are to be ordered for induction, the Director of Selective Service shall issue to each person selected an Order to Report for Induction. The order will be sent to the current address most recently provided by the registrant to the Selective Service System. The date specified to report for induction shall be at least 10 days after the date on which the Order to Report for Induction is issued. The filing of a claim for reclassification in accord with §1633.2 of this chapter delays the date the registrant is required to report for induction until not earlier than the tenth day after the claim is determined to have been abandoned or is finally determined is finally determined in accord with the provisions of this chapter. A claim is finally determined when the registrant does not have the right to appeal the last classification action with respect to the claim or he fails to exercise his right to appeal. 
(b) Any person who has been ordered for induction who is distant from the address to which the order was sent must either report at the time and place specified in the order, or voluntarily submit himself for induction processing at another MEPS on or before the day that he was required to report in accordance with his induction order. 
(c) The Director of Selective Service may direct the cancellation of any Order to Report for Induction at any time. 
(d) Any Order to Report for Induction issued by the Director of Selective Service to a registrant who is an alien, who has not resided in the United States for one year will be void. Such order will be deemed only to be an order to produce evidence of his status. When an alien registrant has been within the United States for two or more periods (including periods before his registration) and the total of such periods equals one year, he shall be deemed to have resided in the United States for one year. In computing the length of such periods, any portion of one day shall be counted as a day. Upon establishing a one year residency, the alien registrant will be assigned to the age selection group corresponding to his age. 

§ 1624.6 Postponement of induction. 
(a) [Reserved] 
(b) In either case of the death of a member of the registrant’s immediate family, extreme emergency involving a member of the registrant’s immediate family, serious illness or injury of the registrant, or other emergency beyond the registrant’s control, the Director, after the Order to Report for Induction has been issued, may postpone for a
§ 1624.6 Specific time the date when such registrant shall be required to report. The period of postponement shall not exceed 60 days from the date of the induction order. When necessary, the Director may grant one further postponement, but the total postponement shall not exceed 90 days from the reporting date on the induction order.

(c)(1) Any registrant who is satisfactorily pursuing a full-time course of instruction at a high school or similar institution of learning and is issued an order to report for induction shall, upon presentation of appropriate facts in the manner prescribed by the Director of Selective Service, have his induction postponed:

(i) Until the time of his graduation therefrom; or

(ii) Until he attains the twentieth anniversary of his birth; or

(iii) Until the end of his last academic year, even if he has attained the twentieth anniversary of his birth; or

(iv) Until he ceases satisfactorily to pursue such course of instruction, whichever is the earliest.

(2) Any registrant who, while satisfactorily pursuing a full-time course of instruction at a college, university, or similar institution of learning, is ordered to report for induction shall, upon the presentation of appropriate facts in the manner prescribed by the Director of Selective Service, have his induction postponed:

(i) Until the end of the semester or term, or in the case of his last academic year, the end of the academic year; or

(ii) Until he ceases to satisfactorily pursue such course of instruction, whichever is the earlier.

(3) A postponement authorized by this subsection may be terminated by the Director of Selective Service for cause upon no less than 10 days notice to the registrant.

(d) The Director of Selective Service may authorize a delay of induction for any registrant whose date of induction conflicts with a religious holiday historically observed by a recognized church, religious sect or religious organization of which he is a member. Any registrant so delayed shall report for induction on the next business day following the religious holiday.

(e) [Reserved]

(f) The Director of Selective Service may authorize a postponement of induction to a registrant when:

(1) The registrant qualifies and is scheduled for a State or National examination in a profession or occupation which requires certification before being authorized to engage in the practice of that profession or occupation; or

(2) The registrant has been accepted in the next succeeding class as a cadet at the U.S. Military Academy, or the U.S. Air Force Academy, or the U.S. Coast Guard Academy; or as a midshipman at the U.S. Naval Academy, or the U.S. Merchant Marine Academy; or

(3) The registrant is a ROTC applicant who has been designated to participate in the next succeeding ROTC field training program prior to enrollment in the ROTC; or

(4) The registrant has been accepted as a ROTC scholarship student in the next succeeding ROTC program at a college or university.

(g) The Director of Selective Service shall issue to each registrant whose induction is postponed a written notice thereof.

(h) No registrant whose induction has been postponed shall be inducted into the Armed Forces during the period of any such postponement. A postponement of induction shall not render invalid the Order to Report for Induction which has been issued to the registrant, but shall operate only to postpone the reporting date, and the registrant shall report on the new date scheduled without having issued to him a new Order to Report for Induction.

(i) Any registrant receiving a postponement under the provisions of this section, shall, after the expiration of such postponement, be rescheduled to report for induction at the place to which he was originally ordered.

(j) The initial determination of claims for all postponements is made by area office compensated personnel. After a denial of a claim for a student postponement, the registrant may request the local board to consider the claim. Such registrant shall be afforded an opportunity to appeal before
§ 1624.7 Expiration of deferment or exemption.
The Director shall issue an Order to Report for Induction to a registrant who is liable for induction whenever his deferment or exemption expires.

§ 1624.8 Transfer for induction.
The Director of Selective Service may direct that a registrant or registrants in a specified group of registrants be transferred for induction to such MEPS as he may designate.

§ 1624.9 Induction into the Armed Forces.
Registrants in classes 1–A and 1–A–0, who have been ordered for induction and found qualified under standards prescribed by the Secretary of Defense, will be inducted at the MEPS into the Armed Forces.

§ 1624.10 Order to report for examination.
(a) The Director of Selective Service may order any registrant in Class 1–A who has filed a claim for classification in a class other than Class 1–A or whose induction has been postponed, to report for an Armed Forces examination to determine acceptability for military service. The date specified to report for examination shall be at least 7 days after the date on which the Order to Report for Examination is issued. Such registrant will not be inducted until his claim for reclassification has been decided or abandoned.
(b) The reporting date for examination may be postponed for any reason a reporting date for induction may be postponed in accord with §1624.6 (b), (d) or (f)(1).
(c) If a registrant fails to report for or complete an examination, the local board will determine that he has abandoned his claim.
(d) If a registrant is determined not acceptable for military service, he will be reclassified in Class 4–F.
(e) If a registrant is determined acceptable for military service, the processing of his claim will be completed.
PART 1630—CLASSIFICATION RULES

Sec. 1630.2 Classes.
1630.10 Class 1–A: Available for unrestricted military service.
1630.11 Class 1–A-0: Conscientious objector available for noncombatant military service only.
1630.12 Class 1–C: Member of the Armed Forces of the United States, the National Oceanic and Atmospheric Administration or the Public Health Service.
1630.13 Class 1–D–D: Deferment for certain members of a reserve component or student taking military training.
1630.14 Class 1–D–E: Exemption of certain members of a reserve component or student taking military training.
1630.15 Class 1–H: Registrant not subject to processing for induction.
1630.16 Class 1–O: Conscientious objector to all military service.
1630.17 Class 1–O–S: Conscientious objector to all military service (separated).
1630.18 Class 1–W: Conscientious objector ordered to perform alternative service.
1630.26 Class 2–D: Registrant deferred because of study preparing for the ministry.
1630.30 Class 3–A: Registrant deferred because of hardship to dependents.
1630.31 Class 3–A–S: Registrant deferred because of hardship to dependents (separated).
1630.40 Class 4–A: Registrant who has completed military service.
1630.41 Class 4–B: Official deferred by law.
1630.42 Class 4–C: Alien or dual national.
1630.43 Class 4–D: Minister of religion.
1630.44 Class 4–F: Registrant not acceptable for military service.
1630.45 Class 4–G: Registrant exempted from service because of the death of his parent or sibling while serving in the Armed Forces or whose parent or sibling is in a captured or missing in action status.
1630.46 Class 4–T: Treaty alien.
1630.47 Class 4–W: Registrant who has completed alternative service in lieu of induction.
1630.48 Class 4–A–A: Registrant who has performed military service for a foreign nation.

SOURCE: 47 FR 4651, Feb. 1, 1982, unless otherwise noted.

§ 1630.10 Class 1–A: Available for unrestricted military service.

(a) All registrants available for unrestricted military service shall be in Class 1–A.

(b) All registrants in the selection groups as determined by the Director of Selective Service are available for unrestricted Military Service, except those determined by a classifying authority to be eligible for exemption or deferment from military service or for noncombatant or alternative service, or who have random sequence numbers (RSNs) determined by the Director not to be required to fill calls by the Secretary of Defense.

§ 1630.11 Class 1–A–0: Conscientious objector available for noncombatant military service only.

In accord with part 1636 of this chapter any registrant shall be placed in Class 1–A–0 who has been found, by reason of religious, ethical, or moral belief, to be conscientiously opposed to participation in combatant military training and service in the Armed Forces.

§ 1630.12 Class 1–C: Member of the Armed Forces of the United States, the National Oceanic and Atmospheric Administration or the Public Health Service.

In Class 1–C shall be placed:
(a) Every registrant who is or who becomes by enlistment or appointment, a commissioned officer, a warrant officer, a pay clerk, an enlisted man or an aviation cadet of the Regular Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the National Oceanic and Atmospheric Administration or the Public Health Service.
(b) Every registrant who is a cadet, United States Military Academy; or midshipman, United States Naval Academy; or a cadet, United States Air Force Academy; or cadet, United States Coast Guard Academy.
(c) Every registrant who by induction becomes a member of the Army of the United States, the United States Navy, the United States Marine Corps, the Air Force of the United States, or the United States Coast Guard.
(d) Exclusive of periods for training only, every registrant who is a member...
Selective Service System

§ 1630.13 Class 1–D–D: Deferment for certain members of a reserve component or student taking military training.

In Class 1–D–D shall be placed any registrant who:

(a)(1) Has been selected for enrollment or continuance in the Senior (entire college level) Army Reserve Officer’s Training Corps, or the Air Force Reserve Officer’s Training Corps, or the Naval Reserve Officer’s Training Corps, or the Naval and Marine Corps officer candidate program of the Navy, or the platoon leader’s class of the Marine Corps, or the officer procurement programs of the Coast Guard and the Coast Guard Reserve, or is appointed an ensign, U.S. Naval Reserve while undergoing professional training; and

(2) Has agreed in writing to accept a commission, if tendered, and to serve subject to order of the Secretary of the military department having jurisdiction over him (or the Secretary of Transportation with respect to the U.S. Coast Guard), not less than 2 years on active duty after receipt of a commission; and

(3) Has agreed to remain a member of a regular or reserve component until the eighth anniversary of his receipt of a commission. Such registrant shall remain eligible for Class 1–D–D until completion or termination of the course of instruction and so long thereafter as he continues in a reserve status upon being commissioned except during any period he is eligible for Class 1–C under the provision of §1630.12; or

(b) Is a fully qualified and accepted aviation cadet applicant of the Army, Navy, or Air Force, who has signed an agreement of service and is within such numbers as have been designated by the Secretary of Defense. Such registrant shall be retained in Class 1–D–D during the period covered by such agreement but in no case in excess of four months; or

(c) Is other than a registrant referred to in paragraph (a) or (d) of this section who:

(1) Prior to the issuance of orders for him to report for induction; or

(2) Prior to the date scheduled for his induction and pursuant to a proclamation by the Governor of a State to the effect that the authorized strength of any unit of the National Guard of that State cannot be maintained by the enlistment or appointment of persons who have not been issued orders to report for induction; or

(3) Prior to the date scheduled for his induction and pursuant to a determination by the President that the strength of the Ready Reserve of the Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve cannot be maintained by the enlistment or appointment of persons who have not been issued orders to report for induction:

enlists or accepts an appointment before attaining the age of 26 years, in the Ready Reserve of any Reserve component of the Armed Forces, the Army National Guard, or the Air National Guard. Such registrant shall remain eligible for Class 1–D–D so long as he serves satisfactorily as a member of an organized unit of such Ready Reserve or National Guard, or satisfactorily performs such other Ready Reserve service as may be prescribed by the Secretary of Defense, or serves satisfactorily as a member of the Ready Reserve of another reserve component, the Army National Guard, or the Air National Guard, as the case may be; or

(d) At any time has enlisted in the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, or the Coast Guard Reserve and who thereafter has been commissioned therein upon graduation from an Officer’s Candidate School of such
§ 1630.14 Exemption of certain members of a reserve component or student taking military training. 

In Class 1–D–E shall be placed any registrant who:

(a) Is a student enrolled in an officer procurement program at a military college the curriculum of which is approved by the Secretary of Defense; or

(b) Has been enlisted in the Delayed Entry Program (DEP) at least ten days prior to his scheduled induction date; or

(c) Has been transferred to a reserve component of the Army, Navy, Air Force, Marine Corps or Coast Guard after a period of extended active duty, which was not for training only.

§ 1630.15 Registrant not subject to processing for induction. 

In Class 1–H shall be placed any registrant who is not eligible for Class 1–A and is not currently subject to processing for induction.

§ 1630.16 Conscientious objector to all military service. 

(a) Any registrant whose acceptability for military service has been satisfactorily determined and who, in accord with part 1636 of this chapter, has been found, by reason of religious, ethical, or moral belief, to be conscientiously opposed to participation in both combatant and noncombatant training and service in the Armed Forces shall be classified in Class 1–O.

(b) Upon the written request of the registrant filed with his claim for classification in Class 1–O, the local board will consider his claim for classification in Class 1–O before he is examined. If the local board determines that the registrant would qualify for Class 1–O if he were acceptable for military service, it will delay such classification until he is found acceptable for military service. Upon the written request of such registrant, he will be deemed acceptable for military service without examination only for the purpose of paragraph (a) of this section.

[52 FR 8891, Mar. 20, 1987; 52 FR 12641, Apr. 17, 1987]

§ 1630.17 Conscientious objector to all military service (separated). 

Any registrant who has been separated from the Armed Forces (including their reserve components) by reason of conscientious objection to participation in both combatant and noncombatant training and service in the Armed Forces shall be classified in Class 1–O–S unless his period of military service qualifies him for Class 4–A. A registrant in Class 1–O–S will be required to serve the remainder of his obligation under the Military Selective Service Act in Alternative Service.

[52 FR 8891, Mar. 20, 1987]

§ 1630.18 Conscientious objector ordered to perform alternative service. 

In Class 1–W shall be placed any registrant who has been ordered to perform alternative service contributing to the mainenance of the national health, safety, or interest.

[52 FR 24455, July 1, 1987]

§ 1630.26 Registrant deferred because of study preparing for the ministry. 

In accord with part 1639 of this chapter any registrant shall be placed in Class 2–D who has requested such deferment and:
§ 1630.40 Class 4-A: Registrant who has completed military service.

(a) In Class 4-A shall be placed any registrant other than a registrant eligible for classification in Class 1-C, 1-D-D, or 1-D-E who is within any of the following categories:

(1) A registrant who was discharged or transferred to a reserve component of the Armed Forces for the convenience of the Government after having served honorably on active duty for a period of not less than six months in the Army, the Navy, the Air Force, the Marine Corps, or the Coast Guard; or

(2) A registrant who has served honorably on active duty for a period of not less than one year in the Army, the Navy, the Air Force, the Marine Corps, or the Coast Guard; or

(3) A registrant who has served on active duty for a period of not less than twenty-four months as a commissioned officer in the National Oceanic and Atmospheric Administration or the Public Health Service, provided that such period of active duty in the Public Health Service as a commissioned Reserve Officer shall have been performed by the registrant while assigned to staff any of the various offices and bureaus of the Public Health Service including the National Institutes of Health, or while assigned to the Coast Guard, or the Bureau of Prisons of the Department of Justice, Environmental Protection Agency, or the National Oceanic and Atmospheric Administration, or who are assigned to assist Indian tribes, groups, bands or communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended; 

(4) [Reserved]

(5) A registrant who has completed six years of satisfactory service as a member of one or more of the Armed Forces including the Reserve components thereof.

(b) For the purpose of computation of periods of active duty referred to in paragraphs (a) (1), (2), or (3) of this section, no credit shall be allowed for:

(1) Periods of active duty training performed as a member of a reserve component pursuant to an order or call
§ 1630.41 Class 4-B: Official deferred by law.

In Class 4-B shall be placed any registrant who is the Vice President of the United States, a governor of a State, Territory or possession, or any other official chosen by the voters of the entire State, Territory or Possession; a member of a legislative body of the United States or of a State, Territory or Possession; a judge of a court of record of the United States or of a State, Territory or Possession, or the District of Columbia.

§ 1630.42 Class 4-C: Alien or dual national.

In Class 4-C shall be placed any registrant who:

(a) Establishes that he is a national of the United States and of a country with which the United States has a treaty or agreement that provides that such person is exempt from liability for military service in the United States.

(b) Is an alien and who has departed from the United States prior to being issued an order to report for induction or alternative service that has not been canceled. If any registrant who is classified in Class 4-C pursuant to this paragraph returns to the United States he shall be classified anew.

(c) Is an alien and who has registered at a time when he was required by the Selective Service Law to present himself for and submit to registration and thereafter has acquired status within one of the groups of persons exempt from registration.

(d) Is an alien lawfully admitted for permanent residence as defined in paragraph (2) of section 101(a) of the Immigration and Nationality Act, as amended (66 Stat. 163, 8 U.S.C. 1101), and who by reason of occupational status is subject to adjustment to non-immigrant status under paragraph (15)(A), (15)(E), or (15)(G) or section 101(a) but who executes a waiver in accordance with section 247(b) of that Act of all rights, privileges, exemptions, and immunities which would otherwise accrue to him as a result of that occupational status. A registrant placed in Class 4-C under the authority of this paragraph shall be retained in Class 4-C only for so long as such occupational status continues.

(e) Is an alien and who has not resided in the United States for one year, including any period of time before his registration. When such a registrant has been within the United States for two or more periods and the total of such period equals one year, he shall be deemed to have resided in the United States for one year. In computing the length of such periods, any portion of one day shall be counted as a day.
§ 1630.43 Class 4–D: Minister of religion.

In accord with part 1645 of this chapter any registrant shall be placed in Class 4–D who is a:

(a) Duly ordained minister of religion; or
(b) Regular minister of religion.

§ 1630.44 Class 4–F: Registrant not acceptable for military service.

In Class 4–F shall be placed any registrant who is found by the Secretary of Defense, under applicable physical, mental or administrative standards, to be not acceptable for service in the Armed Forces; except that no such registrant whose further examination or re-examination is determined by the Secretary of Defense to be justified shall be placed in Class 4–F until such further examination has been accomplished and such registrant continues to be found not acceptable for military service.

[52 FR 24456, July 1, 1987]

§ 1630.45 Class 4–G: Registrant exempted from service because of the death of his parent or sibling while serving in the Armed Forces or whose parent or sibling is in a captured or missing in action status.

In Class 4–G shall be placed any registrant who, except during a period of war or national emergency declared by Congress, is:

(a) A surviving son or brother:
(1) Whose parent or sibling of the whole blood was killed in action or died in the line of duty while serving in the Armed Forces of the United States after December 31, 1959, or died subsequent to such date as a result of injuries received or disease incurred in the line of duty during such service; or
(2) Whose parent or sibling of the whole blood is in a captured or missing status as a result of such service in the Armed Forces during any period of time; or
(b) The sole surviving son of a family in which the father or one or more siblings were killed in action before January 1, 1960 while serving in the Armed Forces of the United States, or died after that date due to injuries received or disease incurred in the line of duty during such service before January 1, 1960.

[47 FR 4651, Feb. 1, 1982, as amended at 52 FR 24456, July 1, 1987]

§ 1630.46 Class 4–T: Treaty alien.

In Class 4–T shall be placed any registrant who is an alien who established that he is exempt from military service under the terms of a treaty or international agreement between the United States and the country of which he is a national, and who has made application to be exempted from liability for training and service in the Armed Forces of the United States.

§ 1630.47 Class 4–W: Registrant who has completed alternative service in lieu of induction.

In Class 4–W shall be placed any registrant who subsequent to being ordered to perform alternative service in lieu of induction has been released from such service after satisfactorily performing the work for a period of 24 months, or has been granted an early release by the Director of Selective Service after completing at least 6 months of satisfactory service.

§ 1630.48 Class 4–A–A: Registrant who has performed military service for a foreign nation.

In Class 4–A–A shall be placed any registrant who, while an alien, has served on active duty for a period of not less than 12 months in the armed forces of a nation determined by the Department of State to be a nation with which the United States is associated in mutual defense activities and which grants exemptions from training and service in its armed forces to citizens of the United States who have served on active duty in the Armed Forces of the United States for a period of not less than 12 months; Provided: That all information which is submitted to the Selective Service System concerning the registrant's service in the armed forces of a foreign nation shall be written in the English language.

[52 FR 24456, July 1, 1987]
PART 1633—ADMINISTRATION OF CLASSIFICATION

Sec.
1633.1 Classifying authority.
1633.2 Claim for other than Class 1–A.
1633.3 Submission of claims.
1633.4 Information relating to claims for deferment or exemption.
1633.5 Securing information.
1633.6 Consideration of classes.
1633.7 General principles of classification.
1633.8 Basis of classification.
1633.9 Explanation of classification action.
1633.10 Notification to registrant of classification action.
1633.11 Assignment of registrant to a local board.
1633.12 Reconsideration of classification.

PART 1633—ADMINISTRATION OF CLASSIFICATION

§ 1633.1 Classifying authority.

The following officials are authorized to classify registrants into the indicated classes established by part 1630 of this chapter:

(a) The Director of Selective Service may in accord with the provisions of this chapter classify a registrant into any class for which he is eligible except Classes 1–A–O, 1–O, 2–D, 3–A, and 4–D: Provided, That, the Director may not reclassify a registrant other than a volunteer for induction, into Class 1–A out of another class prior to the expiration of the registrant's entitlement to such classification. The Director may, before issuing an induction order to a registrant, appropriately classify him if the Secretary of Defense has certified him to be a member of an armed force or reserve component thereof.

(b) The National Selective Service Appeal Board may in accord with part 1653 of this chapter classify a registrant into any class for which he is eligible.

(c) A district appeal board may in accord with part 1651 of this chapter classify a registrant into any class for which he is eligible.

(d) A local board may in accord with part 1648 of this chapter classify a registrant into Class 1–A–O, 1–O, 2–D, 3–A, or 4–D for which he is eligible.

(e) A local board may also classify a registrant into Class 1–C, 1–D–D, 1–D–E, 1–O–S, 1–W, 3–A–S, 4–A, 4–A–A, 4–B, 4–C, 4–F, 4–G, 4–T or 4–W for which he is eligible upon request by the registrant for a review of a classification denial action under §1633.1(f). No individual shall be classified into Class 4–F unless the Secretary of Defense has determined that he is unacceptable for military service.

(f) Compensated employees of an area office may in accord with §1633.2 may classify a registrant into an administrative class for which he is eligible. No individual shall be classified into Class 4–F unless the Secretary of Defense has determined that he is unacceptable for military service.

[47 FR 4654, Feb. 1, 1982, as amended at 52 FR 24456, July 1, 1987]

§ 1633.2 Claim for other than Class 1–A.

(a) Any registrant who has received an order to report for induction may, prior to the day he is scheduled to report, submit to the Selective Service System a claim that he is eligible to be classified into any class other than Class 1–A. The registrant may assert a claim that he is eligible for more than one class other than Class 1–A. The registrant cannot subsequently file a claim with respect to a class for which he was eligible prior to the day he was originally scheduled to report. Information and documentation in support of claims for reclassification and postponement of induction shall be filed in accordance with instructions from the Selective Service System.

(b) Any registrant who has received an order to report for induction that has not been canceled may, at any time before his induction, submit a claim that he is eligible to be classified into any class other than Class 1–A based upon events over which he has no control that occurred on or after the day he was originally scheduled to report for induction.

(c)(1) Claims will be filed with the area office supporting the local board of jurisdiction.

(2) Claims will be considered by the local board identified in paragraph (c)(1) or its supporting area office as prescribed in this part.
(d) The initial determination of claims for all administrative classifications are made by area office compensated personnel. After a denial of a claim for an administrative classification the registrant may request the local board to consider the claim.

(e) The initial determination of a judgmental classification is made by a local board.

(f) A registrant may request and shall be granted a personal appearance whenever a local or appeal board considers his claim for reclassification. Personal appearances will be held in accord with parts 1648, 1651 and 1653 of this chapter.

(g) A registrant who has filed a claim for classification in Class 1–A–O or Class 1–0 shall be scheduled for a personal appearance in accord with §1648.4 before his claim is considered.

(h) If granted, a deferment or exemption supersedes the original order to report for induction. When a deferment or exemption expires or ends, a new order to report for induction will be issued.

[52 FR 24457, July 1, 1987]

§ 1633.6 Consideration of classes.

Claims of a registrant will be considered in inverse order of the listing of the classes below. When grounds are established to place a registrant in one or more of the classes listed in the following table, the registrant shall be classified in the lowest class for which he is determined to be eligible, with Class 1–A–O considered the highest class and Class 1–H considered the lowest class, according to the following table:

Class 1–A–O: Conscientious Objector Available for Noncombatant Military Service Only.

Class 1–O: Conscientious Objector to all Military Service.

Class 1–O–S: Conscientious Objector to all Military Service (Separated).

Class 2–D: Registrant Deferred Because of Study Preparing for the Ministry.

Class 3–A: Registrant Deferred Because of Hardship to Dependents.

Class 3–A–S: Registrant Deferred Because of Hardship to Dependents (Separated).

Class 4–D: Minister of Religion.

Class 1–D–D: Deferment for Certain Members of a Reserve Component or Student Taking Military Training.

Class 4–B: Official Deferred by Law.

Class 4–C: Alien or Dual National.

Class 4–G: Registrant Exempted From Service Because of the Death of his Parent or Sibling While Serving in the Armed Forces or Whose Parent or Sibling is in a Captured or Missing in Action Status.

Class 4–A: Registrant Who Has Completed Military Service.

Class 4–A–A: Registrant Who Has Performed Military Service For a Foreign Nation.

Class 4–W: Registrant Who Has Completed Alternative Service in Lieu of Induction.

Class 1–D–E: Exemption of Certain Members of a Reserve Component or Student Taking Military Training.

Class 1–C: Member of the Armed Forces of the United States, the National Oceanic and Atmospheric Administration, or the Public Health Service.

Class 1–W: Conscientious Objector Ordered to Perform Alternative Service in Lieu of Induction.

Class 4–T: Treaty Alien.


Class 1–H: Registrant Not Subject to Processing for Induction.

[52 FR 24457, July 1, 1987]
§ 1633.7 General principles of classification.

(a) Each classified registrant in a selection group is available for unrestricted military service until his eligibility for noncombatant service, alternative service, or deferment or exemption from service has been determined by a classifying authority.

(b) The classifying authority in considering a registrant’s claim for classification shall not discriminate for or against him because of his race, creed, color or ethnic background and shall not discriminate for or against him because of his membership or activity in any labor, political, religious, or other organization.

[47 FR 4654, Feb. 1, 1982, as amended at 52 FR 24457, July 1, 1987]

§ 1633.8 Basis of classification.

The registrant’s classification shall be determined on the basis of the official forms of the Selective Service System and other written information in his file, oral statements, if made by the registrant at his personal appearance before the board, and oral statements, if made by the registrant’s witnesses at his personal appearance. Any information in any written summary of the oral information presented at a registrant’s personal appearance that was prepared by an official of the Selective Service System or by the registrant will be placed in the registrant’s file. The file shall be subject to review by the registrant during normal business hours.

§ 1633.9 Explanation of classification action.

Whenever a classifying authority denies the request of a registrant for classification into a particular class or classifies a registrant in a class other than that which he requested, it shall record the reasons therefor in the registrant’s file.

§ 1633.10 Notification to registrant of classification action.

The Director will notify the registrant of any classification action.

[52 FR 24457, July 1, 1987]

PART 1636—CLASSIFICATION OF CONSCIENTIOUS OBJECTORS

Sec. 1636.1 Purpose; definitions.
1636.2 The claim of conscientious objection.
1636.3 Basis for classification in Class 1-A-0.
1636.4 Basis for classification in Class 1-0.
1636.5 Exclusion from Class 1-A-0 and Class 1-0.
1636.6 Analysis of belief.
1636.7 Impartiality.
1636.8 Considerations relevant to granting or denying a claim for classification as a conscientious objector.
1636.9 Types of decisions.
1636.10 Statement of reasons for denial.

§ 1636.1 Purpose; definitions.

(a) The provisions of this part govern the consideration of a claim by a registrant for classification in Class 1–A–0 (§1630.11 of this chapter), or Class 1–0 (§1630.17 of this chapter).

(b) The definitions of this paragraph shall apply in the interpretation of the provisions of this part:

(1) Crystallization of a Registrant’s Beliefs. The registrant’s becoming conscious of the fact that he is opposed to participation in war in any form.

(2) Noncombatant Service. Service in any unit of the Armed Forces which is unarmed at all times; any other military assignment not requiring the bearing of arms or the use of arms in combat or training in the use of arms.

(3) Noncombatant Training. Any training which is not concerned with the study, use, or handling of arms or other implements of warfare designed to destroy human life.

§ 1636.2 The claim of conscientious objection.

A claim to classification in Class 1–A–0 or Class 1–0, must be made by the registrant in writing. Claims and documents in support of claims may only be submitted after the registrant has received an order to report for induction or after the Director has made a specific request for submission of such documents. All claims or documents in support of claims received prior to a registrant being ordered to report for induction or prior to the Director’s specific request for such documentation will be returned to the registrant and no file or record of such submission will be established.

§ 1636.3 Basis for classification in Class 1–A–0.

(a) A registrant must be conscientiously opposed to participation in combatant training and service in the Armed Forces.

(b) A registrant’s objection may be founded on religious training and belief; it may be based on strictly religious beliefs, or on personal beliefs that are purely ethical or moral in source or content and occupy in the life of a registrant a place parallel to that filled by belief in a Supreme Being for those holding more traditionally religious views.

(c) A registrant’s objection must be sincere.

§ 1636.4 Basis for classification in Class 1–0.

(a) A registrant must be conscientiously opposed to participation in war in any form and conscientiously opposed to participation in both combatant and noncombatant training and service in the Armed Forces.

(b) A registrant’s objection may be founded on religious training and belief; it may be based on strictly religious beliefs, or on personal beliefs that are purely ethical or moral in source or content and occupy in the life of a registrant a place parallel to that filled by belief in a Supreme Being for those holding more traditionally religious views.

(c) A registrant’s objection must be sincere.

§ 1636.5 Exclusion from Class 1–A–0 and Class 1–0.

A registrant shall be excluded from Class 1–A–0 or Class 1–0:

(a) Who asserts beliefs which are of a religious, moral or ethical nature, but who is found not to be sincere in his assertions; or

(b) Whose stated objection to participation in war does not rest at all upon moral, ethical, or religious principle, but instead rests solely upon considerations of policy, pragmatism, expediency, or his own self-interest or well-being; or

(c) Whose objection to participation in war is directed against a particular war rather than against war in any form (a selective objection). If a registrant objects to war in any form, but also believes in a theocratic, spiritual war between the forces of good and evil, he may not by reason of that belief alone be considered a selective conscientious objector.

§ 1636.6 Analysis of belief.

(a) A registrant claiming conscientious objection is not required to be a
§ 1636.7

member of a peace church or any other church, religious organization, or religious sect to qualify for a 1–A–0 or 1–0 classification; nor is it necessary that he be affiliated with any particular group opposed to participation in war in any form.

(b) The registrant who identifies his beliefs with those of a traditional church or religious organization must show that he basically adheres to beliefs of that church or religious organization whether or not he is actually affiliated with the institution whose teachings he claims as the basis of his conscientious objection. He need not adhere to all beliefs of that church or religious organization.

(c) A registrant whose beliefs are not religious in the traditional sense, but are based primarily on moral or ethical principle should hold such beliefs with the same strength or conviction as the belief in a Supreme Being is held by a person who is religious in the traditional sense. Beliefs may be mixed; they may be a combination of traditional religious beliefs and nontraditional religious, moral or ethical beliefs. The registrant’s beliefs must play a significant role in his life but should be evaluated only insofar as they pertain to his stated objection to his participation in war.

(d) Where the registrant is or has been a member of a church, religious organization, or religious sect, and where his claim of a conscientious objection is related to such membership, the board may properly inquire as to the registrant’s membership, the religious teachings of the church, religious organization, or religious sect, and the registrant’s religious activity, insofar as each relates to his objection to participation in war. The fact that the registrant may disagree with or not subscribe to some of the tenets of his church or religious sect does not necessarily discredit his claim.

(e)(1) The history of the process by which the registrant acquired his beliefs, whether founded on religious, moral, or ethical principle is relevant to the determination whether his stated opposition to participation in war in any form is sincere.

(2) The registrant must demonstrate that his religious, ethical, or moral convictions were acquired through training, study, contemplation, or other activity comparable to the processes by which traditional religious convictions are formulated. He must show that these religious, moral, or ethical convictions, once acquired, have directed his life in the way traditional religious convictions of equal strength, depth, and duration have directed the lives of those whose beliefs are clearly founded in traditional religious conviction.

(f) The registrant need not use formal or traditional language in describing the religious, moral, or ethical nature of his beliefs. Board members are not free to reject beliefs because they find them incomprehensible or inconsistent with their own beliefs.

(g) Conscientious objection to participation in war in any form, if based on moral, ethical, or religious beliefs, may not be deemed disqualifying simply because those beliefs may influence the registrant concerning the Nation’s domestic or foreign policy.


§ 1636.7 Impartiality.

Boards may not give preferential treatment to one religion over another, and all beliefs whether of a religious, ethical, or moral nature are to be given equal consideration.

§ 1636.8 Considerations relevant to granting or denying a claim for classification as a conscientious objector.

(a) After the registrant has submitted a claim for classification as a conscientious objector and his file is complete, a determination of his sincerity will be made based on:

(1) All documents in the registrant’s file folder; and

(2) The oral statements of the registrant at his personal appearance(s) before the local and/or appeal board; and

(3) The oral statements of the registrant’s witnesses, if any, at his personal appearance(s) before the local board; and

(4) The registrant’s general demeanor during his personal appearance(s).
(b) The registrant’s stated convictions should be a matter of conscience.
(c) The board should be convinced that the registrant’s personal history since the crystallization of his conscientious objection is not inconsistent with his claim and demonstrates that the registrant’s objection is not solely a matter of expediency. A recent crystallization of beliefs does not in itself indicate expediency.
(d) The information presented by the registrant should reflect a pattern of behavior in response to war and weapons which is consistent with his stated beliefs. Instances of violent acts or conviction for crimes of violence, or employment in the development or manufacturing of weapons of war, if the claim is based upon or supported by a life of nonviolence, may be indicative of inconsistent conduct.
(e) The development of a registrant’s opposition to war in any form may bear on his sincerity. If the registrant claims a recent crystallization of beliefs, his claim should be supported by evidence of a religious or educational experience, a traumatic event, an historical occasion, or some other special situation which explains when and how his objection to participation in war crystallized.
(f) In the event that a registrant has previously worked in the development of or manufacturing of weapons of war or has served as a member of a military reserve unit, it should be determined whether such activity was prior to the stated crystallization of the registrant’s conscientious objector beliefs. Inconsistent conduct prior to the actual crystallization of conscientious objector beliefs is not necessarily indicative of insincerity. But, inconsistent conduct subsequent to such crystallization may indicate that registrant’s stated objection is not sincere.
(g) A registrant’s behavior during his personal appearance before a board may be relevant to the sincerity of his claim.
(1) Evasive answers to questions by board members or the use of hostile, belligerent, or threatening words or actions, for example, may in proper circumstances be deemed inconsistent with a claim in which the registrant bases his objection on a belief in nonviolence.
(2) Care should be exercised that nervous, frightened, or apprehensive behavior at the personal appearance is not misconstrued as a reflection of insincerity.
(h) Oral response to questions posed by board members should be consistent with the written statements of the registrant and should generally substantiate the submitted information in the registrant’s file folder; any inconsistent material should be explained by the registrant. It is important to recognize that the registrant need not be eloquent in his answers. But, a clear inconsistency between the registrant’s oral remarks at his personal appearance and his written submission to the board may be adequate grounds, if not satisfactorily explained, for concluding that his claim is insincere.
(i) The registrant may submit letters of reference and other supporting statements of friends, relatives and acquaintances to corroborate the sincerity of his claim, although such supplemental documentation is not essential to approval of his claim. A finding of insincerity based on these letters or supporting statements must be carefully explained in the board’s decision, specific mention being made of the particular material relied upon for denial of classification in Class 1–A–0 or Class 1–0.

§ 1636.9 Types of decisions.

The following are the types of decisions which may be made by a board when a claim for classification in Class 1–A–0 or Class 1–0 has been considered.

(a) Decision to grant a claim for classification in Class 1–A–0 or Class 1–0, as requested, based on a determination that the truth or sincerity of the registrant’s claim is not refuted by any information contained in the registrant’s file or obtained during his personal appearance.

(b) Decision to deny a claim for classification in Class 1–A–0 or Class 1–0 based on all information before the board, and a finding that such information fails to meet the tests specified in
§ 1636.10 Statement of reasons for denial.

(a) Denial of a conscientious objector claim by a board must be accompanied by a statement specifying the reason(s) for such denial as prescribed in §§1633.9, 1651.4 and 1653.3 of this chapter. The reason(s) must, in turn, be supported by evidence in the registrant’s file.

(b) If a board’s denial is based on statements by the registrant or on a determination that the claim is inconsistent or insincere, this should be fully explained in the statement of reasons accompanying the denial.

PART 1639—CLASSIFICATION OF REGISTRANTS PREPARING FOR THE MINISTRY

Sec.
1639.1 Purpose; definitions.
1639.2 The claim for Class 2–D.
1639.3 Basis for classification in Class 2–D.
1639.4 Exclusion from Class 2–D.
1639.5 Impartiality.
1639.6 Considerations relevant to granting or denying claims for Class 2–D.
1639.7 Types of decisions.
1639.8 Statement of reason for denial.


SOURCE: 47 FR 4657, Feb. 1, 1982, unless otherwise noted.

§ 1639.1 Purpose; definitions.

(a) The provisions of this part shall govern the consideration of a claim by a registrant for classification in Class 2–D (§1630.26 of this chapter).

(b) The definitions of this paragraph shall apply to the interpretation of the provisions of this part:

(1) The term ministry refers to the vocation of a duly ordained minister of religion or regular minister of religion as defined in part 1645 of this chapter.

(2) The term recognized church or religious organization refers to a church or religious organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, and which engages primarily in religious activities.

(3) The term recognized theological or divinity school refers to a theological or divinity school whose graduates are acceptable for ministerial duties either as an ordained or regular minister by the church or religious organization sponsoring a registrant as a ministerial student.

(4) The term graduate program refers to a program in which the registrant’s studies are officially approved by his church or religious organization for entry into service as a regular or duly ordained minister of religion.

(5) The term full-time intern applies to a program that must run simultaneous with or immediately follow the completion of the theological or divinity training and is required by a recognized church or religious organization for entry into the ministry.

(6) The term satisfactorily pursuing a full-time course of instruction means maintaining a satisfactory academic record as determined by the institution while receiving full-time instructions in a structured learning situation. A full-time course of instruction does not include instructions received pursuant to a mail order program.

§ 1639.2 The claim for Class 2–D.

A claim to classification in Class 2–D must be made by the registrant in writing, such document being placed in his file folder.

§ 1639.3 Basis for classification in Class 2–D.

(a) In Class 2–D shall be placed any registrant who is preparing for the ministry under the direction of a recognized church or religious organization; and

(1) Who is satisfactorily pursuing a full-time course of instruction required for entrance into a recognized theological or divinity school in which he has been pre-enrolled or accepted for admission; or

(2) Who is satisfactorily pursuing a full-time course of instruction in a recognized theological or divinity school; or
(3) Who, having completed theological or divinity school, is a student in a full-time graduate program or is a full-time intern, and whose studies are related to and lead toward entry into service as a regular or duly ordained minister of religion. Satisfactory progress in these studies as determined by the school in which the registrant is enrolled, must be maintained for qualification for the deferment.

(b) The registrant’s classification shall be determined on the basis of the written information in his file folder, oral statements, if made by the registrant at his personal appearance before a board, and oral statements, if made by the registrant’s witnesses at his personal appearance.

§ 1639.4 Exclusion from Class 2-D.
A registrant shall be excluded from Class 2-D when:
(a) He fails to establish that the theological or divinity school is a recognized school; or
(b) He fails to establish that the church or religious organization which is sponsoring him is so recognized; or
(c) He ceases to be a full-time student; or
(d) He fails to maintain satisfactory academic progress.

§ 1639.5 Impartiality.
Boards may not give precedence to any religious organization or school over another, and all are to be given equal consideration.

§ 1639.6 Considerations relevant to granting or denying claims for Class 2-D.
(a) The registrant’s claim for Class 2-D must include the following:
(1) A statement from a church or religious organization that the registrant is preparing for the ministry under its direction; and
(2) Current certification to the effect that the registrant is satisfactorily pursuing a full-time course of instruction required for entrance into a recognized theological or divinity school in which he has been pre-enrolled; or
(3) Current certification to the effect that the registrant is satisfactorily pursuing a full-time course of instruction in a recognized theological or divinity school; or
(4) Current certification to the effect that the registrant, having completed theological or divinity school, is satisfactorily pursuing a full-time graduate program or is a full-time intern, whose studies are related to and lead toward entry into service as a regular or duly ordained minister of religion.

(b) A board may require the registrant to obtain from the church, religious organization, or school detailed information in order to determine whether or not the theological or divinity school is in fact a recognized school or whether or not the church or religious organization which is sponsoring the registrant is recognized.

[47 FR 4657, Feb. 1, 1982, as amended at 52 FR 24458, July 1, 1987]

§ 1639.7 Types of decisions.
(a) A board may grant a classification into Class 2-D until the end of the academic school year.
(b) Upon the expiration of a 2-D classification, a board shall review any request for extension of the classification in the same manner as the first request for Class 2-D. This section does not relieve a registrant of his duties under § 1621.1 of this chapter.
(c) The board may deny a claim for Class 2-D when the evidence fails to merit any of the criteria established in this section.

[47 FR 4657, Feb. 1, 1982, as amended at 52 FR 24458, July 1, 1987]

§ 1639.8 Statement of reason for denial.
(a) Denial of a claim for a ministerial student deferment by a board must be accompanied by a statement specifying the reason(s) for such denial as prescribed in §§1633.9, 1651.4 and 1653.3 of this chapter. The reason(s) must in turn, be supported by evidence in the registrant’s file.
(b) If a board’s denial is based on statements by the registrant or his witnesses at a personal appearance, this must be fully explained in the statement of reasons accompanying the denial.
PART 1642—CLASSIFICATION OF REGISTRANTS DEFERRED BECAUSE OF HARDSHIP TO DEPENDENTS

Sec. 1642.1 Purpose; definitions.
1642.2 The claim for classification in Class 3–A.
1642.3 Basis for classification in Class 3–A.
1642.4 Ineligibility for Class 3–A.
1642.5 Impartiality.
1642.6 Considerations relevant to granting or denying claims for Class 3–A.
1642.7 Types of decisions.
1642.8 Statement of reason for denial.


SOURCE: 47 FR 4658, Feb. 1, 1982, unless otherwise noted.

§ 1642.1 Purpose; definitions.

(a) The provisions of this part govern the consideration of a claim by a registrant for classification in Class 3–A (§1630.30 of this chapter).

(b) The following definitions apply to the interpretation of the provisions of this part.

(1) The term dependent shall apply to the wife, child, parent, grandparent, brother or sister of a registrant.

(2) The term child includes an unborn child, a stepchild, a foster child or a legally adopted child, who is legitimate or illegitimate, but shall not include any person 18 years of age or older unless he or she is physically or mentally handicapped.

(3) The term parent shall include any person who has stood in the place of a parent to the registrant for at least 5 years preceding the 18th anniversary of the registrant’s date of birth and is now supported in good faith by the registrant.

(4) The term brother or sister shall include a person having one or both parents in common with the registrant, who is either under 18 years of age or is physically or mentally handicapped.

(5) The term support includes but is not limited to financial assistance.

(6) Hardship is the unreasonable deprivation of a dependent of the financial assistance, personal care or companionship furnished by the registrant when that deprivation would be caused by the registrant’s induction.

§ 1642.2 The claim for classification in Class 3–A.

A claim for classification in Class 3–A must be made by the registrant in writing. Prior to the consideration of the claim, the registrant shall submit supporting documentation, such documents being placed in his file folder.

§ 1642.3 Basis for classification in Class 3–A.

(a) In Class 3–A shall be placed any registrant:

(1) Whose induction would result in extreme hardship to his wife when she alone is dependent upon him for support; or

(2) Whose deferment is advisable because his child(ren), parent(s), grandparent(s), brother(s), or sister(s) is dependent upon him for support; or

(3) Whose deferment is advisable because his wife and child(ren), parent(s), grandparent(s), brother(s), or sister(s) are dependent upon him for support.

(b) In its consideration of a claim by a registrant for classification in Class 3–A, the board will first determine whether the registrant’s wife, child(ren), parent(s), grandparent(s), brother(s), or sister(s) is dependent upon him for support. Support may be financial assistance, personal care or companionship. If financial assistance is the basis of support, the registrant’s contribution must be a substantial portion of the necessities of the dependent. Under most circumstances 40 to 50% of the cost of the necessities may be considered substantial. If that determination is affirmative, the board will determine whether the registrant’s induction would result in extreme hardship to his wife when she is the only dependent, or whether the registrant’s deferment is advisable because his child(ren), parent(s), grandparent(s), brother(s), or sister(s) is dependent upon him for support, or because his wife and his child(ren), parent(s), grandparent(s), brother(s), or sister(s) are dependent upon him for support. A deferment is advisable whenever the registrant’s induction would result in hardship to his dependents.

(c) The registrant’s classification shall be determined on the basis of the written information in his file, oral
Selective Service System

§ 1642.8 Considerations relevant to granting or denying claims for Class 3–A.

(a) The registrant’s claim for Class 3–A must include the following, with documentation, as applicable:
   (1) Registrant’s and his dependent’s marital status;
   (2) Physician’s statement concerning any dependent who is physically or mentally handicapped;
   (3) Employment status of registrant and his dependents; and
   (4) Each case must be weighed carefully and decided on its own merits.

§ 1642.7 Types of decisions.

(a) A board may grant a classification into Class 3–A for such period of time it deems appropriate but in no event the period exceed one year.
   (b) Upon the expiration of a 3–A classification a board shall review any request for an extension of the classification as if it were the first request for that classification, and the fact that the registrant was placed in Class 3–A under apparently similar circumstances will not be a factor in the decision of the board. This section does not relieve a registrant from his duties under § 1621.1 of this chapter.
   (c) [Reserved]
   (d) A board shall deny a claim for Class 3–A when the evidence fails to meet the criteria established in this part.

[47 FR 4658, Feb. 1, 1982, as amended at 52 FR 24458, July 1, 1987]

§ 1642.8 Statement of reason for denial.

(a) Denial of a claim for Class 3–A by a board must be accompanied by a statement specifying the reason(s) for such denial as prescribed in §§1633.9, 1651.4 and 1653.3 of this chapter. The reason must in turn, be supported by evidence in the registrant’s file.
   (b) If a board’s denial is based on statements by the registrant or his witnesses at a personal appearance, this must be fully explained in the statement of reasons accompanying the denial.

[52 FR 24458, July 1, 1987]
PART 1645—CLASSIFICATION OF MINISTERS OF RELIGION

§ 1645.1 Purpose; definitions.

(a) The provisions of this part govern the consideration of a claim by a registrant for classification in Class 4-D (§1630.43 of this chapter).

(b) The definitions of this paragraph shall apply in the interpretation of the provisions of this part:

(1) The term duly ordained minister of religion means a person:

(i) Who has been ordained in accordance with the ceremonial rite or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character; and

(ii) Who preaches and teaches the doctrines of such church, sect, or organization; and

(iii) Who administers the rites and ceremonies thereof in public worship; and

(iv) Who, as his regular and customary vocation, preaches and teaches the principles of religion; and

(v) Who administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.

(2) The term regular minister of religion means one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

(3) The term regular or duly ordained minister of religion does not include:

(i) A person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization; or

(ii) Any person who has been duly ordained a minister in accordance with the ceremonial rite or discipline of a church, religious sect or organization, but who does not regularly, as a bona fide vocation, teach and preach the principles of religion and administer the ordinances of public worship, as embodied in the creed or principles of his church, sect, or organization.

(4) The term vocation denotes one’s regular calling or full-time profession.

§ 1645.2 The claim for minister of religion classification.

A claim to classification in Class 4-D must be made by the registrant in writing, such document being placed in his file folder.

§ 1645.3 Basis for classification in Class 4-D.

In accordance with part 1630 of this chapter any registrant shall be placed in Class 4-D who is a:

(a) Duly ordained minister of religion; or

(b) Regular minister of religion.

§ 1645.4 Exclusion from Class 4-D.

A registrant is excluded from Class 4-D when his claim clearly shows that:

(a) He is not a regular minister or a duly ordained minister; or

(b) He is a duly ordained minister of religion in accordance with the ceremonial rite or discipline of a church, religious sect or organization, but who does not regularly as his bona fide vocation, teach and preach the principles of religion and administer the ordinances of public worship, as embodied in the creed or principles of his church, sect, or organization; or

(c) He is a regular minister of religion, but does not regularly, as his bona fide vocation, teach and preach the principles of religion; or

(d) He is not recognized by the church, sect, or organization as a regular minister of religion; or
§ 1645.5 Impartiality.
Boards may not give preferential treatment to one religion or sect over another and no preferential treatment will be given a duly ordained minister over a regular minister.

§ 1645.6 Considerations relevant to granting or denying a claim for Class 4-D.
(a) The board shall first determine whether the registrant is requesting classification in Class 4-D because he is a regular minister of religion or because he is a duly ordained minister of religion.
(b) If the registrant claims to be a duly ordained minister of religion, the board will:
   (1) Determine whether the registrant has been ordained, in accordance with the ceremonial ritual or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of religious character, to preach and teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship; and
   (2) Determine whether the registrant as his regular, customary, and bona fide vocation, preaches and teaches the principles of religion and administers the ordinances of public worship, as embodied in the creed or principles of the church, sect, or organization by which the registrant was ordained.
(c) If the registrant claims to be a regular minister of religion, the board will:
   (1) Determine whether the registrant as his customary and regular calling or profession, preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion; and
   (2) Determine whether the registrant is recognized by such church, sect, or organization as a regular minister.
(d) If the board determines that the registrant is a regular minister of religion or a duly ordained minister of religion he shall be classified in Class 4-D.

§ 1645.7 Evaluation of claim.
(a) In evaluating a claim for classification in Class 4-D, the board will not consider:
   (1) The training or abilities of the registrant for duty as a minister; or
   (2) The motive or sincerity of the registrant in serving as a minister.
(b) The board should be careful to ascertain the actual duties and functions of registrants seeking classification in Class 4-D, such classification being appropriate only for leaders of the various religious groups, not granted to members of such groups generally.
(c) Preaching and teaching the principles of one’s sect, if performed part-time or half-time, occasionally or irregularly, are insufficient to establish eligibility for Class 4-D. These activities must be regularly performed and must comprise the registrant’s regular calling or full-time profession. The mere fact of some secular employment on the part of a registrant requesting classification in Class 4-D does not in itself make him ineligible for that class.
(d) The board should request the registrant to furnish any additional information that it believes will be of assistance in the consideration of the registrant’s claim for classification in Class 4-D.

§ 1645.8 Types of decisions.
(a) If the board determines that the registrant is a regular minister of religion or a duly ordained minister of religion, he shall be classified in Class 4-D.
(b) The board will deny a claim for Class 4-D when the evidence fails to meet the criteria established in this part.

§ 1645.9 Statement of reason for denial.
(a) Denial of a 4-D claim by a board must be accompanied by a statement specifying the reason(s) for such denial as prescribed in §§1633.9, 1653.4 and 1653.3 of this chapter. The reason(s)
must in turn, be supported by evidence in the registrant’s file.

(b) If the board’s denial is based on statements by the registrant or his witnesses at a personal appearance or on documentation in the registrant’s file, such basis will be fully explained in the statement of reasons accompanying the denial.

PART 1648—CLASSIFICATION BY LOCAL BOARD

Sec.
1648.1 Authority of local board.
1648.3 Opportunity for personal appearances.
1648.4 Appointment for personal appearances.
1648.5 Procedures during personal appearance before the local board.
1648.6 Registrants transferred for classification.
1648.7 Procedures upon transfer for classification.


§ 1648.1 Authority of local board.
A local board shall consider and determine all claims which it receives in accord with §1633.2 or §1648.6 of this chapter. No action shall be taken by the board in the absence of a quorum of its prescribed membership.

[52 FR 24458, July 1, 1987]

§ 1648.3 Opportunity for personal appearances.
(a) A registrant who has filed a claim for classification in Class 1–A–O or Class 1–O shall be scheduled for a personal appearance in accord with §1648.4 before his claim is considered.

(b) A registrant who has filed a claim for classification in Class 2–D, Class 3–A, or Class 4–D, shall, upon his written request, be afforded an opportunity to appear in person before the board before his claim for classification is considered.

(c) Any registrant who has filed a claim for classification in an administrative class and whose claim has been denied, shall be afforded an opportunity to appear before the board if he requests that the denial of such claim be reviewed by the board.

[47 FR 4661, Feb. 1, 1982, as amended at 52 FR 24458, July 1, 1987]

§ 1648.4 Appointment for personal appearances.
(a) Not less than 10 days (unless the registrant requests an earlier appointment) in advance of the meeting at which he may appear, the registrant shall be informed of the time and place of such meeting and that he may present evidence, including witnesses, bearing on his classification.

(b) Should the registrant who has filed a claim for classification in Class 1–A–O or Class 1–O fail to appear at his scheduled personal appearance, the board will not consider his claim for classification in Class 1–A–O or Class 1–O. The board shall consider any written explanation of such failure that has been filed within 5 days (or extension thereof granted by the board) after such failure to appear. If the board determines that the registrant’s failure to appear was for good cause it shall reschedule the registrant’s personal appearance. If the board does not receive a timely written explanation of the registrant’s failure to appear for his scheduled personal appearance or if the board determines that the registrant’s failure to appear was not for good cause, the registrant will be deemed to have abandoned his claim for Class 1–A–O or 1–O and will be notified that his claim will not be considered. The board will notify the registrant in writing of its action under this paragraph.

(c) Whenever a registrant who has filed a claim for a class other than Class 1–A–O or Class 1–O for whom a personal appearance has been scheduled, fails to appear in accord with such schedule, the board shall consider any written explanation of such failure that has been filed within 5 days (or extension thereof granted by the board) after such failure to appear. If the board determines that the registrant’s failure to appear was for good cause it shall reschedule the registrant’s personal appearance. If the board does not receive a timely written explanation of the registrant’s failure to appear for his scheduled personal appearance or if
the board determines that the registrant’s failure to appear was not for good cause, the registrant will be deemed to have abandoned his request for personal appearance and the board will proceed to classify him on the basis of the material in his file. The board will notify the registrant in writing of its action under this paragraph.

[47 FR 4661, Feb. 1, 1982, as amended at 52 FR 24458, July 1, 1987]

§ 1648.5 Procedures during personal appearance before the local board.

(a) A quorum of the prescribed membership of a board shall be present during all personal appearances. Only those members of the board before whom the registrant appears shall classify him.

(b) At any such appearance, the registrant may present evidence, including witnesses; discuss his classification; direct attention to any information in his file; and present such further information as he believes will assist the board in determining his proper classification. The information furnished should be as concise as possible.

(c) The registrant may present the testimony of not more than three witnesses unless it is the judgment of the board that the testimony of additional witnesses is warranted. The registrant may summarize in writing, the oral information that he or his witnesses presented. Such summary shall be placed in the registrant’s file.

(d) A summary will be made of all oral testimony given by the registrant and his witnesses at his personal appearance and such summary shall be placed in the registrant’s file.

(e) If the registrant does not speak English adequately he may appear with a person to act as interpreter for him. The interpreter shall be sworn in accordance with §1605.81(b). Such interpreter will not be deemed to be a witness unless he testifies in behalf of the registrant.

(f) During the personal appearance only the registrant or his witnesses may address the board or respond to questions of the board and only the registrant and the board will be allowed to address questions to witnesses. A registrant may, however, be accompanied by an advisor of his choosing and may confer with the advisor before responding to an inquiry or statement by the board: Provided, That, those conferences do not substantially interfere with or unreasonably delay the orderly process of the personal appearance.

(g) If, in the opinion of the board, the informal, administrative nature of the personal appearance is unduly disrupted by the presence of an advisor, the board chairman may require the advisor to leave the hearing room. In such case, the board chairman shall put a statement of reasons for his action in the registrant’s file.

(h) The making of verbatim transcripts, and the using of cameras or other recording devices are prohibited in proceedings before the board. This does not prevent the registrant or Selective Service from making a written summary of all testimony presented.

(i) Proceedings before the local boards shall be open to the public only upon the request of or with the permission of the registrant. The board chairman may limit the number of persons attending the hearing in order to maintain order. If during the hearing the presence of nonparticipants in the proceeding becomes disruptive, the chairman may close the hearing.

[47 FR 4661, Feb. 1, 1982, as amended at 52 FR 24459, July 1, 1987]

§ 1648.6 Registrants transferred for classification.

(a) Before a board of jurisdiction has undertaken the classification of a registrant, the file may, at his request, be transferred for classification to a local board nearer to his current address than is the local board of jurisdiction.

(b) The Director of Selective Service may transfer a registrant to another board for classification at any time when:

(1) A board cannot act on the registrant’s claim because of disqualification under the provisions of §1605.55 of this chapter; or

(2) He deems such transfer to be necessary in order to assure equitable administration of the Selective Service Law.

[47 FR 4661, Feb. 1, 1982, as amended at 52 FR 24459, July 1, 1987]
§ 1648.7 Procedures upon transfer for classification.

A board to which a registrant is transferred for classification shall classify the registrant in the same manner it would classify a registrant assigned to it. When the classification has been decided by the transfer board, the file will be returned to the local board of jurisdiction in the manner prescribed by the Director.

[47 FR 4661, Feb. 1, 1982]

PART 1651—CLASSIFICATION BY DISTRICT APPEAL BOARD

Sec.
1651.1 Who may appeal to a district appeal board.
1651.2 Time within which registrants may appeal.
1651.3 Procedures for taking an appeal.
1651.4 Review by district appeal board.
1651.5 File to be returned after appeal to the district appeal board is decided.


SOURCE: 47 FR 4662, Feb. 1, 1982, unless otherwise noted.

§ 1651.1 Who may appeal to a district appeal board.

(a) The Director of Selective Service may appeal from any determination of a local board when he deems it necessary to assure the fair and equitable administration of the Selective Service Law: Provided, That, no such appeal will be taken after the expiration of the appeal period prescribed in §1651.2.

(b) The registrant may appeal the classification action of the local board by filing with it a written statement of his reasons for taking such appeal. When an appeal is taken by the Director, the registrant will be notified that the appeal has been taken, the reason therefor, and that the registrant may appear in person before the appeal board in accord with §1651.4(e).

(c) The registrant may also request an opportunity to appear in person before the district appeal board and such appeal will be considered by the board having jurisdiction over the local board which last classified him.

(d) The registrant may attach to his appeal a statement specifying the reasons he believes the classification action that he is appealing is inappropriate, directing attention to any information in his file, and setting out any information relevant to his claim.

§ 1651.2 Time within which registrants may appeal.

The registrant who wishes to appeal must file the appeal with his local board within 15 days after the date he is mailed a notice of classification action. The registrant who wishes a personal appearance before the district appeal board must file the request at the same time he files the appeal.

§ 1651.3 Procedures for taking an appeal.

(a) When the Director of Selective Service appeals to a district appeal board he shall place in the registrant’s file a written statement of his reasons for taking such appeal. When an appeal is taken by the Director, the registrant will be notified that the appeal has been taken, the reason therefor, and that the registrant may appear in person before the appeal board in accord with §1651.4(e).

(b) The registrant may appeal the classification action of the local board by filing with it a written notice of appeal. The registrant’s notice of appeal need not be in a particular form but must include the name of the registrant and his request. Any notice shall be liberally construed so as to permit the appeal.

(c) The registrant may also request an opportunity to appear in person before the district appeal board and such appeal will be considered by the board having jurisdiction over the local board which last classified him.

(d) The registrant may attach to his appeal a statement specifying the reasons he believes the classification action that he is appealing is inappropriate, directing attention to any information in his file, and setting out any information relevant to his claim.

§ 1651.4 Review by district appeal board.

(a) An appeal to the district appeal board is determined by the classification of the registrant in a class other than 1-A or by its refusal to take such action. No action shall be taken by the board in the absence of a quorum of its prescribed membership.

(b) Prior to the adjudication of an appeal, the clerk of the appeal board or any compensated employee authorized to perform the administrative duties of the board shall review the file to insure that no procedural errors have occurred during the history of the current claim. Files containing procedural errors will be returned to the local board.
board that classified the registrant for any additional processing necessary to correct such errors.

(c) Files containing procedural errors that were not detected during the initial screening but which subsequently surfaced during processing by the appeal board, will be acted on and the board will take such action necessary to correct the errors and process the appeal to completion.

(d) A board shall consider appeals in the order of their having been filed.

(e) Upon receipt of the registrant’s file, a board shall ascertain whether the registrant has requested a personal appearance before the board. If no such request has been made, the board may classify the registrant on the basis of the material in his file.

(f) Not less than 10 days (unless the registrant requests an earlier appointment) in advance of the meeting at which his classification will be considered, the board shall inform any registrant with respect to whom the Director of Selective Service has appealed or who has requested a personal appearance that he may appear at such meeting and present written evidence bearing on his classification.

(g) During the personal appearance, only the registrant may address the board or respond to questions of the board. The registrant will not be permitted to present witnesses at the personal appearance before the district appeal board. A registrant may, however, be accompanied by an advisor of his choosing and may confer with the advisor before responding to an inquiry or statement by the board: Provided, That, those conferences do not substantially interfere with or unreasonably delay the orderly process of the personal appearance.

(h) If, in the opinion of the board, the informal, administrative nature of the hearing is unduly disrupted by the presence of an advisor during the personal appearance, the board chairman may require the advisor to leave the hearing room. In such case, the board chairman shall put a statement of reasons for his action in the registrant’s file.

(i) Whenever a registrant who has filed a claim for whom a personal appearance has been scheduled, fails to appear in accord with such schedule, the board shall consider any written explanation of such failure that has been filed within 5 days (or extension thereof granted by the board) after such failure to appear. If the board determines that the registrant’s failure to appear was for good cause it shall reschedule the registrant’s personal appearance. If the board does not receive a timely written explanation of the registrant’s failure to appear for his scheduled personal appearance or if the board determines that the registrant’s failure to appear was not for good cause, the registrant will be deemed to have abandoned his request for personal appearance and he will be classified on the basis of the material in his file. The board will notify the registrant in writing of its action under this paragraph.

(j) A quorum of the prescribed membership of a board shall be present during all personal appearances. Only those members of the board before whom the registrant appears shall classify him.

(k) At any personal appearance, the registrant may: Present his oral testimony; point out the class or classes in which he thinks he should have been placed; and direct attention to any information in his file. The registrant may present any additional written information he believes will assist the board in determining his proper classification. The information furnished should be as concise as possible.

(l) The registrant may summarize in writing the oral information that he presented. Such summary shall be placed in the registrant’s file.

(m) A summary will be made of oral testimony given by the registrant at his personal appearance and such summary shall be placed in the registrant’s file.

(n) A district appeal board shall classify a registrant who has requested a personal appearance after he:

(1) Has appeared before the board; or
(2) Has withdrawn his request to appear; or
(3) Has abandoned his right to an opportunity to appear; or
(4) Has failed to appear.
§ 1651.5 File to be returned after appeal to the district appeal board is decided.

When the appeal to a district appeal board has been decided, the file shall be returned as prescribed by the Director of Selective Service.

PART 1653—APPEAL TO THE PRESIDENT

Sec. 1653.1 Who may appeal to the President.
1653.2 Procedures for taking an appeal to the President.
1653.3 Review by the National Appeal Board.
1653.4 File to be returned after appeal to the President is decided.


SOURCE: 47 FR 4663, Feb. 1, 1982, unless otherwise noted.
Selective Service System

§ 1653.3

to perform the administrative duties of the board shall review the file to insure that no procedural errors have occurred during the history of the current claim. Files containing procedural errors will be returned to the board where the errors occurred for any additional processing necessary to correct such errors.

(c) Files containing procedural errors that were not detected during the initial screening but which subsequently surfaced during processing by the appeal board, will be acted on and the board will take such action necessary to correct the errors and process the appeal to completion.

(d) The board shall consider appeals in the order of their having been filed.

(e) Upon receipt of the registrant’s file, the board shall ascertain whether the registrant has requested a personal appearance before the board. If no such request has been made, the board may classify the registrant on the basis of the material in his file.

(f) The board shall proceed to classify any registrant who has not requested a personal appearance after the specified time in which to request a personal appearance has elapsed.

(g) Not less than 10 days in advance of the meeting at which his claim will be considered, the board shall inform any registrant with respect to whom the Director of Selective Service has appealed or who has requested a personal appearance that he may appear at such meeting and present written evidence bearing on his classification.

(h) During the personal appearance only the registrant may address the board or respond to questions of the board. The registrant will not be permitted to present witnesses at the personal appearance before the National Appeal Board. A registrant may, however, be accompanied by an advisor of his choosing and may confer with the advisor before responding to an inquiry or statement by the board: Provided, That, those conferences do not substantially interfere with or unreasonably delay the orderly process of the personal appearance.

(i) If, in the opinion of the board, the informal, administrative nature of the personal appearance is unduly disrupted by the presence of an advisor, the board chairman may require the advisor to leave the hearing room. In such a case, the board chairman shall put a statement of reasons for his action in the registrant’s file.

(j) Whenever a registrant who has filed a claim for whom a personal appearance has been scheduled fails to appear in accord with such schedule, the board shall consider any written explanation of such failure that has been filed within five days (or extension thereof granted by the board) after such failure to appear. If the board determines that the registrant’s failure to appear was for good cause it shall reschedule the registrant’s personal appearance. If the board does not receive a timely written explanation of the registrant’s failure to appear for his scheduled personal appearance or if the board determines that the registrant’s failure to appear was not for good cause, the registrant will be deemed to have abandoned his request for personal appearance and the board will proceed to classify him on the basis of the material in his file. The registrant will be notified in writing of its action under this paragraph.

(k) A quorum of the prescribed membership of a board shall be present during all personal appearances. Only those members of the board before whom the registrant appears shall classify him.

(l) At any such appearance, the registrant may: Present oral testimony; point out the class or classes in which he thinks he should have been placed; and direct attention to any information in his file. The registrant may present such further written information as he believes will assist the board in determining his proper classification. The information furnished should be as concise as possible.

(m) The registrant may summarize in writing the oral information that he presented and any such summary shall be placed in his file.

(n) A summary will be made of the oral testimony given by the registrant at his personal appearance and such summary shall be placed in the registrant’s file.

(o) The board shall classify a registrant who has requested a personal appearance after he:
§ 1653.4

(1) Has appeared before the National Board; or
(2) Has withdrawn his request to appear; or
(3) Has waived his right to an opportunity to appear; or
(4) Has failed to appear.

(p) Whenever the National Board or the panel thereof to which a case has been assigned cannot act on the case of a registrant, and there is no other panel of the National Board to which the case may be transferred, the decision of the District Appeal Board will be final.

(q) In considering a registrant’s appeal, the board shall not receive or consider any information other than the following:
(1) Information contained in the registrant’s file; and
(2) Oral statements by the registrant at the registrant’s personal appearance; and
(3) Written evidence submitted by the registrant to the board during his personal appearance.

(r) In the event that the board classifies the registrant in a class other than that which he requested, it shall record its reasons therefor in his file.

(s) The making of verbatim transcripts, and the using of cameras or other recording devices are prohibited in proceedings before the board. This does not prevent the registrant or Selective Service from making a written summary of his testimony.

(t) Proceedings before the National Appeal Board are closed to the public.

[47 FR 4663, Feb. 1, 1982, as amended at 52 FR 24459, July 1, 1987]
§ 1653.4 File to be returned after appeal to the President is decided.

When the appeal to the President has been decided, the file shall be returned as prescribed by the Director of Selective Service.

PART 1656—ALTERNATIVE SERVICE

Sec.
1656.1 Purpose; definitions.
1656.2 Order to perform alternative service.
1656.3 Responsibility for administration.
1656.4 Alternative Service Office: jurisdiction and authority.
1656.5 Eligible employment.
1656.6 Overseas assignments.
1656.7 Employer responsibilities.
1656.8 Employment agreements.
1656.9 Alternative service worker’s responsibilities.
1656.10 Job placement.
1656.11 Job performance standards and sanctions.
1656.12 Job reassignment.
1656.13 Review of alternative service job assignments.
1656.14 Postponement of reporting date.
1656.15 Suspension of order to perform alternative service because of hardship to dependents.
1656.16 Early release—grounds and procedures.
1656.17 Administrative complaint process.
1656.18 Computation of creditable time.
1656.19 Completion of alternative service.
1656.20 Expenses for emergency medical care.

AUTHORITY: Sec. 6(j) Military Selective Service Act; 50 U.S.C. App. 456(j).

SOURCE: 48 FR 16676, Apr. 19, 1983, unless otherwise noted.
§ 1656.1 Purpose; definitions.

(a) The provisions of this part govern the administration of registrants in Class I–W and the Alternative Service Program.

(b) The definitions of this paragraph shall apply in the interpretation of the provisions of this part:

(1) Alternative Service (AS). Civilian work performed in lieu of military service by a registrant who has been classified in Class I–W.

(2) Alternative Service Office (ASO). An office to administer the Alternative Service Program in a specified geographical area.

(3) Alternative Service Office Manager (ASOM). The head of the ASO.

(4) Alternative Service Worker (ASW). A registrant who has been found to be qualified for service and has been ordered to perform alternative service (Class I–W).

(5) Civilian Review Board. A board to review appeals by ASWs of job assignments.

(6) Creditable Time. Time that is counted toward an ASW’s fulfillment of his alternative service obligation.
(8) **Director.** The Director of Selective Service, unless used with a modifier.

(9) **Employer.** Any institution, firm, agency or corporation engaged in lawful activity in the United States, its territories or possessions, or in the Commonwealth of Puerto Rico, that has been approved by Selective Service to employ ASWs.

(10) **Job Assignment.** A job with an eligible employer to which an ASW is assigned to perform his alternative service.

(11) **Job Bank.** A current inventory of alternative service job openings.

(12) **Job Matching.** A comparison of the ASW's work experience, education, training, special skills, and work preferences with the requirements of the positions in the job bank.

(13) **Job Placement.** Assignment of the ASW to alternative service work.

(14) **Open Placement.** The assignment of ASWs without employer interview to employers who have agreed to employ all ASWs assigned to them up to an agreed number.

§ 1656.2 **Order to perform alternative service.**

(a) The local board of jurisdiction shall order any registrant who has been classified in Class 1–O or 1–O–S to perform alternative service at a time and place to be specified by the Director.

(b) When the local board orders a registrant to perform alternative service, it shall be the duty of the registrant to report for and perform alternative service at the time and place ordered unless the order has been canceled. If the time when the registrant is ordered to report for alternative service is postponed, it shall be the continuing duty of the registrant to report for and perform alternative service at such time and place as he may be reordered. Regardless of the time when or the circumstances under which a registrant fails to report for and perform alternative service when it is his duty to do so, it shall thereafter be his continuing duty from day to day to report for and perform alternative service at the place specified in the order to report for and perform alternative service.

(c) The Director may authorize a delay of reporting for alternative service for any registrant whose date of induction conflicts with a religious holiday historically observed by a recognized church, religious sect or religious organization of which he is a member. Any registrant so delayed shall report for alternative service on the next business day following the religious holiday.

(d)(1) Any registrant who is satisfactorily pursuing a full-time course of instruction at a high school or similar institution of learning and is issued an order to perform alternative service shall, upon presentation of appropriate facts in the manner prescribed by the Director of Selective Service, have his date to report to perform alternative service postponed:

(i) Until the time of his graduation therefrom; or

(ii) Until he attains the twentieth anniversary of his birth; or

(iii) Until the end of his last academic year, even if he has attained the twentieth anniversary of his birth; or

(iv) Until he ceases satisfactorily to pursue such course of instruction, whichever is the earliest.

(2) Any registrant who, while satisfactorily pursuing a full-time course of instruction at a college, university or similar institution of learning, is ordered to perform alternative service shall, upon the presentation of appropriate facts in the manner prescribed by the Director of Selective Service, have his date to report to perform alternative service:

(i) Until the end of the semester or term, or in the case of his last academic year, the end of the academic year; or

(ii) Until he ceases to satisfactorily pursue such course of instruction, whichever is the earlier.

(e) After the order to perform alternative service has been issued, the Director may postpone for a specific time the date when such registrant is required to report in the following circumstances:

(1) In the case of the death of a member of the registrant's immediate family, extreme emergency involving a member of the registrant's immediate family, serious illness or injury of the registrant, or other emergency beyond the registrant's control. The period of postponement shall not exceed 60 days
§ 1656.3 Responsibility for administration.

(a) The Director in the administration of the Alternative Service Program shall establish and implement appropriate procedures to:

1. Assure that the program complies with the Selective Service Law;
2. Provide information to ASWs about their rights and duties;
3. Find civilian work for ASWs;
4. Place ASWs in jobs approved for alternative service;
5. Monitor the work performance of ASWs placed in the program;
6. Order reassignment and authorize job separation;
7. Issue certificates of completion;
8. Specify the location of Alternative Service Offices;
9. Specify the geographical area in which the ASOs shall have jurisdiction over ASWs;
10. Establish Civilian Review Boards and panels and provide for the selection and appointment of members thereof;
11. Refer to the Department of Justice, when appropriate, any ASW who fails to perform satisfactorily his alternative service;
12. Perform all other functions necessary for the administration of the Alternative Service Program; and
13. Delegate any of his authority to such office, agent or person as he may designate and provide as appropriate for the subdelegation of such authority.

(b) The Region Director shall be responsible for the administration and operation of the Alternative Service Program in his Region as prescribed by the Director.

(c) The State Director shall perform duties for the administration and operation of the Alternative Service Program in his State as prescribed by the Director.

(d) The ASOM shall perform duties for the administration and operation of the Alternative Service Program as prescribed by the Director.

(e) The manager of an area office shall perform duties for Alternative Service as prescribed by the Director.

§ 1656.4 Alternative Service Office: jurisdiction and authority.

(a) Jurisdiction over the ASW will be transferred from the area office immediately after his classification in Class 1–W to the ASO that administers the Alternative Service Program in the area in which he is assigned to perform alternative service.

(b) The ASO shall:

1. Evaluate and approve jobs and employers for Alternative Service;
(2) Order the ASW to report for alternative service work;
(3) Issue such orders as are required to schedule the ASW for job interviews;
(4) Issue such orders as are required to schedule the ASW for job placement;
(5) Monitor the ASW’s job performance;
(6) Issue a certificate of satisfactory completion of the ASW’s Alternative Service obligation;
(7) Return the ASW to the jurisdiction of the area office from which he was directed to perform Alternative Service; and
(8) Perform such other actions the Director may authorize as necessary to administer the Alternative Service Program.

§ 1656.5 Eligible employment.

(a) The Director will determine in accordance with the Selective Service Law which civilian employment programs or activities are appropriate for Alternative Service work.

(1) Employers which are considered appropriate for Alternative Service assignments are limited to:

(i) The U.S. Government or a state, territory or possession of the United States or a political subdivision thereof, the District of Columbia or the Commonwealth of Puerto Rico;

(ii) Organizations, associations or corporations primarily engaged either in a charitable activity conducted for the benefit of the general public or in carrying out a program for the improvement of the public health, welfare or environment, including educational and scientific activities in support thereof, when such activity or program is not principally for the benefit of the members of such organization, association or corporation or for increasing the membership thereof.

(2) Employment programs or activities generally considered to be appropriate for Alternative Service work include:

(i) Health care services, including but not limited to hospitals, nursing homes, extended care facilities, clinics, mental health programs, hospices, community outreach programs and hotlines;

(ii) Educational services, including but not limited to teachers, teacher’s aides, counseling, administrative support, parent counseling, recreation, remedial programs and scientific research;

(iii) Environmental programs, including but not limited to conservation and firefighting, park and recreational activities, pollution control and monitoring systems, and disaster relief;

(iv) Social services, including but not limited to sheltered or handicapped workshops, vocational training or retraining programs, senior citizens activities, crisis intervention and poverty relief;

(v) Community services, including but not limited to fire protection, public works projects, sanitation services, school or public building maintenance, correctional facility support programs, juvenile rehabilitation programs, and

(vi) Agricultural work.

(b) An organization desiring to employ ASWs is encouraged to submit a request in writing to the Director or an ASOM for approval. Such requests will be considered at any time.

(c) Selective Service shall negotiate employment agreements with prospective employers with the objective of obtaining an adequate number of agreements to assure the timely placement of all ASWs. Participating employers will provide prospective job listings to Selective Service.

(d) Selective Service shall also negotiate employment agreements with eligible employers wherein the employer will agree to hire a specified number of ASWs for open placement positions.

(e) A registrant classified in Class 1–O or Class 1–O–S may seek his own alternative service work by identifying a job with an employer he believes would be appropriate for Alternative Service assignments and by having the employer advise the ASO in writing that he desires to employ the ASW. The acceptability of the job and employer so identified will be evaluated in accordance with §1656.5(a).

§ 1656.6 Overseas assignments.

Alternative Service job assignments outside the United States, its territories or possessions, or the Commonwealth of Puerto Rico, will be allowed when:

(a) The employer is deemed eligible to employ ASWs and is based in the United States, its territories or possessions, or the Commonwealth of Puerto Rico;

(b) The job meets the criteria listed in §1656.5(a);

(c) The ASW and the employer submit a joint application to Selective Service for the ASW to be employed in a specific job;

(d) The employer satisfies Selective Service that the employer has the capability to supervise and monitor the overseas work of the ASW; and

(e) International travel is provided without expense to Selective Service.

§ 1656.7 Employer responsibilities.

Employers participating in the Alternative Service Program are responsible for:

(a) Complying with the employment agreement with Selective Service;

(b) Providing a clear statement of duties, responsibilities, compensation and employee benefits to the ASW;

(c) Providing full-time employment for ASWs;

(d) Assuring that wages, hours and working conditions of ASWs conform with Federal, state and local laws;

(e) Providing adequate supervision of ASWs in their employ; and

(f) Providing nondiscriminatory treatment of ASWs in their employ.

§ 1656.8 Employment agreements.

(a) Nature of Agreement. Before any ASW is placed with an employer, Selective Service and the employer shall enter into an employment agreement that specifies their respective duties and responsibilities under the Alternative Service Program.

(b) Restrictions on Selective Service. The Selective Service System shall not act in any controversy involving ASW’s wages, hours and working conditions except to the extent any of these subjects is specifically covered in §1656.7, §1656.9, or the employment agreement between Selective Service and the employer.

§ 1656.9 Alternative service worker’s responsibilities.

(a) A registrant classified in Class 1–W is required to comply with all orders issued under this part.

(b) A registrant classified in Class 1–W is liable to perform 24 months of creditable time toward completion of Alternative Service, unless released earlier by the Director.

§ 1656.10 Job placement.

(a) Selective Service will maintain a job bank for the exclusive purpose of placing ASWs in alternative service jobs.

(b) An ASW who has identified his own job in accordance with §1656.5(e) of this part may be assigned by the ASO in that job pending review of the job by Selective Service. If the job is not approved he will not receive creditable time and will be placed by Selective Service in a position approved for Alternative Service Work. Selective Service must review the job within 30 calendar days of the time it assigned the ASW to begin work. If the elapsed time from date of placement to the date of Selective Service review exceeds 30 days, the ASW will receive creditable time from the date of placement regardless of the final determination of employer eligibility made by Selective Service. If the placement is
ultimately determined to be inappropriate for Alternative Service the ASW will be reassigned in accordance with §1656.12.

(c) In making job interview referrals and in making assignments of ASWs to jobs, Selective Service will consider the compatibility of the ASW’s skills, work experience, and preferences with the qualification criteria for the job.

(d) When an ASW is hired, the ASO will issue a Job Placement Order specifying the employer, the time, date and place to report for his alternative service work.

(e) The ASO will normally place the ASW in an alternative service job within 30 calendar days after classification in Class 1W.

§ 1656.11 Job performance standards and sanctions.

(a) Standards of Performance. An ASW is responsible for adhering to the standards of conduct, attitude, appearance and performance demanded by the employer of his other employees in similar jobs. If there are no other employees, the standards shall conform to those that are reasonable and customary in a similar job.

(b) Failure to Perform. An ASW will be deemed to have failed to perform satisfactorily whenever:

(1) He refuses to comply with an order of the Director issued under this part;

(2) He refuses employment by an approved employer who agrees to hire him;

(3) His employer terminates the ASW’s employment because his conduct, attitude, appearance or performance violates reasonable employer standards; or

(4) He quits or leaves his job without reasonable justification, and has not submitted an appeal of his job assignment to the Civil Review Board.

(c) Sanctions for ASW’s Failure to Perform. (1) The sanctions for failure to meet his Alternative Service obligation are job reassignment, loss of creditable time during such period and referral to the Department of Justice for failure to comply with the Military Selective Service Act.

(2) Prior to invoking any of the sanctions discussed herein, the ASO will conduct a review as prescribed in §1656.17 of all allegations that an ASW has failed to perform pursuant to any of the provisions of §1656.11(b).

§ 1656.12 Job reassignment.

(a) Grounds for Reassignment. The Director may reassign an ASW whenever the Director determines that:

(1) The job assignment violates the ASW’s religious, moral or ethical beliefs or convictions as to participation in a war that led to his classification as a conscientious objector or violates §1656.5(a) of this part.

(2) An ASW experiences a change in his mental or physical condition which renders him unfit or unable to continue performing satisfactorily in his assigned job;

(3) An ASW’s dependents incur a hardship which is not so severe as to justify a suspension of the Order to Perform Alternative Service under §1656.15;

(4) The ASW’s employer ceases to operate an approved program or activity;

(5) The ASW’s employer fails to comply with terms and conditions of these regulations or;

(6) Continual and severe differences between the ASW’s employer and ASW remain unresolved.

(7) The sanctions authorized in §1656.11 should be applied.

(b) Who May Request Reassignment. Any ASW may request reassignment to another job. An employer may request job reassignment of an ASW who is in his employ.

(c) Method for Obtaining a Reassignment. All requests for reassignment must be in writing with the reasons specified. The request may be filed with the ASO of jurisdiction at any time during an ASW’s alternative service employment. An ASW must continue in his assigned job, if available, until the request for assignment is approved.

§ 1656.13 Review of alternative service job assignments.

(a) Review of ASW job assignments will be accomplished in accordance with the provisions of this subsection.
(b) Whenever the ASW believes that his job assignment violates his religious, moral or ethical beliefs or convictions as to participation in war that led to his classification as a conscientious objector or is in violation of the provisions of this part he may request a reassignment from the ASOM, as provided for in §1656.12.

(c) The ASOM shall reassign the ASW if the ASOM concludes that the ASW’s work assignment violates his religious, moral or ethical beliefs or convictions as to participation in war which led to his classification as a CO or is in violation of the provisions of this part.

(d) If the ASOM does not reassign the ASW, the ASW may, within 15 days after the date of mailing of the decision of the ASOM, request a review of his job assignment by a Civilian Review Board.

(e) The Director shall establish a Civilian Review Board for each ASO in whose area ASW’s are working. The Civilian Review Board shall consist of not less than three members who will serve without compensation. The Director may establish panels. No person will be appointed to a Civilian Review Board who would be ineligible for appointment to a District Appeal Board. A member of a Civilian Review Board would be disqualified in any case that a member of a District Appeal Board would be disqualified under the provisions of §1656.25(a), (b) of this chapter. Each Board, or panel thereof, shall elect a chairman and a vice-chairman at least every two years. A majority of the members present at any meeting shall constitute a quorum for the transaction of business. A majority of the members present at any meeting at which a quorum is present shall decide any question. Every member, unless disqualified, shall vote on every question. In case of a tie vote on a question, the Board shall postpone action until the next meeting. If the question remains unresolved at the next meeting, the Director will transfer the case to another board. If, through death, resignation, or other causes, the membership of the Board falls below the prescribed number of members, the Board or panel shall continue to function, provided a quorum of the prescribed membership is present at each official meeting.

(f) It shall be the function of the Civilian Review Board to determine whether or not an ASW’s job assignment violates the ASW’s religious, moral, or ethical beliefs of convictions as to participation in war which led to his classification as a conscientious objector or is in violation of the provisions §1656.5(a) of this part. In making the former determination, the Review Board must be convinced by the ASW that if the ASW performed the job, his convictions as to participation in war would be violated in a similar way as if the ASW had participated in war.

(g) The Civilian Review Board may affirm the assignment or order the reassignment of the ASW in any matter considered by it.

(h) Procedures of the Civilian Review Board are:

1. Appeals to the Board shall be in writing, stating as clearly as possible the ground for the appeal.

2. The ASW may appear before the Board at his request. He may not be represented by counsel or present witnesses. The ASOM or his representative may represent the Selective Service System at the hearing and present evidence.

3. The Board’s determination will be based on all documents in the ASW’s file folder and statements made at the hearing.

4. The decision of the Board will be binding only in the case before it. A decision of a Board will not be relied upon by a Board in any other case.

5. A decision of the Board is not subject to review within the Selective Service System.

§ 1656.14 Postponement of reporting date.

(a) General. The reporting date in any of the following orders may be postponed in accord with this section:

1. Report for Job Placement;

2. Report for a Job Interview; or


(b) Requests for Postponement. A request for postponement of a reporting date specified in an order listed in paragraph (a) must be made in writing and filed prior to the reporting date.
Selective Service System

§ 1656.16

Early release—grounds and procedures.

(a) General Rule of Service Completion. An ASW will not be released from alternative service prior to completion of 24 months of creditable service unless granted an early release.

(b) Religious Holiday. The Director may authorize a delay of reporting under any of the orders specified for an ASW whose date to report conflicts with a religious holiday historically observed by a recognized church, religious sect or religious organization of which he is a member. Any ASW so delayed shall report on the next business day following the religious holiday.

§ 1656.15 Suspension of order to perform alternative service because of hardship to dependents.

(a) Whenever, after an ASW has begun work, a condition develops that results in hardship to his dependent as contemplated by §1630.30(a) of this chapter which cannot be alleviated by his reassignment under §1656.12(a)(3) of this part, the ASW may request a suspension of Order to Perform Alternative Service. If the local board that ordered the ASW to report for Alternative Service determines he would be entitled to classification in Class 3-A, assuming that the ASW were eligible to file a claim for that class, further compliance with his order shall be suspended for a period not to exceed 365 days, as the local board specifies. Extensions of not more than 365 days each may be granted by the local board so long as the hardship continues until the ASW’s liability for training and service under the Military Selective Service Act terminates.

(b) An ASW may file a request for the suspension of his Order to Perform Alternative Service with the ASO. This request must be in writing, state as clearly as possible the basis for the request, and be signed and dated by the ASW. The ASW must continue working in his assigned job until his request for the suspension of his Order to Perform Alternative Service has been approved.

(c) Local boards shall follow the procedures established in parts 1642 and 1648 of this chapter to the extent they are applicable in considering a request for the suspension of an Order to Perform Alternative Service.

§ 1656.16 Early release—grounds and procedures.

(a) General Rule of Service Completion. An ASW will not be released from alternative service prior to completion of 24 months of creditable service unless granted an early release.
§ 1656.17  (b) Reasons For Early Release. The Director may authorize the early release of an ASW whenever the ASO determines that the ASW:

(1) Has failed to meet the performance standards of available alternative service employment because of physical, mental or moral reasons;
(2) No longer meets the physical, mental or moral standards that are required for retention in the Armed Forces based on a physical or mental examination at a MEPS or other location designated by Selective Service;
(3) Is planning to return to school and has been accepted by such school and scheduled to enter within 30 days prior to the scheduled completion of his alternative service obligation;
(4) Has been accepted for employment and that such employment will not be available if he remains in alternative service the full 24 months. Such early release shall not occur more than 30 days before the scheduled completion of his alternative service obligation; or
(5) Has enlisted in or has been inducted into the Armed Forces of the United States.

(c) Reclassification and Records. Upon granting an early release to an ASW, the Director will reclassify the ASW and transfer his records in accordance with §1656.19 of this part.

§ 1656.18  Computation of creditable time.

(a) Creditable time starts when the ASW begins work pursuant to an Order to Perform Alternative Service or 30 days after the issuance of such order, whichever occurs first. Creditable time will accumulate except for periods of:

(1) Work of less than 35 hours a week or an employer’s full-time work week whichever is greater;
(2) Leaves of absence in a calendar year of more than 5 days in the aggregate granted by the employer to the ASW to attend to his personal affairs unless such absence is approved by the ASOM;
(3) Time during which an ASW fails or neglects to perform satisfactorily his work;
(4) Time during which the ASOM determines that work of the ASW is unsatisfactory because of his failure to comply with reasonable requirements of his employer;
(5) Time during which the ASW is not employed in an approved job because of his own fault; or
(6) Time during which the ASW is in a postponement period or his Order to Perform Alternative Service has been suspended.

(b) Creditable time will be awarded for periods of travel, job placement and job interviews performed under orders issued by Selective Service. Creditable time may be awarded for normal employer leave periods.

(c) Creditable time will be awarded to an ASW for the time lost after he leaves his job assignment following his request for reassignment on the basis of §1656.13(b) of this part until he is reassigned pursuant to §1656.13(c) or (g) of this part. Creditable time for the corresponding period will be lost if neither the ASOM nor the Civilian Review VerDate 11<MAY>2000 11:16 Jul 24, 2001 Jkt 194122 PO 00000 Frm 00360 Fmt 8010 Sfmt 8010 Y:\SGML\194122T.XXX pfrm12 PsN: 194122T
§ 1657.1 Purpose; definition.
(a) The provisions of this part apply to the processing of overseas registrants, and, where applicable, they supersede inconsistent provisions in this chapter.
(b) An overseas registrant is a registrant whose bona fide current address most recently provided by him to the Selective Service System is outside the United States, its territories or possessions, Commonwealth of Puerto Rico, Canada and Mexico.

§ 1657.2 Local boards.

The Director shall establish local boards with jurisdiction to determine claims of overseas registrants. Such
§ 1657.3 District appeal boards.

The Director shall establish district appeal boards with jurisdiction to determine appeals of claims of overseas registrants. Such boards shall consist of three or more members appointed by the President. The Director shall prescribe the geographic jurisdiction of each board.

§ 1657.4 Consideration of claims.

An overseas registrant’s claim shall be determined by a local board (or its supporting area office) or appeal board as may be established in accord with this part or, upon the request of the registrant filed no later than the filing of his claim for reclassification, by the board having geographic jurisdiction over his permanent address within the United States last reported by him to the Selective Service System prior to issuance of his induction order.

§ 1657.5 Place of induction.

The Director may order an overseas registrant to any place in the world for induction.

§ 1657.6 Transportation.

(a) The Director shall furnish transportation for an overseas registrant from the place at which the registrant’s order to report for induction was sent to the place he is required to report for induction. If such registrant is not inducted, the Director shall furnish him transportation from the place he reported for induction to the place to which his order to report for induction was sent.

(b) In the event the personal appearance before a local board or appeal board of an overseas registrant is required or permitted by regulation, travel expenses incurred in personally appearing before the board shall be at theregistrant’s own expense.

PART 1659—EXTRAORDINARY EXPENSES OF REGISTRANTS


§ 1659.1 Claims.

(a) Claims for payment of actual and reasonable expenses of:

(1) Emergency medical care, including hospitalization of registrants who suffer illness or injury; and

(2) The transportation and burial of the remains of registrants who suffer death while acting under orders issued by or under the authority of the Director of Selective Service will be paid in accordance with the provisions of this section.

(b) Claims for payment of expenses incurred for the purposes set forth in paragraph (a) of this section shall be presented to the Director of Selective Service.

(c)(1) The term emergency medical care, including hospitalization, as used in this section, shall be construed to mean such medical care or hospitalization that normally must be rendered promptly after an occurrence of illness or injury. Discharge by a physician or facility subsequent to such medical care or hospitalization shall be justification to terminate the period of emergency.

(2) The death of a registrant shall be deemed to have occurred while acting under orders issued by or under the authority of the Director of Selective Service if it results directly from an illness or injury suffered by the registrant while so acting and occurs prior to the completion of an emergency medical care, including hospitalization, occasioned by such illness or injury.

(d) No such claim shall be paid unless it is presented within the period of one year from the date on which the expenses were incurred.

(e) No such claim shall be allowed in case it is determined that the cause of injury, illness, or death was due to negligence or misconduct of the registrant.

(f) Burial expenses shall not exceed the maximum prescribed in Section 11
§ 1662.6 Fee schedule; waiver of fees.

(a) Definitions. For the purposes of this section:

The provisions of this part prescribe the procedures for requests for information under 5 U.S.C. 552, as amended (Freedom of Information Act).
§ 1662.6 32 CFR Ch. XVI (7–1–01 Edition)

(1) Direct costs mean those expenditures which the Selective Service System (SSS) actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of the rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) The term search includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Search should be distinguished from review of material in order to determine whether the material is exempt from disclosure (see paragraph (a)(4) of this section). Searches may be done manually or by computer using existing programming.

(3) Duplication refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies may take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(4) Review refers to the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise to prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term ‘commercial use’ request refers to a request from or on behalf of one who seeks information for the use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request properly belongs in this category the agency must determine the use to which a requester will put the documents requested. Moreover where there is reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the agency may seek additional clarification before assigning the request to a specific category.

(6) The term educational institution refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) The term non-commercial scientific institution refers to an institution that is not operated on a commercial basis as that term is referenced in paragraph (a)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) The term representative of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of freelance journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the agency may also look to the past publication record of a requester in making this determination.
Selective Service System

§ 1662.6

(b) Fees to be charged—categories of requesters. There are four categories of FOIA requesters: Commercial use requesters; education and non-commercial scientific institutions; representatives of the news media; and other requesters. The FOI Reform Act prescribes specific levels of fees for each of these categories:

(1) Commercial use requesters. A request for documents for commercial use will be assessed charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the record sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. The cost of searching for and reviewing records will be recovered even if there is ultimately no disclosure of records (see paragraph (c)(5) of this section).

(2) Educational and non-commercial scientific institution requesters. Documents to requesters in this category will be provided for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(3) Requesters who are representatives of the news media. Documents will be provided to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (a)(8) of this section, and his or her request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(4) All other requesters. The agency will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests from record subjects for records about themselves filed in the agency’s systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction.

(c) Assessment and collection of fees—

(1) Aggregated requests. If the Records Manager reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Records Manager may aggregate any such requests accordingly.

(2) Payment procedures—(i) Fee payment. The Records Manager may assume that a person requesting records pursuant to this part will pay the applicable fees, unless a request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (c)(4) of this section. Unless applicable fees are paid, the agency may use the authorities of the Debt Collection Act (Pub. L. 97–365), including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage payment.

(ii) Advance payment. (A) The Records Manager may require advance payment of any fee estimated to exceed $25. The Records Manager may also require full payment in advance where a requester has previously failed to pay fees in a timely fashion.

(B) If the Records Manager estimates that the fees will likely exceed $25, he will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.
§ 1662.6  

(3) Late charges. The Records Manager may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C.A.

(4) Waiver or reduction of fees—(1) Standards for determining waiver or reduction. The Records Manager shall grant a waiver or reduction of fees chargeable under this section where it is determined that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Selective Service System and is not primarily in the commercial interest of the requester. The Records Manager shall also waive fees that are less than the average cost of collecting fees. In determining whether disclosure is in the public interest, the following factors may be considered:

(A) The relation of the records to the operations or activities of the System;

(B) The information value of the information to be disclosed;

(C) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(D) The significance of that contribution to the public understanding of the subject;

(E) The nature of the requester’s personal interest, if any, in the disclosure requested; and

(F) Whether the disclosure would be primarily in the requester’s commercial interest.

(ii) Contents of request for waiver. The Records Manager will normally deny a request for a waiver of fees that does not include:

(A) A clear statement of the requester’s interest in the requested documents;

(B) The use proposed for the documents and whether the requester will derive income or other benefit from such use;

(C) A statement of how the public will benefit from such use and from the release of the requested documents; and

(D) If specialized use of the documents or information is contemplated, a statement of the requester’s qualifications that are relevant to the specialized use.

(iii) Burden of proof. In all cases the burden shall be on the requester to present evidence or information in support of a request for a waiver of fees.

(5) Fees for nonproductive search. Fees for record searches and review may be charged even if not responsive documents are located or if the request is denied, particularly if the requester insists upon a search after being informed that it is likely to be nonproductive or that any records found are likely to be exempt from disclosure. The Records Manager shall apply the standards set out in paragraph (c)(4) of this section in determining whether to waive or reduce fees.

APPENDIX A TO §1662.6—FREEDOM OF INFORMATION FEE SCHEDULE

Duplication:

Photocopy, per standard page ................... $ .10

Paper Copies of microfiche, per frame ............................................................ $ .10

Search and review:

Salary of the employee (the basic rate of pay of the employee plus 16 percent of that rate to cover benefits), performing the work of manual search and review.

Computer search and production:

For each request the Records Manager will separately determine the actual direct costs of providing the service, including computer search time, tape or printout production, and operator salary.

Special services:

The Records Manager may agree to provide and set fees to recover the costs of special services not covered by the Freedom of Information Act, such as certifying records or information, packaging and mailing records, and sending records by special methods such as express mail. The Records Manager may provide self-service photocopy machines and microfiche printers as a convenience to requesters and set separate perpage fees reflecting the cost of operation and maintenance of those machines.

Fee waivers:

For qualifying educational and non-commercial scientific institution requesters and representatives of the news media the Records Manager will not assess fees for review time, for the first 100 pages of reproduction, or, when the records sought are reasonably described, for search time. For other
Selective Service System § 1665.2

noncommercial use requests no fees will be assessed for review time, for the first 100 pages of reproduction, or for the first two hours of search time.

The Records Manager will waive in full fees that total less than $1.00 or that are less than the average cost of collecting fees.

The Records Manager will waive or reduce fees, upon proper request, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the System and is not primarily in the commercial interest of the requester.

[52 FR 13665, Apr. 24, 1987]

PART 1665—PRIVACY ACT PROCEDURES

Sec.
1665.1 Rules for determining if an individual is the subject of a record.
1665.2 Requests for access.
1665.3 Access to the accounting of disclosures from records.
1665.4 Requests to amend records.
1665.5 Request for review.
1665.6 Schedule of fees.
1665.7 Information available to the public or to former employers of registrants.
1665.8 Systems of records exempted from certain provisions of this act.

SOURCE: 47 FR 7224, Feb. 18, 1982, unless otherwise noted.

§ 1665.1 Rules for determining if an individual is the subject of a record.

(a) Individuals desiring to know if a specific system of records maintained by the Selective Service System (SSS) contains a record pertaining to them should address their inquiries to the Director, Selective Service System, ATTN: Records Manager, Washington, DC 20435. The written inquiry should contain a specific reference to the system of records maintained by Selective Service listed in the SSS Notices of Systems of Records or it should describe the type of record in sufficient detail to reasonably identify the system of records. Notice of SSS Systems of Records subject to the Privacy Act is in the FEDERAL REGISTER and copies of the notices will be available upon request to the records manager. A compilation of such notices will also be made and published by the Office of Federal Register, in accord with section 5 U.S.C. 552a(f).

(b) At a minimum, the request should also contain sufficient information to identify the requester in order to allow SSS to determine if there is a record pertaining to that individual in a particular system of records. In instances when the information is insufficient to insure that disclosure will be to the individual to whom the information pertains, in view of the sensitivity of the information, SSS reserves the right to ask the requester for additional identifying information.

(c) Ordinarily the requester will be informed whether the named system of records contains a record pertaining to the requester within 10 days of receipt of such a request (excluding Saturdays, Sundays, and legal federal holidays). Such a response will also contain or reference the procedures which must be followed by the individual making the request in order to gain access to the record.

(d) Whenever a response cannot be made within the 10 days, the records manager will inform the requester of the reason for the delay and the date by which a response may be anticipated.

§ 1665.2 Requests for access.

(a) Requirement for written requests. Individuals desiring to gain access to a record pertaining to them in a system of records maintained by SSS must submit their request in writing in accord with the procedures set forth in paragraph (b) below.

(b) Procedures—(1) Content of the request. (i) The request for access to a record in a system of records shall be addressed to the records manager, at the address cited above, and shall name the system of records or contain a description of such system of records. The request should state that the request is pursuant to the Privacy Act of 1974. In the absence of specifying solely the Privacy Act of 1974 and, if the request may be processed under both the Freedom of Information Act and the Privacy Act and the request specifies both or neither act, the procedures under the Privacy Act of 1974 will be...
§ 1665.2 32 CFR Ch. XVI (7–1–01 Edition)

employed. The individual will be advised that the procedures of the Privacy Act will be utilized, of the existence and the general effect of the Freedom of Information Act, and the difference between procedures under the two acts (e.g., fees, time limits, access). The request should contain necessary information to verify the identity of the requester (see § 1665.2(b)(2)(vi)). In addition, the requester should include any other information which may assist in the rapid identification of the record for which access is being requested (e.g., maiden name, dates of employment, etc.) as well as any other identifying information contained in and required by SSS Notice of Systems of Records.

(ii) If the request for access follows a prior request under § 1665.1, the same identifying information need not be included in the request for access if a reference is made to that prior correspondence, or a copy of the SSS response to that request is attached.

(iii) If the individual specifically desires a copy of the record, the request should so specify.

(2) SSS action on request. A request for access will ordinarily be answered within 10 days, except when the records manager determines that access cannot be afforded in that time, in which case the requester will be informed of the reason for the delay and an estimated date by which the request will be answered. Normally access will be granted within 30 days from the date the request was received by the Selective Service System. At a minimum, the answer to the request for access shall include the following:

(i) A statement that there is a record as requested or a statement that there is not a record in the system of records maintained by SSS;

(ii) A statement as to whether access will be granted only by providing copy of the record through the mail; or the address of the location and the date and time at which the record may be examined. In the event the requester is unable to meet the specified date and time, alternative arrangements may be made with the official specified in § 1665.2(b)(1);

(iii) A statement, when appropriate, that examination in person will be the sole means of granting access only when the records manager has determined that it would not unduly impede the requester’s right of access;

(iv) The amount of fees charged, if any (see § 1665.6) (Fees are applicable only to requests for copies);

(v) The name, title, and telephone number of the SSS official having operational control over the record; and

(vi) The documentation required by SSS to verify the identity of the requester. At a minimum, SSS’s verification standards include the following:

(A) Current or former SSS employees. Current or former SSS employees requesting access to a record pertaining to them in a system of records maintained by SSS may, in addition to the other requirements of this section, and at the sole discretion of the official having operational control over the record, have his or her identity verified by visual observation. If the current or former SSS employee cannot be so identified by the official having operational control over the records, identification documentation will be required. Employee identification cards, annuitant identification, drivers licenses, or the employee copy of any official personnel document in the record are examples of acceptable identification validation.

(B) Other than current or former SSS employees. Individuals other than current or former SSS employees requesting access to a record pertaining to them in a system of records maintained by SSS must produce identification documentation of the type described herein, prior to being granted access. The extent of the identification documentation required will depend on the type of record to be accessed. In most cases, identification verification will be accomplished by the presentation of two forms of identification. Any additional requirements are specified in the system notices published pursuant to 5 U.S.C. 552a(e)(4).

(C) Access granted by mail. For records to be accessed by mail, the records manager shall, to the extent possible, establish identity by a comparison of signatures in situations where the data in the record is not so sensitive that unauthorized access
could cause harm or embarrassment to the individual to whom they pertain. No identification documentation will be required for the disclosure to the requester of information required to be made available to the public by 5 U.S.C. 552. When in the opinion of the records manager the granting of access through the mail could reasonably be expected to result in harm or embarrassment if disclosed to a person other than the individual to whom the record pertains, a notarized statement of identity or some similar assurance of identity will be required.

(D) Unavailability of identification documentation. If an individual is unable to produce adequate identification documentation the individual will be required to sign a statement asserting identity and acknowledging that knowingly or willfully seeking or obtaining access to a record about another person under false pretenses may result in a fine of up to $5,000. In addition, depending upon the sensitivity of the records sought to be accessed, the official having operational control over the records may require such further reasonable assurances as may be considered appropriate e.g., statements of other individuals who can attest to the identity of the requester. No verification of identity will be required of individuals seeking access to records which are otherwise available to any person under 5 U.S.C. 552, Freedom of Information Act.

(E) Access by the parent of a minor, or legal guardian. A parent of a minor, upon presenting suitable personal identification, may access on behalf of the minor any record pertaining to the minor maintained by SSS in a system of records. A legal guardian may similarly act on behalf of an individual declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction. Absent a court order or consent, a parent or legal guardian has no absolute right to have access to a record about a child. Minors are not precluded from exercising on their own behalf rights given to them by the Privacy Act.

(F) Granting access when accompanied by another individual. When an individual requesting access to his or her record in a system of records maintained by SSS wishes to be accompanied by another individual during the course of the examination of the record, the individual making the request shall submit to the official having operational control of the record, a signed statement authorizing that person access to the record.

(G) Denial of access for inadequate identification documentation. If the official having operational control over the records in a system of records maintained by SSS determines that an individual seeking access has not provided sufficient identification documentation to permit access, the official shall consult with the records manager prior to finally denying the individual access.

(H) Review of decision to deny access. Whenever the records manager determines, in accordance with the procedures herein, that access cannot be granted the response will also include a statement of the procedures to obtain a review of the decision to deny in accord with §1665.5.

(vii) Exceptions. (A) Nothing in these regulations shall be construed to entitle an individual the right to access to any information compiled in reasonable anticipation of a civil action or proceeding. The mere fact that records in a system of records are frequently the subject of litigation does not bring those systems of records within the scope of this provision. This provision is not intended to preclude access by an individual to the records which are available to that individual under the other processes such as the Freedom of Information Act or the rules of civil procedure.

(B) Within any system of records pertaining to possible violations of the Military Selective Service Act, the identity of or any information pertaining to any individual who provides information relating to a suspected violator will not be revealed to the suspected violator. This exemption is made under the provision of 5 U.S.C. 552a(k)(2).
to the records (including verification of identity) outlined in §1665.2.

§ 1665.4 Requests to amend records.

(a) Requirement for written requests. Individuals desiring to amend a record that pertains to them in a system of records maintained by SSS must submit their request in writing in accord with the procedures set forth herein. Records not subject to the Privacy Act of 1974 will not be amended in accord with these provisions. However, individuals who believe that such records are inaccurate may bring this to the attention of SSS.

(b) Procedures.

(i) The requests to amend a record in a system of records shall be addressed to the records manager. Included in the request shall be the name of the system and a brief description of the record proposed for amendment. In the event the request to amend the record is the result of the individual’s having gained access to the record in accordance with the provisions concerning access to records as set forth above, copies of previous correspondence between the requester and SSS will serve in lieu of a separate description of the record.

(ii) When the individual’s identity has been previously verified pursuant to §1665.2(b)(2)(vi), further verification of identity is not required as long as the communication does not suggest that a need for verification is present. If the individual’s identity has not been previously verified, SSS may require identification validation as described in §1665.2(b)(2)(vi). Individuals desiring assistance in the preparation of a request to amend a record should contact the records manager at the address cited above.

(iii) The exact portion of the record the individual seeks to have amended should be clearly indicated. If possible, the proposed alternative language should also be set forth, or at a minimum, the facts which the individual believes are not accurate, relevant, timely, or complete should be set forth with such particularity as to permit SSS not only to understand the individual’s basis for the request, but also to make an appropriate amendment to the record.

(iv) The request must also set forth the reasons why the individual believes his record is not accurate, relevant, timely, or complete. In order to avoid the retention by SSS of personal information merely to permit verification of records, the burden of persuading SSS to amend a record will be upon the individual. The individual must furnish sufficient facts to persuade the official in charge of the system of the inaccuracy, irrelevancy, timeliness or incompleteness of the record.

(v) Incomplete or inaccurate requests will not be rejected categorically. The individual will be asked to clarify the request as needed.

(ii) SSS action on the request. To the extent possible, a decision, upon a request to amend a record will be made within 10 days, (excluding Saturdays, Sundays, and legal Federal holidays). The response reflecting the decisions upon a request for amendment will include the following:

(i) The decision of the Selective Service System whether to grant in whole, or deny any part of the request to amend the record.

(ii) The reasons for determination for any portion of the request which is denied.

(iii) The name and address of the official with whom an appeal of the denial may be lodged.

(iv) The name and address of the official designated to assist, as necessary and upon request of, the individual making the request in preparation of the appeal.

(v) A description of the review of the appeal with SSS (see §1665.5).

(vi) A description of any other procedures which may be required of the individual in order to process the appeal.

(iii) If the nature of the request for the correction of the system of records precludes a decision within 10 days, the individual making the request will be informed within 10 days of the extended date for a decision. Such a decision will be issued as soon as it is reasonably possible, normally within 30 days from the receipt of the request (excluding Saturdays, Sundays, and legal Federal holidays) unless unusual circumstances preclude completing action within that time. If the expected completion date for the decision indicated cannot be
§ 1665.5 Request for review.

(a) Individuals wishing to request a review of the decision by SSS with regard to any initial request to access or amend a record in accord with the provisions of §§1665.2 and 1665.4, should submit the request for review in writing and, to the extent possible, include the information specified in §1665.5(b). Individuals desiring assistance in the preparation of their request for review should contact the records manager at the address provided herein.

(b) The request for review should contain a brief description of the record involved or in lieu thereof, copies of the correspondence from SSS in which the request to access or to amend was denied and also the reasons why the requester believes that access should be granted or the disputed information amended. The request for review should make reference to the information furnished by the individual in support of his claim and the reasons as required by §§1665.2 and 1665.4 set forth by SSS in its decision denying access or amendment. Appeals filed without a complete statement by the requester setting forth the reasons for review will, of course, be processed. However, in order to make the appellate process as meaningful as possible, the requester’s disagreement should be set forth in an understandable manner. In order to avoid the unnecessary retention of personal information, SSS reserves the right to dispose of the material concerning the request to access or amend a record if no request for review in accord with this section is received by SSS within 180 days of the mailing by SSS of its decision upon an initial request. A request for review received after the 180 day period may, at the discretion of the records manager, be treated as an initial request to access or amend a record.

(c) The request for review should be addressed to the Director of Selective Service.

(d) The Director of Selective Service will inform the requester in writing of the decision on the request for review within 20 days (excluding Saturdays, Sundays, and legal federal holidays) from the date of receipt by SSS of the individual’s request for review unless the Director extends the 20 days period for good cause. The extension and the reasons therefor will be sent by SSS to the requester within the initial 20 day period. Such extensions should not be routine and should not normally exceed an additional thirty days. If the decision does not grant in full the request for amendment, the notice of the decision will provide a description of the steps the individual may take to obtain judicial review of such a decision, a statement that the individual may file a concise statement with SSS setting forth the individual’s reasons for his disagreement with the decision and the procedures for filing such a statement of disagreement. The Director of Selective Service has the authority to determine the conciseness of the statement, taking into account the scope of the disagreement and the complexity of the issues. Upon the filing of a proper, concise statement by the individual, any subsequent disclosure of the information in dispute will be clearly noted so that the fact that the record is disputed is apparent, a copy of the concise statement furnished and a concise statement by SSS setting forth its reasons for not making the requested changes, if SSS chooses to file such a statement. A notation of a dispute is required to be made only if an individual informs the agency of his disagreement with SSS’s determination in accord with §1665.5(a), (b) and (c). A copy of the individual’s statement, and if it chooses, SSS’s statement will be sent to any prior transferee of the disputed information who is listed on the accounting required by 5 U.S.C. 552a(c). If the reviewing official determines that the record should be amended in accord with the individual’s request, SSS will promptly correct the record, advise the individual, and inform previous recipients if an accounting of the disclosure was made pursuant to 5 U.S.C. 552a(c). The notification of correction pertains to information actually disclosed.
§ 1665.6 Schedule of fees.
  (a) Prohibitions against charging fees. Individuals will not be charged for:
      (1) The search and review of the record.
      (2) Any copies of the record produced as a necessary part of the process of making the record available for access, or
      (3) Any copies of the requested record when it has been determined that access can only be accomplished by providing a copy of the record through the mail.
      (4) Where a registrant has been charged under the Military Selective Service Act and must defend himself in a criminal prosecution, or where a registrant submits to induction and thereafter brings habeas corpus proceedings to test the validity of his induction, the Selective Service System will furnish to him, or to any person he may designate, one copy of his Selective Service file free of charge.
  (b) Waiver. The Director of Selective Service may at no charge, provide copies of a record if it is determined the production of the copies is in the interest of the Government.
  (c) Fee schedule and method of payment. Fees will be charged as provided below except as provided in paragraphs (a) and (b) of this section.
      (1) Duplication of records. Records will be duplicated at a rate of $.25 per page.
      (2) Fees should be paid in full prior to issuance of requested copies. In the event the requester is in arrears for previous requests, copies will not be provided for any subsequent request until the arrears have been paid in full.
      (3) Remittance shall be in the form of cash, a personal check or bank draft drawn on a bank in the United States, or postal money order. Remittances shall be made payable to the order of the Selective Service System and mailed or delivered to the records manager, Selective Service System, Washington, DC 20435.
      (4) A receipt of fees paid will be given upon request.

§ 1665.7 Information available to the public or to former employers of registrants.
  (a) Each area office maintains a classification record which contains the name, Selective Service number, and the current and past classifications for each person assigned to that board. Information in this record may be inspected at the area office at which it is maintained.
  (b) Any compensated employee of the Selective Service System may disclose to the former employer of a registrant who is serving in or who has been discharged from the Armed Forces whether the registrant has or has not been discharged and, if discharged, the date thereof, upon reasonable proof that the registrant left a position in the employ of the person requesting such information in order to serve in the Armed Forces.
  (c) Whenever an office referred to in this section is closed, the request for information that otherwise would be submitted to it should be submitted to the National Headquarters, Selective Service System, Washington, DC 20435.

§ 1665.8 Systems of records exempted from certain provisions of this act.
  Pursuant to 5 U.S.C. 552a(k)(2), the Selective Service System will not reveal to the suspected violator the informant’s name or other identifying information relating to the informant.

[47 FR 24543, June 7, 1982]

PART 1690 [RESERVED]

PART 1697—SALARY OFFSET

Sec.
1697.1 Purpose and scope.
1697.2 Definitions.
1697.3 Applicability.
1697.4 Notice requirements.
1697.5 Hearing.
1697.6 Written decision.
1697.7 Coordinating offset with another Federal agency.
1697.8 Procedures for salary offset.
1697.9 Refunds.
1697.10 Statute of Limitations.
1697.11 Non-waiver of rights.
1697.12 Interest, penalties, and administrative costs.

AUTHORITY: 5 U.S.C. 5514, and 5 CFR part 550, subpart K.

SOURCE: 54 FR 48098, Nov. 21, 1989, unless otherwise noted.
§ 1697.1 Purpose and scope.

(a) This regulation provides procedures for the collection by administrative offset of a federal employee’s salary without his/her consent to satisfy certain debts owed to the federal government. These regulations apply to all federal employees who owe debts to the Selective Service System and to current employees of the Selective Service System who owe debts to other federal agencies. This regulation does not apply when the employee consents to recovery from his/her current pay account.

(b) This regulation does not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 et seq.;

(2) The Social Security Act, 42 U.S.C. 301 et seq.;

(3) The tariff laws of the United States; or

(4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(c) This regulation does not apply to any adjustment to pay arising out of an employee’s selection of coverage or a change in coverage under a federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) This regulation does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act 31 U.S.C. 3711 et seq. 4 CFR parts 101 through 105 and 45 CFR part 1177.

(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774 or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office. This regulation does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

(f) Matters not addressed in these regulations should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 et seq.

§ 1697.2 Definitions.

For the purposes of the part the following definitions will apply:

Agency means an executive agency as is defined at 5 U.S.C. 105 including the U.S. Postal Service and the U.S. Postal Rate Commission; a military department as defined in 5 U.S.C. 102; an agency or court in the judicial branch, including a court as defined in section 610 of title 28 U.S.C., the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation; an agency of the legislative branch including the U.S. Senate and House of Representatives; and other independent establishments that are entities of the federal government. Creditor agency means the agency to which the debt is owed.

Debt means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines, forfeitures (except those arising under the Uniform Code of Military Justice) and all other similar sources.

Director means the Director of Selective Service or his designee.

Disposable pay means the amount that remains from an employee’s federal pay after required deductions for social security, federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, federal employment taxes, and any other deductions that are required to be withheld by law.

Employee means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

Hearing official means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Director of Selective Service.
§ 1697.3 Paying Agency means the agency that employs the individual who owes the debt and authorizes the payment of his/her current pay.

Salary offset means an administrative offset to collect a debt pursuant to 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his/her consent.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

§ 1697.3 Applicability.

(a) These regulations are to be followed when:

(1) The Selective Service System is owed a debt by an individual currently employed by another federal agency;

(2) The Selective Service System is owed a debt by an individual who is a current employee of the Selective Service System; or

(3) The Selective Service System employs an individual who owes a debt to another federal agency.

§ 1697.4 Notice requirements.

(a) Deductions shall not be made unless the employee is provided with written notice signed by the Director of the debt at least 30 days before salary offset commences.

(b) The written notice shall contain:

(1) A statement that the debt is owed and an explanation of its nature and amount;

(2) The agency’s intention to collect the debt by deducting from the employee’s current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of interest, penalties, and administrative charges, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 et seq.;

(5) The employee’s right to inspect or request and receive a copy of government records relating to the debt;

(6) The opportunity to establish a written schedule for the voluntary repayment of the debt;

(7) The right to a hearing conducted by an impartial hearing official;

(8) The methods and time period for petitioning for hearings;

(9) A statement that the timely filing of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing will be issued not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of title 5 U.S.C., part 752 of title 5, Code of Federal Regulations, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, sections 3729 through 3731 of title 31 U.S.C., or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18 U.S.C., or any other applicable statutory authority.

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

§ 1697.5 Hearing.

(a) Request for hearing. (1) An employee must file a petition for a hearing in accordance with the instructions outlined in the agency’s notice to offset.

(2) A hearing may be requested by filing a written petition addressed to the Director of Selective Service stating why the employee disputes the existence or amount of the debt. The petition for a hearing must be received by
the Director no later than fifteen (15) calendar days after the date of the notice to offset unless the employee can show good cause for failing to meet the deadline date.

(b) Hearing procedures. (1) The hearing will be presided over by an impartial hearing official.

(2) The hearing shall conform to procedures contained in the Federal Claims Collection Standards 4 CFR 102.3(c). The burden shall be on the employee to demonstrate that the existence or the amount of the debt is in error.

§ 1697.6 Written decision.

(a) The hearing official shall issue a written opinion no later than 60 days after the hearing.

(b) The written opinion will include: a statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official’s analysis, findings and conclusions; the amount and validity of the debt, and the repayment schedule, if applicable.

§ 1697.7 Coordinating offset with another federal agency.

(a) The Selective Service System as the creditor agency. (1) When the Director determines that an employee of a federal agency owes a delinquent debt to the Selective Service System, the Director shall as appropriate:

(i) Arrange for a hearing upon the proper petitioning by the employee;

(ii) Certify in writing to the paying agency that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the government’s right to collect the debt accrued, and that Selective Service System regulations for salary offset have been approved by the Office of Personnel Management;

(iii) If collection must be made in installments, the Director must advise the paying agency of the amount or percentage of disposable pay to be collected in each installment;

(iv) Advise the paying agency of the actions taken under 5 U.S.C. 5514(b) and provide the dates on which action was taken unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law.

(b) The Selective Service System as the paying agency. (1) Upon receipt of a properly certified debt claim from another agency, deductions will be scheduled to begin at the next established pay interval. The employee must receive written notice that the Selective Service System has received a certified debt claim from the creditor agency, the amount of the debt, the date salary offset will begin, and the amount of the deduction(s). The Selective Service System shall not review the merits of the creditor agency’s determination of the validity or the amount of the certified claim.

(2) If the employee transfers to another agency after the creditor agency has submitted its debt claim to the Selective Service System and before the debt is collected completely, the Selective Service System must certify the total amount collected. One copy of the certification must be furnished to the employee. A copy must be furnished the creditor agency with notice of the employee’s transfer.

The written consent or acknowledgement must be sent to the paying agency;

(v) If the employee is in the process of separating, the Selective Service System must submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee and send a copy of the certification and notice of the employee’s separation to the creditor agency. If the creditor agency is aware that the employee is entitled to Civil Service Retirement and Disability Fund or similar payments, it must certify to the agency responsible for making such payments the amount of the debt and that the provisions of this part have been followed; and

(vi) If the employee has already separated and all payments due from the paying agency have been paid, the Director may request, unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset as provided under 5 CFR 831.1801 or other provisions of law or regulation.
§ 1697.8 Procedures for salary offset.

(a) Deductions to liquidate an employee’s debt will be by the method and in the amount stated in the Director’s notice of intention to offset as provided in §1697.4. Debts will be collected in one lump sum where possible. If the employee is financially unable to pay in one lump sum, collection must be made in installments.

(b) Debts will be collected by deduction at officially established pay intervals from an employee’s current pay account unless alternative arrangements for repayment are made with the approval of the Director.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee’s ability to pay. The deduction for the pay intervals for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(d) Unliquidated debts may be offset against any financial payment due to a separated employee including but not limited to final salary or leave payment in accordance with 31 U.S.C. 3716.

§ 1697.9 Refunds.

(a) The Selective Service System will refund promptly any amounts deducted to satisfy debts owed to the Selective Service System when the debt is waived, found not owed to the Selective Service System, or when directed by an administrative or judicial order.

(b) The creditor agency will promptly return any amounts deducted by the Selective Service System to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order.

(c) Unless required by law, refunds under this subsection shall not bear interest.

§ 1697.10 Statute of Limitations.

If a debt has been outstanding for more than 10 years after the agency’s right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the government’s right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 1697.11 Non-waiver of rights.

An employee’s involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutes or contract(s) to the contrary.

§ 1697.12 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs in accordance with the Federal Claims Collection Standards, 4 CFR 102.13

PART 1698—ADVISORY OPINIONS

Sec.
1698.1 Purpose.
1698.2 Requests for advisory opinions.
1698.3 Requests for additional information.
1698.4 Confidentiality of advisory opinions and requests for advisory opinions.
1698.5 Basis for advisory opinions.
1698.6 Issuance of advisory opinions.
1698.7 Reconsideration of advisory opinion.
1698.8 Effect of advisory opinions.


SOURCE: 52 FR 24460, July 1, 1987, unless otherwise noted.

§ 1698.1 Purpose.

The provisions of this part prescribe the procedures for requesting and processing requests for advisory opinions relative to a named individual’s liability for registration under the Military Selective Service Act (MSSA), 50 U.S.C. App. 451 et seq.

§ 1698.2 Requests for advisory opinions.

(a) Any male born after December 31, 1959 who has attained 18 years of age may request an advisory opinion as to his liability to register under MSSA. A parent or guardian of such person who is unable to make a request for an advisory opinion may request an advisory opinion for him. Any Federal, state or
Selective Service System

§ 1699.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of

Sec.
1699.101 Purpose.
1699.102 Application.
1699.103 Definitions.
1699.104—1699.109 [Reserved]
1699.110 Self-evaluation.
1699.111 Notice.
1699.112—1699.129 [Reserved]
1699.130 General prohibitions against discrimination.
1699.131—1699.139 [Reserved]
1699.140 Employment.
1699.141—1699.148 [Reserved]
1699.149 Program accessibility: discrimination prohibited.
1699.150 Program accessibility: existing facilities.
1699.151 Program accessibility: new construction and alterations.
1699.152—1699.159 [Reserved]
1699.160 Communications.
1699.161—1699.169 [Reserved]
1699.170 Compliance procedure.
1699.171—1699.999 [Reserved]


SOURCE: 50 FR 35219, Aug. 30, 1985, unless otherwise noted.

§ 1699.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of
§ 1699.102 Application.
This part applies to all programs or activities conducted by the agency.

§ 1699.103 Definitions.
For purposes of this part, the term—
Agency means the Selective Service System.
Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.
Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunication devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD’s), interpreters, notetakers, written materials, and other similar services and devices.
Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.
Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:
(1) Physical or mental impairment includes—
(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or
(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such disease and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.
(2) Major life activities includes functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
(3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
(4) Is regarded as having an impairment means—
(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;
(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.
Qualified handicapped person means—
(1) With respect to any agency program or activity under which a person is required to perform services or to
§ 1699.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aids, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

§ 1699.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and its regulation.

§§ 1699.112—1699.129 [Reserved]

§ 1699.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aids, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
§§ 1699.131—1699.139

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permisibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap. However, the agency may establish requirements for the programs or activities of licensees or certified entities that subject handicapped persons to discrimination on the basis of handicap.

§§ 1699.131—1699.139 [Reserved]

§ 1699.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 1699.141—1699.148 [Reserved]

§ 1699.149 Program accessibility: discrimination prohibited.

Except as otherwise provided in §1699.150, no qualified handicapped persons shall, because the agency’s facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subject to discrimination under any program or activity conducted by the agency.

§ 1699.150 Program accessibility: existing facilities.

(a) General. The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where
agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §1699.150(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) Methods. The agency may comply with the requirements of this section through such means as redesign of equipment, reallocation of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4141 through 4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) Time period for compliance. The agency shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) Transition plan. In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

1. Identify physical obstacles in the agency’s facilities that limit the accessibility of its programs or activities to handicapped persons;
2. Describe in detail the methods that will be used to make the facilities accessible;
3. Specify the schedule for taking the steps necessary to achieve compliance with this section and, at the time, identify steps that will be taken during each year of the transition period; and
4. Indicate the officials responsible for implementation of the plan.

§1699.151 Program accessibility: new construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151 through 4157), as established in 41 CFR 101–19.600 to 14–19.607, apply to buildings covered by this section.
§§ 1699.152—1699.159 [Reserved]

§ 1699.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aid where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD’s), or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signs at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible services, activities, and facilities.

(d) The agency shall provide signs at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible services, activities, and facilities.

(e) The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §1699.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 1699.161—1699.169 [Reserved]

§ 1699.170 Compliance procedure.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicaps in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Associate Director for Administration.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible and usable to handicapped persons.
(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—
   (1) Findings of fact and conclusion of law;
   (2) A description of a remedy of each violation found; and
   (3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §1699.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Director of Selective Service.

(j) The agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

§§ 1699.171–1699.999 [Reserved]
# CHAPTER XVIII—NATIONAL COUNTERINTELLIGENCE CENTER

<table>
<thead>
<tr>
<th>Part</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1800</td>
<td>Public access to NACIC records under the Freedom of Information Act (FOIA)</td>
</tr>
<tr>
<td>1801</td>
<td>Public rights under the Privacy Act of 1974</td>
</tr>
<tr>
<td>1802</td>
<td>Challenges to classification of documents by authorized holders pursuant to section 1.9 of Executive Order 12958</td>
</tr>
<tr>
<td>1803</td>
<td>Public requests for mandatory declassification review of classified information pursuant to section 3.6 of Executive Order 12958</td>
</tr>
<tr>
<td>1804</td>
<td>Access by historical researchers and former presidential appointees pursuant to section 4.5 of Executive Order 12958</td>
</tr>
<tr>
<td>1805</td>
<td>Production of official records or disclosure of official information in proceedings before Federal, State or local Government entities of competent jurisdiction</td>
</tr>
<tr>
<td>1806</td>
<td>Procedures governing acceptance of service of process</td>
</tr>
<tr>
<td>1807</td>
<td>Enforcement of nondiscrimination on the basis of disability in programs or activities conducted by the National Counterintelligence Center</td>
</tr>
</tbody>
</table>
PART 1800—PUBLIC ACCESS TO NACIC RECORDS UNDER THE FREEDOM OF INFORMATION ACT (FOIA)

Subpart A—General

Sec.
1800.1 Authority and purpose.
1800.2 Definitions.
1800.3 Contact for general information and requests.
1800.4 Suggestions and complaints.

Subpart B—Filing of FOIA Requests

1800.11 Preliminary information.
1800.12 Requirements as to form and content.
1800.13 Fees for record services.
1800.14 Fee estimates (pre-request option).

Subpart C—NACIC Action on FOIA Requests

1800.21 Processing of requests for records.
1800.22 Action and determination(s) by originator(s) or any interested party.
1800.23 Payment of fees, notification of decision, and right of appeal.

Subpart D—Additional Administrative Matters

1800.31 Procedures for business information.
1800.32 Procedures for information concerning other persons.
1800.33 Allocation of resources; agreed extensions of time.
1800.34 Requests for expedited processing.

Subpart E—NACIC Action on FOIA Administrative Appeals

1800.41 Appeal authority.
1800.42 Right of appeal and appeal procedures.
1800.43 Determination(s) by Office Chief(s).
1800.44 Action by appeals authority.
1800.45 Notification of decision and right of judicial review.

AUTHORITY: 5 U.S.C. 552.
SOURCE: 64 FR 49879, Sept. 14, 1999, unless otherwise noted.

Subpart A—General

§ 1800.1 Authority and purpose.

This part is issued under the authority of and in order to implement the Freedom of Information Act (FOIA), as amended (50 U.S.C. 403). It prescribes procedures for:

(a) Requesting information on available NACIC records, or NACIC 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.

§ 1800.2 Definitions.

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

NACIC means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator.

Days means calendar days when NACIC 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; otherwise ten (10) days may be added if responding by international mail.

Control means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records.

Coordinator means the NACIC Information and Privacy Coordinator who serves as the NACIC manager of the information review and release program instituted under the Freedom of Information Act.

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
§ 1800.2 32 CFR Ch. XVIII (7–1–01 Edition)

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;

Expression of interest means a written communication submitted by a member of the public requesting information or concerning the FOIA program and/or the availability of documents from NACIC;

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);

Fees means those direct costs which may be assessed a requester considering the categories established by the FOIA; requesters should submit information to assist NACIC in determining the proper fee category and NACIC 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 categories (h)(1), (2), or (3) of this section;

Freedom of Information Act or “FOIA” means the statutes as codified at 5 U.S.C. 552;

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 NACIC, has a subject matter or physical interest in the documents or information at issue;

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;

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

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

Records or agency records means all documents, irrespective of physical or electronic form, made or received by NACIC in pursuance of federal law or in connection with the transaction of public business and appropriate for preservation by NACIC as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of NACIC or because of the informational value of the data contained therein; it does not include:
§ 1800.13 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.
§ 1800.13

(b) Fee waiver requests. Records will be furnished without charge or at a reduced rate whenever NACIC 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; NACIC 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 Director, NACIC 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 in paragraph (b) of this section.

(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, NACIC will request specific commitment when it estimates that fees will exceed $100.00. NACIC 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 refiling his or her FOIA request with a fee commitment at a subsequent date.

(f) Deposits. NACIC 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. NACIC 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:

(1) Personnel Search and Review

Clerical/Technical Quarter $5.00 Professional/Supervisory Quarter $10.00 Manager/Senior Professional $18.00

(ii) 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 minute $60.00 Paper (mainframe printer) Per page $10.00 Paper (PC b&w laser printer) Per page $10.00 Paper (PC color printer) Per page $1.00

390
§ 1800.21 Processing of requests for records.

(a) In general. Requests meeting the requirements of §§1800.11 through 1800.13 shall be accepted as formal requests and processed under the Freedom of Information Act, 5 U.S.C. 552, and these regulations. Pursuant to the Electronic Freedom of Information Act Amendments of 1996, upon receipt, NACIC shall within twenty (20) days

§ 1800.14 Fee estimates (pre-request option).

In order to avoid unanticipated or potentially large fees, a requester may submit a request for a fee estimate. Pursuant to the Electronic Freedom of Information Act Amendments of 1996, NACIC will endeavor within twenty (20) days to provide an accurate estimate, and, if a request is thereafter submitted, NACIC will not accrue or charge fees in excess of our estimate without the specific permission of the requester.

Subpart C—NACIC Action On FOIA Requests

§ 1800.21 Paper Production

Photocopy (standard or legal) Per page per page. Microfiche Per frame 20 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 NACIC 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.

(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 NACIC 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 §1800.2, 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 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, NACIC may aggregate the requests and charge the applicable fees.
record each request, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the NACIC components reasonably believed to hold responsive records.

(b) Database of “officially released information.” As an alternative to extensive tasking and as an accommodation to many requesters, NACIC maintains a database of “officially released information” which contains copies of documents released by NACIC. Searches of this database 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. Consistent with the mandate of the Electronic Freedom of Information Act Amendments of 1996, on-line electronic access to these records is available to the public. Detailed information regarding such access is available from the point of contact specified in §1800.3.

(c) Effect of certain exemptions. In processing a request, NACIC 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 and may jeopardize intelligence sources or methods protected pursuant to section 103(c)(6) of the National Security Act of 1947. In such circumstances, NACIC, 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. Pursuant to the Electronic Freedom of Information Act Amendments of 1996, NACIC will utilize every effort to determine within the statutory guideline of twenty (20) days after receipt of an initial request whether to comply with such a request. However, should the volume of requests require that NACIC seek additional time from a requester pursuant to §1800.33, NACIC will inform the requester in writing and further advise of his or her right to file an administrative appeal of any adverse determination.

§1800.23 Payment of fees, notification of decision, and right of appeal.

(a) Fees in general. Fees collected under this part do not accrue to the National Counterintelligence Center 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), NACIC 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, NACIC will provide copies; with respect to the latter, NACIC 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 NACIC “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 § 1800.3. 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.

§ 1800.31 Procedures for business information.

(a) In general. Business information obtained by NACIC 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:

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

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;

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. NACIC 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) NACIC 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 NACIC 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) NACIC shall consider carefully a submitter’s objections and specific grounds for nondisclosure prior to its final determination. If NACIC decides to disclose a document over the objection of a submitter, NACIC 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, NACIC shall also notify the requester and, if NACIC 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, NACIC shall promptly notify the submitter. The submitter, as specified above, shall provide such litigation assistance as required by NACIC and the Department of Justice.

(6) Exceptions to notice requirement. The notice requirements of this section shall not apply if NACIC 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, NACIC will, within a reasonable time prior to the specified disclosure date, give the submitter written notice of any final decision to disclose the information.

[64 FR 49879, Sept. 14, 1999; 64 FR 53769, Oct. 4, 1999]

§ 1800.32 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:
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.

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, NACIC 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.
§ 1800.33 Allocation of resources; agreed extensions of time.

(a) In general. NACIC 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 NACIC 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 NACIC-wide program defined by this part and for establishing priorities for cases consistent with established law. The Director, NACIC shall provide policy and resource direction as necessary and render decisions on administrative appeals.

(c) Requests for extension of time. When NACIC 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 accordance with the definition of “exceptional circumstances” per section 552(a)(6)(C) of the Freedom of Information Act, as amended, effective October 2, 1997. In such instances NACIC 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.

§ 1800.34 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 section will only be made in accordance with the following procedures. In all circumstances, however, and consistent with established judicial precedent, requests 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. Requests for expedited processing will be approved only when a compelling need is established to the satisfaction of NACIC. A requester may make such a request with a certification of “compelling need” and, within ten (10) days of receipt, NACIC 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 NACIC 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.

Subpart E—NACIC Action On FOIA Administrative Appeals

§ 1800.41 Appeal authority.

The Director, NACIC will make final NACIC decisions from appeals of initial adverse decisions under the Freedom of Information Act and such other information release decisions made under parts 1801, 1802, and 1803 of this chapter. Matters decided by the Director,
§ 1800.42 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. NACIC will apprise all requesters in writing of their right to appeal such decisions to the Director, NACIC 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 NACIC’s initial decision. NACIC 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 §1800.3. 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. NACIC shall promptly record each request received under this part, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the office(s) which originated or has an interest in the record(s) subject to the appeal.

(e) Time for response. NACIC shall attempt to complete action on an appeal within twenty (20) days of the date of receipt. The volume of requests, however, may require that NACIC request additional time from the requester pursuant to §1800.33. In such event, NACIC will inform the requester of the right to judicial review.

§ 1800.43 Determination(s) by Office Chief(s).

Each Office Chief in charge of an office 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.

§ 1800.44 Action by appeals authority.

(a) Preparation of docket. The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC; the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of concerned Office Chiefs or designee(s).

(b) Decision by the Director, NACIC. The Director, NACIC shall personally decide each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

§ 1800.45 Notification of decision and right of judicial review.

The Coordinator shall promptly prepare and communicate the decision of the Director, NACIC 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 1801—PUBLIC RIGHTS UNDER THE PRIVACY ACT OF 1974

Subpart A—General

Sec.
1801.1 Authority and purpose.
1801.2 Definitions.
§ 1801.2 Definitions.

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

NACIC means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

Days means calendar days when NACIC 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;

Control means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

Coordinator means the NACIC Information and Privacy Coordinator who serves as the NACIC manager of the information review and release program instituted under the Privacy Act;

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);

Interested party means any official in the executive, military, congressional, or judicial branches of government,
§ 1801.3 Contact for general information and requests.

For general information on this part, to inquire about the Privacy Act program at NACIC, or to file a Privacy Act request, please direct your communication in writing to the Information and Privacy Coordinator, Executive Secretariat Office, National Counterintelligence Center, 3W01 NHB, Washington, DC 20505. Requests with the required identification statement pursuant to §1801.13 must be filed in original form by mail. Subsequent communications and any inquiries will be accepted by mail or facsimile at (703) 874–5844 or by telephone at (703) 874–4121. Collect calls cannot be accepted.

§ 1801.4 Suggestions and complaints.

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

Subpart B—Filing of Privacy Act Requests

§ 1801.11 Preliminary information.

Members of the public shall address all communications to the contact specified at §1801.3 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.

§ 1801.12 Requirements as to form.

(a) In general. No particular form is required. All requests must contain the identification information required at §1801.13.

(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 biennially by the Federal Register. In lieu of this, a requester may simply describe why and under what circumstances it is believed that NACIC maintains responsive records; NACIC 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.
§ 1801.13 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 NACIC determines that this information is not sufficient, NACIC 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, NACIC will deem the request closed. This action, of course, would not prevent an individual from refiled his or her Privacy Act request at a subsequent date with the required information.

§ 1801.14 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.

Subpart C—Action On Privacy Act Requests

§ 1801.21 Processing requests for access to or amendment of records.

(a) In general. Requests meeting the requirements of § 1801.11 through § 1801.13 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 §§ 1801.11 through 1801.13, NACIC shall within ten (10) days record each request, acknowledge receipt to the requester, and thereafter effect the necessary taskings to the office(s) reasonably believed to hold responsive records.

(c) Effect of certain exemptions. In processing a request, NACIC 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 and that confirmation of the existence of a record may jeopardize intelligence sources and methods protected pursuant to section 103(c)(6) of the National Security Act of 1947. In such circumstances, NACIC, 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 NACIC 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 volume of requests may require that NACIC seek additional time from a requester pursuant to § 1801.33. In such event, NACIC will inform the requester in writing and further advise of his or
her right to file an administrative appeal.

§ 1801.22 Action and determination(s) by originator(s) or any interested party.

(a) Initial action for access. NACIC offices 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. NACIC offices 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 NACIC’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 NACIC office 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 NACIC records containing information originated by other NACIC offices 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 NACIC records containing other federal 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 NACIC records) or return to NACIC (for NACIC records).

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

§ 1801.23 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), NACIC 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, NACIC shall so inform the requester, identify the denying official, and advise of the right to administrative appeal.

Subpart D—Additional Administrative Matters

§ 1801.31 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, NACIC will, after consultation with the Director of Medical Services, CIA, 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 NACIC determines, in accordance with paragraph (a)(2) of this section, that records should not be sent directly to the requester, NACIC 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, NACIC will forward such records to the designated physician.

(c) Procedure if physician option not available. If within sixty (60) days of 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, NACIC will hold the documents in abeyance and advise the requester that this action may be construed as a technical denial. NACIC will also advise the requester of the responsible official and of his or her rights to administrative appeal and thereafter judicial review.

§ 1801.32 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 NACIC deems to be exceptional. In making this determination, NACIC 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.

§ 1801.33 Allocation of resources; agreed extensions of time.

(a) In general. NACIC 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, NACIC 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. Offices 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 NACIC-wide program defined by this part and for establishing priorities for cases consistent with established law. The Director, NACIC shall provide policy and resource direction as necessary and shall render decisions 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 NACIC is unable to meet the statutory time requirements of the FOIA, NACIC may request additional
Subpart E—Action On Privacy Act
Administrative Appeals

§ 1801.41 Appeal authority.

The Director, NACIC will make final NACIC decisions from appeals of initial adverse decisions under the Privacy Act and such other information release decisions made under 32 CFR parts 1800, 1802, and 1803 of this chapter. Matters decided by the Director, NACIC will be deemed a final decision by NACIC.

§ 1801.42 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. NACIC will apprise all requesters in writing of their right to appeal such decisions to the Director, NACIC 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 NACIC’s initial decision. NACIC 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 Director, NACIC shall be in writing and addressed as specified in §1801.3. 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. NACIC shall promptly record each administrative appeal, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the office chief in charge of the office(s) which originated or has an interest in the record(s) subject to the appeal.

§ 1801.43 Determination(s) by Office Chiefs.

Each Office Chief in charge of an office 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.

§ 1801.44 Action by appeals authority.

(a) Preparation of docket. The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC; the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of any concerned office chiefs or designee(s).

(b) Decision by the Director, NACIC. The Director, NACIC shall personally decide each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.
§ 1801.45 Notification of decision and right of judicial review.

(a) In general. The Coordinator shall promptly prepare and communicate the decision of the Director, NACIC 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 NACIC. 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.

Subpart F—Prohibitions

§ 1801.51 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 NACIC 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 § 1801.02(m), as contained in the Privacy Act Issuances Compilation which is published biennially in the Federal Register, and as described in sections (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 NACIC 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 NACIC 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.

§ 1801.52 Criminal penalties.

(a) Unauthorized disclosure. Criminal penalties may be imposed against any officer or employee of NACIC who, by virtue of employment, has possession of or access to NACIC 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
§ 1801.63 Specific exemptions.

Pursuant to authority granted in section (k) of the Privacy Act, the Director, NACIC has determined to exempt from section (d) of the Privacy Act those portions and only those portions of all systems of records maintained by NACIC 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.
National Counterintelligence Center § 1802.3

Subpart C—Action on Challenges

1802.21 Receipt, recording, and tasking.
1802.22 Challenges barred by res judicata.
1802.23 Determination by originator(s) and/or any interested party.
1802.24 Designation of authority to hear challenges.
1802.25 Action on challenge.
1802.26 Notification of decision and prohibition on adverse action.

Subpart D—Right of Appeal

1802.31 Right of Appeal.


SOURCE: 64 FR 49889, Sept. 14, 1999, unless otherwise noted.

Subpart A—General

§ 1802.1 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 and section 102 of the National Security Act of 1947.

(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.

§ 1802.2 Definitions.

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

NACIC means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

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 NACIC to possess and use on official business classified information, or otherwise has Constitutional authority pursuant to their office;

Days means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any requirement of this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

Challenge means a request in the individual’s official, not personal, capacity and in furtherance of the interests of the United States;

Control means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

Coordinator means the NACIC Information and Privacy Coordinator acting in the capacity of the Director of NACIC;

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 NACIC;

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 NACIC, has a subject matter or physical interest in the documents or information at issue;

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

This Order means Executive Order 12958 of April 17, 1995, or successor Orders.

§ 1802.3 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 Director, National Counterintelligence Center,
§ 1802.4

Washington, DC 20505. The commercial (non-secure) telephone is (703) 874–4117; the classified (secure) telephone for voice and facsimile is (703) 874–5829.

§ 1802.4 Suggestions and complaints.

NACIC 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. NACIC will respond to all substantive communications and take such actions as determined feasible and appropriate.

Subpart B—Filing Of Challenges

§ 1802.11 Prerequisites.

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, § 1802.3.

§ 1802.12 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.

§ 1802.13 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.

§ 1802.14 Transmission.

Authorized holders must direct challenge requests to NACIC as specified in §1802.3. 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 NACIC-approved couriers. Further information is available from NACIC as well as corporate or other federal agency security departments.

Subpart C—Action On Challenges

§ 1802.21 Receipt, recording, and tasking.

The Coordinator 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.

§ 1802.22 Challenges barred by res judicata.

The Coordinator shall respond on behalf of the Director, NACIC 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.

§ 1802.23 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 Director, NACIC 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 Director,
National Counterintelligence Center

NACIC 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.

§ 1802.24 Designation of authority to hear challenges.

The Director, NACIC is the NACIC authority to hear and decide challenges under this part.

§ 1802.25 Action on challenge.

The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC; the complete package consisting of the challenge, the information at issue, and the findings of the originator and interested parties shall be provided. The Director, NACIC shall personally decide each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

§ 1802.26 Notification of decision and prohibition on adverse action.

The Coordinator shall communicate the decision of NACIC to the authorized holder, the originator, and other interested parties within ten (10) days of the decision by the Coordinator. 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.

Subpart D—Right of Appeal

§ 1802.31 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 1803—PUBLIC REQUESTS FOR MANDATORY DECCLASSIFICATION REVIEW OF CLASSIFIED INFORMATION PURSUANT TO SECTION 3.6 OF EXECUTIVE ORDER 12958

Subpart A—General

Sec.
1803.1 Authority and purpose.
1803.2 Definitions.
1803.3 Contact for general information and requests.
1803.4 Suggestions and complaints.

Subpart B—Filing of Mandatory Declassification Review (MDR) Requests

1803.11 Preliminary information.
1803.12 Requirements as to form.
1803.13 Fees.

Subpart C—NACIC Action on MDR Requests

1803.21 Receipt, recording, and tasking.
1803.22 Requests barred by res judicata.
1803.23 Determination by originator or interested party.
1803.24 Notification of decision and right of appeal.

Subpart D—NACIC Action on MDR Appeals

1803.31 Requirements as to time and form.
1803.32 Receipt, recording, and tasking.
1803.33 Determination by NACIC Office Chiefs.
1803.34 Appeal authority.
1803.35 Action by appeals authority.
1803.36 Notification of decision and right of further appeal.
Subpart E—Further Appeals

§ 1803.1 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); and Section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403).

(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.

§ 1803.2 Definitions.

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

NACIC means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

Days means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any requirement of this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

Control means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

Coordinator means the NACIC Information and Privacy Coordinator who serves as the NACIC manager of the information review and release program instituted under the mandatory declassification review provisions of Executive Order 12958;

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);

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 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;

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 NACIC, has a subject matter or physical interest in the documents or information at issue;

NARA means the National Archives and Records Administration;

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

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

Referral means coordination with or transfer of action to an interested party;

This Order means Executive Order 12958 of April 17, 1995 or successor Orders;

§ 1803.3 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, National Counterintelligence Center, 3W01 NHB, Washington, DC 20505. Such inquiries will also be accepted by facsimile at (703) 874-5844.
National Counterintelligence Center

For general or status information only, the telephone number is (703) 874-4121. Collect calls cannot be accepted.

§ 1803.4 Suggestions and complaints.

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

Subpart B—Filing of Mandatory Declassification Review (MDR) Requests

§ 1803.11 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 part. 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.

§ 1803.12 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 NACIC 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 NACIC review. The requester shall also provide sufficient personal identifying information when required by NACIC to satisfy requirements of this part.

§ 1803.13 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 NACIC will be liable for costs in the same amount and under the same conditions as specified in part 1800 of this chapter.

Subpart C—NACIC Action on MDR Requests

§ 1803.21 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.

§ 1803.22 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.

§ 1803.23 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.
§ 1803.24 Notification of decision and right of appeal.

The Coordinator shall communicate the decision of NACIC 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 Director, NACIC pursuant to §3.6(d) of this Order.

Subpart D—NACIC Action on MDR Appeals

§ 1803.31 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 NACIC’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.

§ 1803.32 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.

§ 1803.33 Determination by NACIC Office Chiefs.

Each NACIC Office Chief in charge of an office 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.

§ 1803.34 Appeal authority.

The Director, NACIC will make final NACIC decisions from appeals of initial denial decisions under E.O. 12958. Matters decided by the Director, NACIC will be deemed a final decision by NACIC.

§ 1803.35 Action by appeals authority.

Action by the Director, NACIC. The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC; 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 Director, NACIC shall personally decide each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

§ 1803.36 Notification of decision and right of further appeal.

The Coordinator shall communicate the decision of the Director, NACIC 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.

Subpart E—Further Appeals

§ 1803.41 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 1804—ACCESS BY HISTORICAL RESEARCHERS AND FORMER PRESIDENTIAL APPOINTEES PURSUANT TO SECTION 4.5 OF EXECUTIVE ORDER 12958

Subpart A—General

§ 1804.01 Authority and purpose.

This part is issued under the authority of and in order to implement §4.5 of Executive Order 12958 (or successor Orders); and Presidential Decision Directive/NSC 24, “U.S. Counterintelligence Effectiveness,” dated May 3, 1994.

Source: 64 FR 49892, Sept. 14, 1999, unless otherwise noted.

Subpart B—Requests for Historical Access

§ 1804.11 Requirements as to who may apply.

§ 1804.12 Designations of authority to hear requests.

§ 1804.13 Receipt, recording, and tasking.

§ 1804.14 Determinations by tasked officials.

§ 1804.15 Action by hearing authority.

§ 1804.16 Action by appeal authority.

§ 1804.17 Notification of decision.

§ 1804.18 Termination of access.


Source: 64 FR 49892, Sept. 14, 1999, unless otherwise noted.

Subpart A—General

§ 1804.1 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); and Presidential Decision Directive/NSC 24, U.S. Counterintelligence Effectiveness, dated May 3, 1994.

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

(i) Requesting access to NACIC records for purposes of historical research, or

(ii) Requesting access to NACIC records as a former Presidential appointee.

(2) Section 4.5 of Executive Order 12958 and this part 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.

§ 1804.2 Definitions.

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

NACIC means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

Days means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any requirement of this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

Control means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

Coordinator means the NACIC Information and Privacy Coordinator who serves as the NACIC manager of the historical access program established pursuant to Section 4.5 of this Order;

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);

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;

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;

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;

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 NACIC, has a subject matter or physical interest in the documents or information at issue;

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

This Order means Executive Order 12958 of April 17, 1995 or successor Orders.

§ 1804.3 Contact for general information and requests.

For general information on this part, to inquire about historical access to NACIC records, or to make a formal request for such access, please direct your communication in writing to the Information and Privacy Coordinator, Executive Secretariat, 3W01 NHB, National Counterintelligence Center, Washington, DC 20505. Inquiries will also be accepted by facsimile at (703) 874-5844. For general information only, the telephone number is (703) 874-4121. Collect calls cannot be accepted.

§ 1804.4 Suggestions and complaints.

NACIC 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. NACIC will respond to all substantive communications and take such actions as determined feasible and appropriate.

Subpart B—Requests for Historical Access

§ 1804.11 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 NACIC’s various historical programs, it is the policy of NACIC 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 NACIC. Requests from appointees shall be in writing to the Coordinator and shall identify the records of interest.

§ 1804.12 Designations of authority to hear requests.

The Director, NACIC has designated the Coordinator, as the NACIC authority to decide requests for historical and former Presidential appointee access under Executive Order 12958 (or successor Orders) and this part.

§ 1804.13 Receipt, recording, and tasking.

The Information and Privacy Coordinator shall within ten (10) days record
§ 1804.16 Action by appeal authority.

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 Coordinator 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 §1804.14(a) will be considered by the Director,
§ 1804.17 Notification of decision.

The Coordinator shall inform the requester of the decision of the Director, NACIC 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 Director, NACIC in accordance with the requirements of §1804.14(a).

§ 1804.18 Termination of access.

The Coordinator shall cancel any authorization whenever the security clearance of a requester (or research associate, if any) has been canceled or whenever the Director, NACIC determines that continued access would not be in compliance with one or more of the requirements of §1804.14(a).

PART 1805—PRODUCTION OF OFFICIAL RECORDS OR DISCLOSURE OF OFFICIAL INFORMATION IN PROCEEDINGS BEFORE FEDERAL, STATE OR LOCAL GOVERNMENT ENTITIES OF COMPETENT JURISDICTION

Sec.
1805.1 Scope and purpose.
1805.2 Definitions.
1805.3 General.
1805.4 Procedures for production.


SOURCE: 64 FR 49694, Sept. 14, 1999, unless otherwise noted.

§ 1805.1 Scope and purpose.

This part sets forth the policy and procedures with respect to the production or disclosure of:

(a) Material contained in the files of NACIC;

(b) Information relating to or based upon material contained in the files of NACIC;

(c) Information acquired by any person while such person is an employee of NACIC as part of the performance of that person’s official duties or because of that person’s association with NACIC.

§ 1805.2 Definitions.

For the purpose of this part:

NACIC means the National Counterintelligence Center and includes all staff elements of the NACIC.

Demand means any subpoena, order or other legal summons (except garnishment orders) that is issued by a federal, state or local government entity of competent jurisdiction with the authority to require a response on a particular matter, or a request for appearance of an individual where a demand could issue.

Employee means any officer, any staff, contract or other employee of NACIC, any person including independent contractors associated with or acting on behalf of NACIC; and any person formerly having such relationships with NACIC.

Production or produce means the disclosure of:

(1) Any material contained in the files of NACIC;

(2) Any information relating to material contained in the files of NACIC, including but not limited to summaries of such information or material, or opinions based on such information or material; or

(3) Any information acquired by persons while such persons were employees of NACIC as a part of the performance of their official duties or because of their official status or association with NACIC; in response to a demand upon an employee of NACIC.

NACIC Counsel is the NACIC employee designated to manage legal matters and regulatory compliance.

§ 1805.3 General.

(a) No employee shall produce any materials or information in response to a demand without prior authorization as set forth in this part. This part also applies to former employees to the extent consistent with applicable nondisclosure agreements.

(b) This part is intended only to provide procedures for responding to demands for production of documents or information, and is not intended to, does not, and may not be relied upon
to, create any right or benefit, substantive or procedural, enforceable by any party against the United States.

§ 1805.4 Procedure for production.

(a) Whenever a demand for production is made upon an employee, the employee shall immediately notify NACIC Counsel, who will follow the procedures set forth in this section.

(b) NACIC Counsel and the Office Chiefs with responsibility for the information sought in the demand shall determine whether any information or materials may properly be produced in response to the demand, except that NACIC Counsel may assert any and all legal defenses and objections to the demand available to NACIC prior to the start of any search for information responsive to the demand. NACIC may, in its sole discretion, decline to begin any search for information responsive to the demand until a final and non-appealable disposition of any such defenses and objections raised by NACIC has been made by the entity or person that issued the demand.

(c) NACIC officials shall consider the following factors, among others, in reaching a decision:
   (1) Whether production is appropriate in light of any relevant privilege;
   (2) Whether production is appropriate under the applicable rules of discovery or the procedures governing the case or matter in which the demand arose; and
   (3) Whether any of the following circumstances apply:
      (i) Disclosure would violate a statute, including but not limited to the Privacy Act of 1974, as amended, 5 U.S.C. 552a;
      (ii) Disclosure would reveal classified information;
      (iii) Disclosure would improperly reveal trade secrets or proprietary confidential information without the owner's consent; or
      (iv) Disclosure would interfere with the orderly conduct of NACIC's functions.

(d) If oral or written testimony is sought by a demand in a case or matter in which the NACIC is not a party, a reasonably detailed description of the testimony sought, in the form of an affidavit or, if that is not feasible, a written statement, by the party seeking the testimony or by the party's attorney must be furnished to the NACIC Counsel.

(e) The NACIC Counsel shall be responsible for notifying the appropriate employees and other persons of all decisions regarding responses to demands and providing advice and counsel as to the implementation of such decisions.

(f) If response to a demand is required before a decision is made whether to provide the documents or information sought by the demand, NACIC Counsel, after consultation with the Department of Justice, shall appear before and furnish the court or other competent authority with a copy of this part and state that the demand has been or is being, as the case may be, referred for the prompt consideration of the appropriate NACIC officials, and shall respectfully request the court or other authority to stay the demand pending receipt of the required instructions.

(g) If the court or any other authority declines to stay the demand pending receipt of instructions in response to a request made in accordance with §1805.4(g) or rules that the demand must be complied with regardless of instructions rendered in accordance with this Part not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall, if so directed by NACIC Counsel, respectfully decline to comply with the demand under the authority of United States ex. rel. Touhy v. Ragen, 340 U.S. 462 (1951), and this part.

(h) With respect to any function granted to NACIC officials in this part, such officials are authorized to delegate in writing their authority in any case or matter or category thereof to subordinate officials.

(i) Any non-employee who receives a demand for the production of NACIC information acquired because of that person's association or contacts with NACIC should notify NACIC Counsel, (703) 874-4121, for guidance and assistance. In such cases, the provisions of this part shall be applicable.
PART 1806—PROCEDURES GOVERNING ACCEPTANCE OF SERVICE OF PROCESS

Sec. 1806.1 Scope and Purpose.
1806.2 Definitions.
1806.3 Procedures governing acceptance of service of process.
1806.4 Notification to NACIC Counsel.
1806.5 Authority of NACIC Counsel.


SOURCE: 64 FR 49895, Sept. 14, 1999, unless otherwise noted.

§ 1806.1 Scope and purpose.

(a) This part sets forth the authority of NACIC personnel to accept service of process on behalf of the NACIC or any NACIC employee.

(b) This part is intended to ensure the orderly execution of the NACIC’s affairs and not to impede any legal proceeding.

(c) NACIC regulations concerning employee responses to demands for production of official information before federal, state or local government entities are set out in part 1805 of this chapter.

§ 1806.2 Definitions.

NACIC means the National Counterintelligence Center and include all staff elements of NACIC.

Process means a summons complaint, subpoena, or other official paper (except garnishment orders) issued in conjunction with a proceeding or hearing being conducted by a federal, state, or local government entity of competent jurisdiction.

Employee means any NACIC officer, any staff, contract, or other employee of NACIC, any person including independent contractors associated with or acting for or on behalf of NACIC, and any person formerly having such a relationship with NACIC.

NACIC Counsel refers to the NACIC employee designated by NACIC to manage legal issues and regulatory compliance.

§ 1806.3 Procedures governing acceptance of service of process.

(a) Service of Process Upon the NACIC or a NACIC Employee in an Official Capacity.—(1) Personal Service. Unless otherwise expressly authorized by NACIC Counsel, or designee, personal service of process may be accepted only by NACIC Counsel, Director, NACIC, or Deputy Director, NACIC, located at Central Intelligence Agency Headquarters, Langley, Virginia.

(2) Mail Service. Where service of process by registered or certified mail is authorized by law, unless expressly directed otherwise by the NACIC Counsel or designee, personal service of process may be accepted only by NACIC Counsel, Director, NACIC, or Deputy Director, NACIC. Process by mail should be addressed as follows: NACIC Counsel, National Counterintelligence Center, Washington, DC 20505.

(b) Service of Process Upon a NACIC Employee Solely in An Individual Capacity.—(1) General. NACIC will not provide the name or address of any current or former NACIC employee to individuals or entities seeking to serve process upon such employee solely in his or her individual capacity, even when the matter is related to NACIC activities.

(2) Personal Service. Subject to the sole discretion of appropriate officials of the CIA, where NACIC is physically located, process servers generally will not be allowed to enter CIA Headquarters for the purpose of serving process upon any NACIC employee solely in his or her individual capacity. Subject to the sole discretion of the Director, NACIC, process servers will generally not be permitted to enter NACIC office space for the purpose of serving process upon a NACIC employee in his or her individual capacity. The NACIC Counsel, the Director, NACIC, and the Deputy Director, NACIC are not permitted to accept service of process on behalf of a NACIC employee in his or her individual capacity.

(3) Mail Service. Unless otherwise expressly authorized by the NACIC Counsel, or designee, NACIC personnel are not authorized to accept or forward mailed service of process directed to any NACIC employee in his or her individual capacity. Any such process will
be returned to the sender via appropriate postal channels.

(c) *Service of Process Upon a NACIC Employee in a Combined Official and Individual Capacity.*—Unless expressly directed otherwise by the NACIC Counsel, or designee, any process to be served upon a NACIC employee in his or her combined official and individual capacity, in person or by mail, can be accepted only by NACIC Counsel, Director, NACIC, or Deputy Director, NACIC, National Counterintelligence Center, Langley, Virginia.

(d) *Service of Process Upon a NACIC Counsel.* The documents for which service is accepted in official capacity only shall be stamped “Service Accepted in Official Capacity Only.” Acceptance of Service of Process shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under the laws or rules applicable to the service of process.

§ 1806.4 Notification to NACIC Counsel.

A NACIC employee who receives or has reason to expect to receive service of process in an individual, official, or combined individual and official capacity, in a matter that may involve or the furnishing of documents and that could reasonably be expected to involve NACIC interests, shall promptly notify the NACIC Counsel. Such notification should be given prior to providing the requestor, personal counsel or any other representative, any NACIC information and prior to the acceptance of service of process.

§ 1806.5 Authority of NACIC Counsel.

Any questions concerning interpretation of this part shall be referred to the NACIC Counsel for resolution.

PART 1807—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL COUNTERINTELLIGENCE CENTER


Source: 64 FR 49896, Sept. 14, 1999, unless otherwise noted.
useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD’s), interpreters, notetakers, written materials, and other similar services and devices. The CIA, where NACIC is physically located, may prohibit from any of its facilities any auxiliary aid, or category of auxiliary aid that the Center for CIA Security (CCS) determines creates a security risk or potential security risk. CCS reserves the right to examine any auxiliary aid brought into the NACIC facilities at CIA Headquarters.

Complete complaint means a written statement that contains the complainant’s name and address and describes the NACIC’s alleged discriminatory action in sufficient detail to inform the NACIC of the nature and date of the alleged violation of section 504. It must be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties must describe or identify (by name, if possible) the alleged victims of discrimination.

Director means the Director of NACIC or an official or employee of the NACIC acting for the Director under a delegation of authority.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances or other real or personal property.

Individual with disabilities means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase—

(1) Physical or mental impairment includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Cardiovascular; Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(2) Major life activities includes functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(3) Has a record of such an impairment means has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.

(4) Is regarded as having an impairment means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the NACIC as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the NACIC as having such an impairment.

Qualified individual with disabilities means—

(1) With respect to any NACIC program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with a handicap who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the NACIC can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other NACIC program or activity, an individual with disabilities who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and
§ 1807.130 General prohibitions against discrimination.

(a) No qualified individual with disabilities shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under, any program or activity conducted by the NACIC.

(b)(1) The NACIC, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

(i) Deny a qualified individual with disabilities the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Deny a qualified individual with disabilities an opportunity to obtain the same result, to gain the same benefit, to reach the same level of achievement as that provided to others;

(iii) Provide a qualified individual with disabilities with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless that action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with disabilities the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with disabilities in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The NACIC may not deny a qualified individual with disabilities the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The NACIC may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would:

(i) Subject qualified individuals with disabilities to discrimination on the basis of disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(4) The NACIC may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity conducted by the NACIC; or

(ii) Defeat or substantially impair the accomplishment of the objectives

§§ 1807.104–1807.110 [Reserved]

§ 1807.111 Notice.

The NACIC shall make available to employees, applicants, participants, beneficiaries, and other interested persons, such information regarding the provisions of this part and its applicability to the programs or activities conducted by the NACIC, and make that information available to them in such manner as the Director finds necessary to apprise those persons of the protections against discrimination assured them by section 504 and the regulations in this part.

§§ 1807.112–1807.129 [Reserved]
§§ 1807.131–1807.139
of a program or activity with respect to individuals with disabilities.
(5) The NACIC, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.
(6) The NACIC may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may the NACIC establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by the NACIC are not, themselves, covered by this part.
(c) The exclusion of persons without disabilities from the benefits of a program limited by Federal statute or Executive Order to individuals with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive Order to a different class of individuals with disabilities is not prohibited by this part.
§§ 1807.131–1807.139 [Reserved]
§ 1807.140 Employment.
No qualified individual with disabilities shall, solely on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the NACIC. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1614, shall apply to employment in federally conducted programs or activities.
§§ 1807.141–1807.148 [Reserved]
§ 1807.149 Program accessibility: discrimination prohibited.
Except as otherwise provided in §1807.150, no qualified individual with disabilities shall, because the NACIC’s facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the NACIC.
§ 1807.150 Program accessibility: existing facilities.
(a) General. The NACIC shall operate each program or activity so that the program or activity, viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This program does not:
(1) Necessarily require the NACIC to make each of its existing facilities accessible to and usable by individuals with disabilities;
(2)(i) Require the NACIC to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.
(ii) The NACIC has the burden of proving that compliance with §1807.150(a) would result in that alteration or those burdens.
(iii) The decision that compliance would result in that alteration of those burdens must be made by the Director after considering all of the NACIC’s resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.
(iv) If an action would result in that alteration or those burdens, the NACIC shall take any other action that would not result in the alteration of burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.
(b) Methods. (1) The NACIC may comply with the requirements of this section through such means as redesign of equipment, delivery of services at alternate accessible sites, alteration of existing facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities.
 § 1807.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs and activities conducted by the NACIC.

(b) The NACIC shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Office of Equal Employment Opportunity, is responsible for coordinating implementation of this section. Complaints may be sent to NACIC, Director, Washington, DC 20505.

(d) The NACIC shall accept and investigate all complete complaints for which it has jurisdiction. All complete
§ 1807.170

complaints must be filed within 180 days of the alleged act of discrimination. The NACIC may extend this time period for good cause.

(e) If the NACIC receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The NACIC shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Americans with Disabilities Act Accessibility Guidelines is not readily accessible to and usable by individuals with disabilities.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, The NACIC shall notify the complainant of the results of the investigation in a letter containing:

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the NACIC of the letter required by paragraph (g) of this section. The NACIC may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Director.

(j) The NACIC shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the NACIC determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Director may delegate the authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.
# CHAPTER XIX—CENTRAL INTELLIGENCE AGENCY

<table>
<thead>
<tr>
<th>Part</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1900</td>
<td>Public access to CIA records under the Freedom of Information Act (FOIA)</td>
</tr>
<tr>
<td>1901</td>
<td>Public rights under the Privacy Act of 1974</td>
</tr>
<tr>
<td>1902</td>
<td>Information security regulations</td>
</tr>
<tr>
<td>1903</td>
<td>Conduct on Agency Installations</td>
</tr>
<tr>
<td>1904</td>
<td>Procedures governing acceptance of service of process</td>
</tr>
<tr>
<td>1905</td>
<td>Production of official records or disclosure of official information in proceedings before Federal, state or local governmental entities of competent jurisdiction</td>
</tr>
<tr>
<td>1906</td>
<td>Enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by the Central Intelligence Agency</td>
</tr>
<tr>
<td>1907</td>
<td>Challenges to classification of documents by authorized holders pursuant to §1.9 of Executive Order 12958</td>
</tr>
<tr>
<td>1908</td>
<td>Public requests for mandatory declassification review of classified information pursuant to §3.6 of Executive Order 12958</td>
</tr>
<tr>
<td>1909</td>
<td>Access by historical researchers and former presidential appointees pursuant to §4.5 of Executive Order 12958</td>
</tr>
</tbody>
</table>
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.

FILING OF FOIA REQUESTS
1900.11 Preliminary information.
1900.12 Requirements as to form and content.
1900.13 Fees for record services.
1900.14 Fee estimates (pre-request option).

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.


SOURCE: 62 FR 32481, June 16, 1997, unless otherwise noted.

GENERAL

§ 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. 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.

§ 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 refiling 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:

<table>
<thead>
<tr>
<th>Personnel Search and Review</th>
<th>Quarter hour</th>
<th>$5.00</th>
<th>$10.00</th>
<th>$18.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clerical/Technical</td>
<td>Quarter hour</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Professional/Supervisory</td>
<td>Quarter hour</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Manager/Senior Professional</td>
<td>Quarter hour</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
§ 1900.13

Computer Search and Production

<table>
<thead>
<tr>
<th>Service</th>
<th>Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Search (on-line)</td>
<td>Flat rate</td>
</tr>
<tr>
<td>Search (off-line)</td>
<td>Flat rate</td>
</tr>
<tr>
<td>Other activity</td>
<td>Flat rate</td>
</tr>
<tr>
<td>Tapes (mainframe cassette)</td>
<td>Per minute</td>
</tr>
<tr>
<td>Tapes (mainframe cartridge)</td>
<td>Each</td>
</tr>
<tr>
<td>Tapes (mainframe reel)</td>
<td>Each</td>
</tr>
<tr>
<td>Tapes (PC 9mm)</td>
<td>Each</td>
</tr>
<tr>
<td>Diskette (3.5&quot;)</td>
<td>Each</td>
</tr>
<tr>
<td>CD (bulk recorded)</td>
<td>Each</td>
</tr>
<tr>
<td>CD (recordable)</td>
<td>Each</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>Per minute</td>
</tr>
<tr>
<td>Paper (mainframe printer)</td>
<td>Per page</td>
</tr>
<tr>
<td>Paper (PC b&amp;w laser printer)</td>
<td>Per page</td>
</tr>
<tr>
<td>Paper (PC color printer)</td>
<td>Per page</td>
</tr>
</tbody>
</table>

Paper Production

<table>
<thead>
<tr>
<th>Service</th>
<th>Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Photocopy (standard or legal)</td>
<td>Per page</td>
</tr>
<tr>
<td>Microfiche</td>
<td>Per frame</td>
</tr>
<tr>
<td>Pre-printed (if available)</td>
<td>Per page</td>
</tr>
<tr>
<td>Published (if available)</td>
<td>Per item</td>
</tr>
</tbody>
</table>

(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 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.

(1) 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...
§ 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.

§ 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.
Central Intelligence Agency

§ 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

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
§ 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 agency 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.

(d) Decision and notice of intent to disclose. (i) The Agency shall carefully consider 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.
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 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
§ 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

434
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.

§ 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
§ 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

GENERAL

Sec.
1901.01 Authority and purpose.
1901.02 Definitions.
1901.03 Contact for general information and requests.
1901.04 Suggestions and complaints.

FILING OF PRIVACY ACT REQUESTS
1901.11 Preliminary information.
1901.12 Requirements as to form.
1901.13 Requirements as to identification of requester.
1901.14 Fees.

ACTION ON PRIVACY ACT REQUESTS
1901.21 Processing requests for access to or amendment of records.
1901.22 Action and determination(s) by originator(s) or any interested party.
1901.23 Notification of decision and right of appeal.

ADDITIONAL ADMINISTRATIVE MATTERS
1901.31 Special procedures for medical and psychological records.
1901.32 Requests for expedited processing.
1901.33 Allocation of resources; agreed extensions of time.

ACTION ON PRIVACY ACT ADMINISTRATIVE APPEALS
1901.41 Establishment of appeals structure.
1901.42 Right of appeal and appeal procedures.
1901.43 Determination(s) by Deputy Director(s).
1901.44 Action by appeals authority.
1901.45 Notification of decision and right of judicial review.

PROHIBITIONS
1901.51 Limitations on disclosure.
1901.52 Criminal penalties.


Central Intelligence Agency

§ 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
§ 1901.03
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 refiling 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 requires 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,
§ 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.

§ 1901.41 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.

(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.
(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.

### §1901.42 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
Central Intelligence Agency

§ 1901.45

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
§ 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. 403(q)(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.

(2) [Reserved].

(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...
§ 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:

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

(b) 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

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

23 CFR Ch. XIX (7–1–01 Edition)
(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 1902—INFORMATION SECURITY REGULATIONS

Subparts A–E [Reserved]

Subpart F—Declassification and Downgrading

AUTHORITY: Sec. 5–402 of Executive Order 12065.

§ 1902.13 Declassification and downgrading policy.

(a)—(b) [Reserved]

(c) The Executive Order provides that in some cases the need to protect properly classified information “may be outweighed by the public interest in disclosure of the information,” and that “when such questions arise” the competing interests in protection and disclosure are to be balanced. The Order further provides that the information is to be declassified in such cases if the balance is struck in favor of disclosure. The drafters of the Order recognized that such cases would be rare and that declassification decisions in such cases would remain the responsibility of the Executive Branch. For purposes of these provisions, a question as to whether the public interest favoring the continued protection of properly classified information is outweighed by a public interest in the disclosure of that information will be deemed to exist only in circumstances where, in the judgment of the agency, nondisclosure could reasonably be expected to:

1. Place a person’s life in jeopardy.
2. Adversely affect the public health and safety.
3. Impede legitimate law enforcement functions.
4. Impede the investigative or oversight functions of the Congress.
5. Obstruct the fair administration of justice.
6. Deprive the public of information indispensable to public decisions on issues of critical national importance (effective for declassification reviews conducted on or after 1 February 1980).

(d) When a case arises that requires a balancing of interests under paragraph (c) above, the reviewing official shall refer the matter to an Agency official having Top Secret classification authority, who shall balance. If it appears that the public interest in disclosure of the information may outweigh any continuing need for its protection, the case shall be referred with a recommendation for decision to the appropriate Deputy Director or Head of Independent Office. If those officials believe disclosure may be warranted, they, in coordination with OGC, as appropriate, shall refer the matter and a recommendation to the DDCI. If the DDCI determines that the public interest in disclosure of the information outweighs any damage to national security that might reasonably be expected to result from disclosure, the information shall be declassified.

[45 FR 64175, Sept. 29, 1980]

PART 1903—CONDUCT ON AGENCY INSTALLATIONS

Sec.
1903.1 Definitions.
1903.2 Applicability.
1903.3 State law applicable.
1903.4 Vehicles and traffic safety.
1903.5 Enforcement of parking regulations.
1903.6 Admission on to an Agency installation.
1903.7 Trespassing.
1903.8 Interfering with Agency functions.
1903.9 Explosives.
1903.10 Weapons.
1903.11 Restrictions on photographic, transmitting, and recording equipment.
1903.12 Alcoholic beverages and controlled substances.
§ 1903.1

1903.13 Intoxicated on an Agency installation.
1903.14 Disorderly conduct.
1903.15 Preservation of property.
1903.16 Restrictions on animals.
1903.17 Soliciting, vending, and debt collection.
1903.18 Distribution of materials.
1903.19 Gambling.
1903.20 Penalties and effects on other laws.

AUTHORITY: 50 U.S.C. 403o.
SOURCE: 63 FR 44786, Aug. 21, 1998, unless otherwise noted.

§ 1903.1 Definitions.

As used in this part:

Agency installation. For the purposes of this part, the term Agency installation means the property within the Agency Headquarters Compound and the property controlled and occupied by the Federal Highway Administration located immediately adjacent to such Compound, and property within any other Agency installation and protected property (i.e., property owned, leased, or otherwise controlled by the Central Intelligence Agency).

Authorized person. An officer of the Security Protective Service, or any other Central Intelligence Agency employee who has been authorized by the Director of Central Intelligence pursuant to section 15 of the Central Intelligence Agency Act of 1949 to enforce the provisions of this part.

Blasting agents. The term is defined for the purposes of this part as it is defined in Title 18 U.S.C. 841.

Controlled Substance. Any drug or other substance, or immediate precursor that has been defined as a controlled substance in the Controlled Substances Act (Title 21 U.S.C. 801 et seq.).

Explosives/Explosive Materials. The term is defined for the purposes of this part as it is defined in Title 18 U.S.C. 841.

Operator. A person who operates, drives, controls, or otherwise has charge of, or is in actual physical control of a mechanical mode of transportation or any other mechanical equipment.

Permit. A written authorization to engage in uses or activities that are otherwise prohibited, restricted, or regulated.

Possession. Exercising direct physical control or dominion, with or without ownership, over the property.

State law. The applicable and non-conflicting laws, statutes, regulations, ordinances, and codes of the State(s) and other political subdivision(s) within whose exterior boundaries an Agency installation or a portion thereof is located.

Traffic. Pedestrians, ridden or herded animals, vehicles, and other conveyances, either singly or together, while using any road, path, street, or other thoroughfare for the purpose of travel.

Vehicles. Any vehicle that is self-propelled or designed for self-propulsion, any motorized vehicle, and any vehicle drawn by or designed to be drawn by a motor vehicle, including any device in upon, or by which any person or property is or can be transported or drawn upon a roadway, highway, hallway, or pathway; to include any device moved by human or animal power. Whether required to be licensed in any State or otherwise.

Weapons. Any firearms or any other loaded or unloaded pistol, rifle, shotgun, or other weapon which is designed to, or may be readily converted to expel a projectile by ignition of a propellant, by compressed gas, or which is spring-powered. Any bow and arrow, crossbow, blowgun, spear gun, hand-thrown spear, sling-shot, irritant gas device, explosive device, or any other implement designed to discharge missiles; or a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or is readily capable of, causing death or serious bodily injury, including any weapon the possession of which is prohibited under the laws of the State in which the Agency installation or portion thereof is located; except that such term does not include a closing pocket knife with a blade of less than 2 1/2 inches in length.

§ 1903.2 Applicability.

The provisions of this part apply to all Agency installations, and to all persons entering on to or when on an Agency installation. They supplement the provisions of Title 18, United States Code, relating to crimes and
§ 1903.4 Vehicles and traffic safety.

(a) Open container of alcoholic beverage. (1) Each person within the vehicle is responsible for complying with the provisions of this section that pertain to carrying an open container. The operator of the vehicle is the person responsible for complying with the provisions of this section that pertain to the storage of an open container.

(2) Carrying or storing a bottle, can, or other receptacle containing an alcoholic beverage that is open or has been opened, or whose seal is broken, or the contents of which have been partially removed, within a vehicle on an Agency installation is prohibited.

(3) This section does not apply to:

(i) An open container stored in the trunk of a vehicle or, if a vehicle is not equipped with a trunk, to an open container stored in some other portion of the vehicle designated for the storage of luggage and not normally occupied by or readily accessible to the operator or passenger; or

(ii) An open container stored in the living quarters of a motor home or camper.

(4) For the purpose of paragraph (a)(3)(i) of this section, a utility compartment or glove compartment is deemed to be readily accessible to the operator and passengers of a vehicle.

(b) Operating under the influence of alcohol, drugs, or controlled substances. (1) Operating or being in actual physical control of a vehicle is prohibited while:

(i) Under the influence of alcohol, drug or drugs, a controlled substance, or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(ii) The alcohol concentration in the operator’s blood is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more alcohol per 210 liters of breath. Provided, however, that if the applicable State law that applies to operating a vehicle while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator’s blood or breath, those limits supersede the limits specified in this section.

(2) The provisions or paragraph (b)(1) of this section shall also apply to an operator who is or has been legally entitled to use alcohol or another drug.

(3) Test. (i) At the request or direction of an authorized person who has probable cause to believe that an operator of a vehicle within an Agency installation has violated a provision of paragraph (b)(1) of this section, the operator shall submit to one or more tests of blood, breath, saliva, or urine for the purpose of determining blood alcohol, drug, and controlled substance content.

(ii) Refusal by an operator to submit to a test is prohibited and may result in detention and citation by an authorized person. Proof of refusal may be admissible in any related judicial proceeding.

(iii) Any test or tests for the presence of alcohol, drugs, and controlled substances shall be determined by and administered at the direction of an officer of the Security Protective Service.

(iv) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability and operated by personnel certified in its use.

(4) Presumptive levels. (i) The results of chemical or other quantitative tests
§ 1903.5 Enforcement of parking regulations.

(a) A vehicle parked in any location without authorization, pursuant to a fraudulent, fabricated, copied or altered parking permit, or parked contrary to the directions of posted signs or markings, shall be subject to any penalties imposed by this section and the vehicle may be removal from the Agency installation at the owner’s risk and expense. The Central Intelligence Agency assumes no responsibility for the payment of any fees or costs related to the removal and/or storage of the vehicle which may be charged to the owner of the vehicle by the towing organization.

(b) The use, attempted use or possession of a fraudulent, fabricated, copied or altered parking permit is prohibited.

(c) The blocking of entrances, driveways, sidewalks, paths, loading platforms, or fire hydrants on an Agency installation is prohibited.

(d) This section may be supplemented or the applicability suspended from time to time by the Director of the Center for CIA Security, or by his or her designee, by the issuance and posting of such parking directives as may be required, and when so issued and posted, such directives shall have the same force and effects as if made a part thereof.

(e) Proof that a vehicle was parked in violation of the regulations of this section or directives may be taken as prima facie evidence that the registered owner was responsible for the violation.

§ 1903.6 Admission on to an Agency installation.

(a) Access on to any Agency installation shall be controlled and restricted to ensure the orderly and secure conduct of Agency business. Admission on to an Agency installation or into a restricted area on an Agency installation shall be limited to Agency employees and other persons with proper authorization.

(b) All persons entering on to or when on an Agency installation shall, when required and/or requested, produce and display proper identification to authorized persons.

(c) All personal property, including but not limited to any packages, briefcases, other containers or vehicles brought on to, on, or being removed from an Agency installation are subject to inspection and search by authorized persons.

(d) A full search of a person may accompany an investigative stop or an arrest.

(e) Persons entering on to an Agency installation or into a restricted area who refuse to permit an inspection and search will be denied further entry and will be ordered to leave the Agency installation or restricted area pursuant to §1903.7(a) of this part.

(f) All persons entering on to or when on any Agency installation shall comply with all official signs of a prohibitory, regulatory, or directory nature at all times while on the Agency installation.

(g) All persons entering on to or when on any Agency installation shall comply with the instructions or directions of authorized persons.

§ 1903.7 Trespassing.

(a) Entering, or remaining on any Agency installation without proper authorization is prohibited. Failure to obey an order to leave given under this section by an authorized person, or reentry or attempted reentry onto the Agency installation after being ordered...
§ 1903.11 Restrictions on photographic, transmitting, and recording equipment.

(a) Except as otherwise authorized under this section, the following are prohibited on Agency installations:

(1) Possessing a camera, other visual or audio recording devices, or electronic transmitting equipment of any kind.

(2) Carrying a camera, other visual or audio recording devices, or electronic transmitting equipment of any kind.

(3) Using a camera, other visual or audio recording devices, or electronic transmitting equipment of any kind.

(b) This section does not apply to any person using, possessing or storing a government or privately owned cellular telephone or pager while on any
Agency installation. The Central Intelligence Agency may regulate or otherwise administratively control cellular telephones and pagers outside the provisions of this part.

(c) This section does not apply to any officer, agent, or employee of the United States, a State, or a political subdivision thereof, who may enter on to an Agency installation to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law.

(d) This section does not apply to any person who has received approval from the Director of the Center for CIA Security, or from his or her designee to carry, transport, or use a camera, other visual or audio recording devices, or electronic transmitting equipment while on an Agency installation.

§ 1903.12 Alcoholic beverages and controlled substance.

(a) Alcoholic beverages. The possession, transportation of alcoholic beverages in closed containers and their consumption on an Agency installation will be administratively controlled by the Agency outside the provisions of this part.

(b) Controlled substances. The following are prohibited on an Agency installation:

1. The delivery of a controlled substance, except when distribution is made by a licensed physician or pharmacist in accordance with applicable Federal or State law, or as otherwise permitted by Federal or State law. For the purpose of this paragraph, delivery means the actual, attempt, or constructive transfer of a controlled substance.

2. The possession of a controlled substance, unless such substance was obtained by the possessor directly from, or pursuant to a valid prescription or ordered by, a licensed physician or pharmacist, or as otherwise allowed by Federal or State law.

§ 1903.13 Intoxicated on an Agency installation.

Presence on an Agency installation when under the influence of alcohol, a drug, or a controlled substance or a combination thereof to a degree that interferes with, impedes or hinders the performance of the official duties of any government employee, or damages government or personal property is prohibited.

§ 1903.14 Disorderly conduct.

A person commits disorderly conduct when, with intent to cause public alarm, nuisance, jeopardy, or violence, or knowingly or recklessly creating a risk thereof, such person commits any of the following prohibited acts:

(a) Engages in fighting or threatening, or in violent behavior.

(b) Acts in a manner that is physically threatening or menacing, or acts in a manner that is likely to inflict injury or incite an immediate breach of peace.

(c) Makes noises that are unreasonable considering the nature and purpose of the actor’s conduct, location, time of day or night, and other factors that would govern the conduct of a reasonable prudent person under the circumstances.

(d) Uses obscene language, an utterance, or gesture, or engages in a display or act that is obscene.

(e) Impedes or threatens the security of persons or property, or disrupts the performance of official duties by employees, officers, contractors or visitors on an Agency installation or obstructs the use of areas on an Agency installation such as entrances, foyers, lobbies, corridors, concourses, offices, elevators, stairways, roadways, driveways, walkways, or parking lots.

§ 1903.15 Preservation of property.

The following are prohibited:

(a) Property Damage. Destroying or damaging private property.

(b) Theft. The theft of private property, except where Title 18 U.S.C. 661 applies.

(c) Creation of hazard. The creation of hazard to persons or things, the throwing of articles of any kind from or at buildings, vehicles, or persons while on an Agency installation.

(d) Improper disposal. The improper disposal of trash or rubbish while on an Agency installation.

§ 1903.16 Restriction on animals.

Animals, except for those animals used for the assistance of persons with
Central Intelligence Agency

§ 1903.17 Soliciting, vending, and debt collection.

Commercial or political soliciting, vending of all kinds, displaying or distributing commercial advertising, collecting private debts or soliciting aims on any Agency installation is prohibited. This does not apply to:

(a) National or local drives for funds for welfare, health, or other purposes as authorized by Title 5 CFR parts 110 and 950 as amended and sponsored or approved by the Director of Central Intelligence, or by his or her designee.

(b) Personal notices posted on authorized bulletin boards and in compliance with Central Intelligence Agency rules governing the use of such authorized bulletin boards advertising to sell or rent property of Central Intelligence Agency employees or their immediate families.

§ 1903.18 Distribution of materials.

Distributing, posting, or affixing materials, such as pamphlets, handbills, or flyers, on any Agency installation is prohibited except as authorized by §1903.17(b), or by other authorization from the Director of the Center for CIA Security, or from his or her designee.

§ 1903.19 Gambling.

Gambling in any form, or the operation of gambling devices, is prohibited. This prohibition shall not apply to the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by the provisions of the Randolph-Sheppard Act (Title 20 U.S.C. 107 et seq.).

§ 1903.20 Penalties and effects on other laws.

(a) Whoever shall be found guilty of violating any rule or regulation enumerated in this part is subject to the penalties imposed by Federal law for the commission of a Class B misdemeanor offense.

(b) Nothing in this part shall be construed to abrogate or supersede any other Federal law or any non-conflicting State or local law, ordinance or regulation applicable to any location where the Agency installation is situated.

PART 1904—PROCEDURES GOVERNING ACCEPTANCE OF SERVICE OF PROCESS

Sec.

1904.1 Scope and purpose.

1904.2 Definitions.

1904.3 Procedures governing acceptance of service of process.

1904.4 Notification to CIA Office of General Counsel.

1904.5 Authority of General Counsel.

AUTHORITY: 50 U.S.C. 403g; 50 U.S.C. 403(d)(3); E.O. 12333 sections 1.8(h), 1.8(i), 3.2.

SOURCE: 56 FR 41458, Aug. 21, 1991, unless otherwise noted.

§ 1904.1 Scope and purpose.

(a) This part sets forth the limits of authority of CIA personnel to accept service of process on behalf of the CIA or any CIA employee.

(b) This part is intended to ensure the orderly execution of the Agency’s affairs and not to impede any legal proceeding.

(c) CIA regulations concerning employee responses to demands for production of official information in proceedings before federal, state, or local governmental entities are set out in part 1905 of this chapter.

§ 1904.2 Definitions.

(a) Agency or CIA means the Central Intelligence Agency and include all staff elements of the Director of Central Intelligence.

(b) Process means a summons, complaint, subpoena, or other official paper (except garnishment orders) issued in conjunction with a proceeding or hearing being conducted by a federal, state, or local governmental entity of competent jurisdiction.

(c) Employee means any CIA officer, any staff, contract, or other employee of CIA, any person including independent contractors associated with or acting for or on behalf of CIA, and any person formerly having such a relationship with CIA.
§ 1904.3 Procedures governing acceptance of service of process.

(a) Service of Process Upon the CIA or a CIA Employee in An Official Capacity—
(1) Personal service. Unless otherwise expressly authorized by the General Counsel, or designee, personal service of process may be accepted only by attorneys of the Office of General Counsel at CIA Headquarters in Langley, Virginia.

(2) Mail service. Where service of process by registered or certified mail is authorized by law, unless expressly directed otherwise by the General Counsel or designee, such process may only be accepted by attorneys of the Office of General Counsel. Process by mail should be addressed as follows: Litigation Division, Office of General Counsel, Central Intelligence Agency, Washington, DC 20505.

(b) Service of Process Upon a CIA Employee Solely in An Individual Capacity—
(1) General. Consistent with section 6 of the CIA Act of 1949, as amended, 50 U.S.C. 403g, CIA will not provide the name or address of any current or former employee of CIA to individuals or entities seeking to serve process upon such employee solely in his or her individual capacity, even where the matter is related to CIA activities.

(2) Personal Service. Subject to the sole discretion of appropriate officials of the CIA, process servers generally will not be allowed to enter CIA facilities or premises for the purpose of serving process upon any CIA employee solely in his or her individual capacity. The Office of General Counsel is not authorized to accept service of process on behalf of a CIA employee—except the Director and Deputy Director of Central Intelligence—in his or her individual capacity.

(3) Mail Service. Unless otherwise expressly authorized by the General Counsel, or designee, CIA personnel are not authorized to accept or forward mailed service of process directed to any CIA employee in his or her individual capacity. Any such process will be returned to the sender via appropriate postal channels.

(c) Service of Process Upon a CIA Employee in A Combined Official and Individual Capacity. Unless expressly directed otherwise by the General Counsel, or designee, any process to be served upon a CIA employee in his or her combined official and individual capacity, in person or by mail, can be accepted only by attorneys of the Office of General Counsel at CIA Headquarters in Langley, Virginia.

(d) The documents for which service is accepted in official capacity only shall be stamped “Service Accepted in Official Capacity Only.” Acceptance of service of process shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under the laws or rules applicable to the service of process.

§ 1904.4 Notification to CIA Office of General Counsel.

A CIA employee who receives or has reason to expect service of process in an individual, official, or combined individual and official capacity, in a matter that may involve testimony or the furnishing of documents and that could reasonably be expected to involve Agency interests, shall promptly notify the Litigation Division, Office of General Counsel, Central Intelligence Agency, Washington, DC 20505.

§ 1904.5 Authority of General Counsel.

Any questions concerning interpretation of this regulation shall be referred to the Office of General Counsel for resolution.

PART 1905—PRODUCTION OF OFFICIAL RECORDS OR DISCLOSURE OF OFFICIAL INFORMATION IN PROCEEDINGS BEFORE FEDERAL, STATE OR LOCAL GOVERNMENTAL ENTITIES OF COMPETENT JURISDICTION
Central Intelligence Agency

§ 1905.4 Procedure for production.

(a) Whenever a demand for production is made upon an employee, the employee shall immediately notify the Litigation Division, Office of General Counsel, Central Intelligence Agency, Washington, DC 20505 (703/874–3118), which shall follow the procedures set forth in this section.

(b) The General Counsel of CIA and Deputy Directors or Heads of Independent Offices with responsibility for the information sought in the demand, or their designees, shall determine whether any information or materials may properly be produced in response to the demand, except that the Office of General Counsel may assert any and all legal defenses and objections to the demand available to CIA prior to the start of any search for information responsive to the demand. CIA may, in its sole discretion, decline to begin any search for information responsive to the demand until a final and non-appealable disposition of any such defenses and objections raised by CIA has been made by the entity or person that issued the demand.

(c) CIA officials shall consider the following factors, among others, in reaching a decision:

(1) Whether the production is appropriate in light of any relevant privilege;

(2) Any information relating to material contained in the files of CIA, including but not limited to summaries of such information or material, or opinions based on such information or material;

(3) Any information acquired by persons while such persons were employees of CIA as a part of the performance of their official duties or because of their official status or association with CIA:

in response to a demand upon an employee of CIA.

(e) General Counsel includes the Deputy General Counsel or Acting General Counsel.

§ 1905.3 General.

(a) No employee shall produce any materials or information in response to a demand without prior authorization as set forth in this part. This part applies to former employees to the extent consistent with applicable nondisclosure agreements.

(b) This part is intended only to provide procedures for responding to demands for production of documents or information, and is not intended to, does not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable by any party against the United States.
(2) Whether production is appropriate under the applicable rules of discovery or the procedures governing the case or matter in which the demand arose; and

(3) Whether any of the following circumstances apply:

(i) Disclosure would violate a statute, including but not limited to the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

(ii) Disclosure would be inconsistent with the statutory responsibility of the Director of Central Intelligence to protect intelligence sources and methods;

(iii) Disclosure would violate a specific CIA regulation or directive;

(iv) Disclosure would reveal classified information;

(v) Disclosure would improperly reveal trade secrets or proprietary confidential information without the owner’s consent; or

(vi) Disclosure would unduly interfere with the orderly conduct of CIA’s functions.

(d) If oral or written testimony is sought by a demand in a case or matter in which the CIA is not a party, a reasonably detailed description of the testimony sought, in the form of an affidavit or, if that is not feasible, a written statement, by the party seeking the testimony or by the party’s attorney must be furnished to the CIA Office of General Counsel.

(e) The Office of General Counsel shall be responsible for notifying the appropriate employees and other persons of all decisions regarding responses to demands and providing advice and counsel as to the implementation of such decisions.

(f) If response to a demand is required before a decision is made whether to provide the documents or information sought by the demand, an attorney from the Office of General Counsel, after consultation with the Department of Justice, shall appear before and furnish the court or other competent authority with a copy of this Regulation and state that the demand has been or is being, as the case may be, referred for the prompt consideration of the appropriate CIA officials, and shall respectfully request the court or other authority to stay the demand pending receipt of the requested instructions.

(g) If the court or other authority declines to stay the demand pending receipt of instructions in response to a request made in accordance with §1905.4(g), or rules that the demand must be complied with irrespective of instructions rendered in accordance with this part not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall, if so directed by the General Counsel of CIA, or designee, respectfully decline to comply with the demand under the authority of United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951), and this Regulation.

(h) With respect to any function granted to CIA officials in this part, such officials are authorized to delegate in writing their authority in any case or matter or category thereof to subordinate officials.

(i) Any nonemployee who receives a demand for the production or disclosure of CIA information acquired because of that person’s association or contacts with CIA should notify CIA’s Office of General Counsel, Litigation Division (703/874–3118) for guidance and assistance. In such cases the provisions of this regulation shall be applicable.
§ 1906.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1906.102 Application.

This part applies to all programs or activities conducted by the Agency except for programs or activities conducted outside the United States that do not involve handicapped persons in the United States. This regulation will apply to the Agency only to the extent consistent with the National Security Act of 1947 (50 U.S.C. 402 et seq.), as amended; the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.), as amended; and other applicable law.

§ 1906.103 Definitions.

For purposes of this part, the following terms mean—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Agency. For example, auxiliary aids useful for persons with impaired vision include readers, materials in braille, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD’s), interpreters, notetakers, written materials, and other similar services and devices. The Central Intelligence Agency may prohibit from any of its facilities any auxiliary aid, or category of auxiliary aid, that the Office of Security (OS) determines creates a security risk or potential security risk. OS reserves the right to examine any auxiliary aid brought into an Agency facility.

Complete complaint means a written statement that contains the complainant’s name and address and describes the Agency’s alleged discriminatory action in sufficient detail to inform the Agency of the nature and date of the alleged violation of section 504. It must be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties must describe or identify (by name, if possible) the alleged victims of discrimination.

Director means the Director of Central Intelligence or an official or employee of the Agency acting for the Director under a delegation of authority.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances or other real or personal property.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase—

(i) Physical or mental impairment includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Cardiovascular; neurological; musculoskeletal; special sense organs; respiratory, including speech organs; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple
§§ 1906.104—1906.109

sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(2) **Major life activities** includes functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(3) **Has a record of such an impairment** means has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities;

(4) **Is regarded as having an impairment** means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment;

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the Agency as having such an impairment.

**Qualified individual with handicaps** means—

(1) With respect to any Agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Agency can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other Agency program or activity, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Agency can demonstrate would result in a fundamental alteration in its nature;

(3) **Qualified handicapped person** as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by §1906.140.


§§ 1906.104—1906.109 [Reserved]

§ 1906.110 Self-evaluation.

(a) The Agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effect thereof, that do not or may not meet the requirements of this part, and to the extent modification of any of those policies and practices is required, the Agency shall proceed to make the necessary modifications.

(b) The Agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Agency shall, for at least 3 years following completion of the self-evaluation, maintain on file, and make available for public inspection—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 1906.111 Notice.

The Agency shall make available, to employees, applicants, participants, beneficiaries, and other interested persons, such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Agency, and make that information available to them in such manner as the Director finds necessary to apprise those persons of the protections against discrimination assured them by section 504 and the regulations in this part.
§ 1906.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under, any program or activity conducted by the Agency.

(b)(1) The Agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified individual with handicap the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Deny a qualified individual with handicaps an opportunity to obtain the same result, to gain the same benefit, to reach the same level of achievement as that provided to others;

(iii) Provide a qualified individual with handicaps an opportunity to obtain the same result, to gain the same benefit, to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless that action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permisibly separate or different programs or activities.

(3) The Agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The Agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity conducted by the Agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The Agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The Agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the Agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the Agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits or a program limited by Federal statute or Executive Order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive Order to a different class of individuals with handicaps is not prohibited by this part.

(d) The Agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.
§§ 1906.131—1906.139 [Reserved]

§ 1906.140 Employment.

No qualified individual with handicaps shall, solely on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1979 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 1906.141—1906.148 [Reserved]

§ 1906.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §1906.150, no qualified individual with handicaps shall, because the Agency’s facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Agency.

§ 1906.150 Program accessibility: Existing facilities.

(a) General. The Agency shall operate each program or activity so that the program or activity, viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This program does not—

(1) Necessarily require the Agency to make each of its existing facilities accessible to and usable by individuals with handicaps.

(2)(i) Require the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(ii) The Agency has the burden of proving that compliance with §1906.150(a) would result in that alteration or those burdens.

(iii) The decision that compliance would result in that alteration or those burdens must be made by the Director after considering all of the Agency’s resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.

(iv) If an action would result in that alteration or those burdens, the Agency shall take any other action that would not result in the alteration or burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) Methods. (1) The Agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps.

(2) The Agency is not required to make structural changes in existing facilities if other methods are effective in achieving compliance with this section.

(3) The Agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing that Act.

(4) In choosing among available methods for meeting the requirements of this section, the Agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) Time period for compliance. The Agency shall comply with the obligations established under this section within 60 days of the effective date of this part except that if structural changes in facilities are undertaken, the changes shall be made within 3 years of the effective date of this part, but in any event as expeditiously as possible.

(d) Transition plan. (1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Agency shall develop,
§ 1906.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of, the Agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4175), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 1906.152—1906.159 [Reserved]

§ 1906.160 Communications.

(a) The Agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public as follows:

(1)(i) The Agency shall furnish appropriate auxiliary aids if necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Agency.

(ii) In determining what type of auxiliary aid is necessary, the Agency shall give primary consideration to the requests of the individual with handicaps.

(2) Where the Agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD’s) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The Agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Agency has the burden of proving that compliance with §1906.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Agency head or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such alteration or burdens must be made by the Agency head or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such alteration or burdens must be made by the Agency head or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such alteration or burdens must be made by the Agency head or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such alteration or burdens must be made by the Agency head or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion.
§§ 1906.161—1906.169

extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 1906.161—1906.169 [Reserved]

§ 1906.167 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the Agency.

(b) The Agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Office of Equal Employment Opportunity, is responsible for coordinating implementation of this section. Complaints may be sent to Central Intelligence Agency, Director, Office of Equal Employment Opportunity, Washington, DC 20505.

(d) The Agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The Agency may extend this time period for good cause.

(e) If the Agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157) is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;
(2) A description of a remedy for each violation found; and
(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the Agency of the letter required by § 1906.170(g). The Agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Director.

(j) The Agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Director may delegate the authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

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

GENERAL

Sec.
1907.01 Authority and purpose.
1907.02 Definitions.
1907.03 Contact for general information and requests.
1907.04 Suggestions and complaints.

FILING OF CHALLENGES

1907.11 Prerequisites.
1907.12 Requirements as to form.
1907.13 Identification of material at issue.
1907.14 Transmission.

ACTION ON CHALLENGES

1907.21 Receipt, recording, and tasking.
1907.22 Challenges barred by res judicata.
1907.23 Response by originator(s) and/or any interested party.
1907.24 Designation of authority to hear challenges.
1907.25 Action on challenge.
1907.26 Notification of decision and prohibition on adverse action.

RIGHT OF APPEAL

1907.31 Right of appeal.

Source: 62 FR 32494, June 16, 1997, unless otherwise noted.

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
§ 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.
1908.12 Requirements as to form.
1908.13 Fees.

AGENCY ACTION ON MDR REQUESTS

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.
1908.32 Receipt, recording, and tasking.
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).

SOURCE: 62 FR 32495, June 16, 1997, unless otherwise noted.

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;
Central Intelligence Agency

§ 1908.21 Receipt, recording, and tasking.

The Information and Privacy Coordinator shall within ten (10) days record each mandatory declassification review...
§ 1908.22 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. The Board, 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 summary 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
§ 1908.36 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.
Central Intelligence Agency

§ 1909.11

(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 §4.3 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,
§ 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 requester given current mission requirements (by D/CSI and originator); and,


§ 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).

§ 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).

§ 1909.15 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.
CHAPTER XX—INFORMATION SECURITY
OVERSIGHT OFFICE, NATIONAL ARCHIVES
AND RECORDS ADMINISTRATION

<table>
<thead>
<tr>
<th>Part</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>Administrative procedures [Reserved]</td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td>Classified national security information</td>
<td>477</td>
</tr>
<tr>
<td>2002</td>
<td>General guidelines for systematic declassification review of foreign government information</td>
<td>502</td>
</tr>
<tr>
<td>2003</td>
<td>National security information—standard forms</td>
<td>507</td>
</tr>
<tr>
<td>2004</td>
<td>Directive on safeguarding classified national security information</td>
<td>514</td>
</tr>
</tbody>
</table>
PART 2000—ADMINISTRATIVE PROCEDURES [RESERVED]

PART 2001—CLASSIFIED NATIONAL SECURITY INFORMATION

Subpart A—Classification

Sec.
2001.10 Classification definitions and standards [1.1 and 1.2].
2001.11 Classification authority [1.4].
2001.12 Duration of classification [1.6].
2001.13 Classification challenges [1.9].
2001.14 Classification guides [2.3].

Subpart B—Identification and Markings

2001.20 General [1.7].
2001.21 Original classification [1.7(a)].
2001.22 Derivative classification [2.2].
2001.23 Additional requirements [1.7].

Subpart C—Self-Inspections

2001.30 General [5.6].
2001.31 Coverage [5.6(c)(4)].

Subpart D—Security Education and Training

2001.40 General [5.6].
2001.41 Coverage [5.6(c)(3)].

Subpart E—Declassification

2001.50 Definition [3.1].
2001.51 Automatic declassification [3.4].
2001.52 Systematic declassification review [3.5].
2001.53 Declassification guides [3.5(b)].
2001.54 Mandatory review for declassification [3.6, 3.7].

Subpart F—Reporting

2001.60 Statistical reporting [5.3].
2001.61 Accounting for costs [5.6(c)(8)].
2001.62 Effective date [6.2].

APPENDIX A TO PART 2001—INTRAGENCY SECURITY CLASSIFICATION APPEALS PANEL BYLAWS.

AUTHORITY: Section 5.2 (a) and (b), and section 5.4., E.O. 12958, 60 FR 19625, April 20, 1995.

SOURCE: 60 FR 53492, Oct. 13, 1995, unless otherwise noted.

§ 2001.10 Classification definitions and standards [1.1 and 1.2].

(a) Definitions. (1) An original classification authority with jurisdiction over the information includes:

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

(ii) The originator’s current successor in function;

(iii) A supervisory official of either;

or

(iv) The senior agency official under Executive Order 12958 (“the Order”).

(2) Permanently valuable information or permanent historical value refers to information contained in:

(i) Records that have been accessioned into the National Archives of the United States;

(ii) Records that have been scheduled as permanent under a records retention schedule approved by the National Archives and Records Administration (NARA); and

(iii) Presidential historical materials, presidential records or donated historical materials located in the National Archives of the United States, a presidential library, or any other approved repository.

(b) Identifying or describing damage to the national security. Section 1.2(a) of the Order sets forth the conditions for classifying information in the first instance. One of these conditions, the ability to identify or describe the damage to the national security, is critical to the process of making an original classification decision. There is no requirement, at the time of the decision, for the original classification authority to prepare a written description of such damage. However, the original classification authority must be able to support the decision in writing, including identifying or describing the damage, should the classification decision become the subject of a challenge or access demand.

§ 2001.11 Classification authority [1.4].

(a) General. Agencies with original classification authority shall establish
§ 2001.12 Training for original classifiers

(a) A training program for original classifiers in accordance with subpart D of this part.

(b) Requests for original classification authority. Agencies not possessing such authority shall forward requests to the Director of the Information Security Oversight Office (ISOO). The agency head must make the request and shall provide a specific justification of the need for this authority. The Director of ISOO shall forward the request, along with the Director’s recommendation, to the President through the Director of the Office of Management and Budget within 30 days. Agencies wishing to increase their assigned level of original classification authority shall forward requests in accordance with the procedures of this section.

§ 2001.12 Duration of classification

1.6.

(a) Determining duration of classification for information originally classified under the Order—(1) Establishing duration of classification. When determining the duration of classification for information originally classified under this Order, an original classification authority shall follow the sequence listed in paragraphs (a)(1)(i), (ii), and (iii) of this section.

(i) The original classification authority shall attempt to determine a date or event that is less than 10 years from the date of original classification and which coincides with the lapse of the information’s national security sensitivity, and shall assign such date or event as the declassification instruction.

(ii) If unable to determine a date or event of less than 10 years, the original classification authority shall ordinarily assign a declassification date that is 10 years from the date of the original classification decision.

(iii) The original classification authority may assign an exemption designation to the information only if the information qualifies for exemption from automatic declassification as described in section 1.6(d) of the Order. Unless declassified earlier, such information contained in records determined by the Archivist of the United States to be permanently valuable shall remain classified for 25 years from the date of its origin, at which time it will be subject to section 3.4 of the Order.

(2) Extending duration of classification for information originally classified under the Order. Extensions of classification are not automatic. If an original classification authority with jurisdiction over the information does not extend the classification of information assigned a date or event for declassification, the information is automatically declassified upon the occurrence of the date or event. If an original classification authority has assigned a date or event for declassification that is 10 years or less from the date of classification, an original classification authority with jurisdiction over the information may extend the classification duration of such information for additional periods not to exceed 10 years at a time.

(i) For information in records determined to have permanent historical value, successive extensions may not exceed a total of 25 years from the date of the information’s origin. Continued classification of this information beyond 25 years is governed by section 3.4 of the Order.

(ii) For information in records not determined to have permanent historical value, successive extensions may exceed 25 years from the date of the information’s origin.

(3) Conditions for extending classification. When extending the duration of classification, the original classification authority must:

(i) Be an original classification authority with jurisdiction over the information;

(ii) Ensure that the information continues to meet the standards for classification under the Order; and

(iii) Make reasonable attempts to notify all known holders of the information,

(b) Information classified under prior orders—(1) Specific date or event. Unless declassified earlier, information marked with a specific date or event for declassification under a prior order is automatically declassified upon that date or event. However, if the information is contained in records determined by the Archivist of the United States to be permanently valuable, and the
prescribed date or event will take place more than 25 years from the information’s origin, the declassification of the information will instead be subject to section 3.4 of the Order.

(2) **Indefinite duration of classification.** For information marked “Originating Agency’s Determination Required,” its acronym “OADR,” or with some other marking indicating an indefinite duration of classification under a prior order:

(i) A declassification authority, as defined in section 3.1 of the Order, may declassify it;

(ii) An authorized original classification authority with jurisdiction over the information may re-mark the information to establish a duration of classification consistent with the requirements for information originally classified under the Order, as provided in paragraph (a) of this section; or

(iii) Unless declassified earlier, such information contained in records determined by the Archivist of the United States to be permanently valuable shall remain classified for 25 years from the date of its origin, at which time it will be subject to section 3.4 of the Order.

(c) **Foreign government information.** The declassifying agency is the agency that initially received or classified the information. When foreign government information is being considered for declassification or appears to be subject to automatic declassification, the declassifying agency shall determine whether the information is subject to a treaty or international agreement that would prevent its declassification at that time. Depending on the age of the information and whether it is contained in permanently valuable records, the declassifying agency shall also determine if another exemption under section 1.6(d) (other than section 1.6(d)(5)) or 3.4(b) of the Order, such as the exemptions that pertain to United States foreign relations, may apply to the information. If the declassifying agency believes such an exemption may apply, it should consult with any other concerned agencies in making its declassification determination. The declassifying agency or the Department of State, as appropriate, should consult with the foreign government prior to declassification.

(d) **Determining when information is subject to automatic declassification.** The “date of the information’s origin” or “the information’s origin,” as used in the Order and this part, pertains to the date that specific information, which is contemporaneously or subsequently classified, is first recorded in an agency’s records, or in presidential historical materials, presidential records or donated historical materials. The following examples illustrate this process:

**Example 1.** An agency first issues a classification guide on the F–99 aircraft on October 20, 1995. The guide states that the fact that the F–99 aircraft has a maximum velocity of 500 m.p.h. shall be classified at the “Secret” level for a period of ten years. A document dated July 10, 1999, is classified because it includes the maximum velocity of the F–99. The document should be marked for declassification on October 20, 2005, ten years after the specific information was first recorded in the guide, not on July 10, 2009, ten years after the derivatively classified document was created.

**Example 2.** An agency classification guide issued on October 20, 1995, states that the maximum velocity of any fighter aircraft shall be classified at the “Secret” level for a period of ten years. The agency first records the specific maximum velocity of the new F–99 aircraft on July 10, 1999. The document should be marked for declassification on July 10, 2009, ten years after the specific information is first recorded, and not on October 20, 2005, ten years after the date of the guide’s generic instruction.

§ 2001.13 **Classification challenges**

(a) **Challenging classification.** Authorized holders wishing to challenge the classification status of information shall present such challenges to an original classification authority with jurisdiction over the information. An authorized holder is any individual, including an individual external to the agency, who has been granted access to specific classified information in accordance with section 4.2(g) of the Order. A formal challenge under this provision must be in writing, but need not be any more specific than to question why information is or is not classified, or is classified at a certain level.

(b) **Agency procedures.** (1) Because the Order encourages authorized holders to challenge classification as a means for
promoting proper and thoughtful classification actions, agencies shall ensure that no retribution is taken against any authorized holders bringing such a challenge in good faith.

(2) Agencies shall establish a system for processing, tracking and recording formal classification challenges made by authorized holders. Agencies shall consider classification challenges separately from Freedom of Information Act or other access requests, and shall not process such challenges in turn with pending access requests.

(3) The agency shall provide an initial written response to a challenge within 60 days. If the agency is unable to respond to the challenge within 60 days, the agency must acknowledge the challenge in writing, and provide a date by which the agency will respond. The acknowledgment must include a statement that if no agency response is received within 120 days, the challenger has the right to forward the challenge to the Interagency Security Classification Appeals Panel for a decision. The challenger may also forward the challenge to the Interagency Security Classification Appeals Panel if an agency has not responded to an internal appeal within 90 days of the agency’s receipt of the appeal. Agency responses to those challenges it denies shall include the challenger’s appeal rights to the Interagency Security Classification Appeals Panel.

(4) Whenever an agency receives a classification challenge to information that has been the subject of a challenge within the past two years, or that is the subject of pending litigation, the agency is not required to process the challenge beyond informing the challenger of this fact and of the challenger’s appeal rights, if any.

(c) Additional considerations. (1) Challengers and agencies shall attempt to keep all challenges, appeals and responses unclassified. However, classified information contained in a challenge, an agency response, or an appeal shall be handled and protected in accordance with the Order and its implementing directives. Information being challenged for classification shall remain classified unless and until a final decision is made to declassify it.

(2) The classification challenge provision is not intended to prevent an authorized holder from informally questioning the classification status of particular information. Such informal inquiries should be encouraged as a means of holding down the number of formal challenges.

§ 2001.14 Classification guides [2.3].

(a) Preparation of classification guides. Originators of classification guides are encouraged to consult users of guides for input when developing or updating guides. When possible, originators of classification guides are encouraged to communicate within their agencies and with other agencies that are developing guidelines for similar activities to ensure the consistency and uniformity of classification decisions. Each agency shall maintain a list of its classification guides in use.

(b) General content of classification guides. Classification guides shall, at a minimum:

(1) Identify the subject matter of the classification guide;

(2) Identify the original classification authority by name or personal identifier, and position;

(3) Identify an agency point-of-contact or points-of-contact for questions regarding the classification guide;

(4) Provide the date of issuance or last review;

(5) State precisely the elements of information to be protected;

(6) State which classification level applies to each element of information, and, when useful, specify the elements of information that are unclassified;

(7) State, when applicable, special handling caveats;

(8) Prescribe declassification instructions or the exemption category from automatic declassification for each element of information;

(9) Specify, when citing the exemption category listed in section 1.6(d)(8) of the Order, the applicable statute, treaty or international agreement;

(10) State a concise reason for classification which, at a minimum, cites the applicable classification category or categories in section 1.5 of the Order.

(c) Dissemination of classification guides. Classification guides shall be
disseminated as widely as necessary to ensure the proper and uniform derivative classification of information.

(d) Reviewing and updating classification guides. (1) Classification guides, including guides created under prior orders, shall be reviewed and updated as circumstances require, but, in any event, at least once every five years. Updated instructions for guides first created under prior orders shall comply with the requirements of the Order and this part.

(2) Originators of classification guides are encouraged to consult the users of guides for input when reviewing or updating guides. Also, users of classification guides are encouraged to notify the originator of the guide when they acquire information that suggests the need for change in the instructions contained in the guide.

Subpart B—Identification and Markings

§ 2001.20 General [1.7].

A uniform security classification system requires that standard markings be applied to classified information. Except in extraordinary circumstances, or as approved by the Director of ISOO, the marking of classified information created after October 14, 1995, shall not deviate from the following prescribed formats. If markings cannot be affixed to specific classified information or materials, the originator shall provide holders or recipients of the information with written instructions for protecting the information. Markings shall be uniformly and conspicuously applied to leave no doubt about the classified status of the information, the level of protection required, and the duration of classification.

§ 2001.21 Original classification [1.7(a)].

(a) Primary markings. On the face of each originally classified document, including electronic media, the classifier shall apply the following markings.

(1) Classification authority. The name or personal identifier, and position title of the original classifier shall appear on the “Classified By” line. An example might appear as:

 Classified By: David Smith, Chief, Division 5
 or
 Classified By: ID# IMNO1, Chief, Division 5

(2) Agency and office of origin. If not otherwise evident, the agency and office of origin shall be identified and placed below the name on the “Classified By” line. An example might appear as:

 Classified By: David Smith, Chief, Division 5
 Department of Good Works, Office of Administration

(3) Reason for classification. The original classifier shall identify the reason(s) for the decision to classify. The classifier shall include, at a minimum, a brief reference to the pertinent classification category(ies), or the number 1.5 plus the letter(s) that corresponds to that classification category in section 1.5 of the Order.

(i) These categories, as they appear in the Order, are as follows:

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

(ii) An example might appear as:

 Classified By: David Smith, Chief, Division 5,
 Department of Good Works, Office of Administration
 Reason: Vulnerabilities or capabilities of
 plans relating to the national security or
 Reason: 1.5(g)

(iii) When the reason for classification is not apparent from the content of the information, e.g., classification by compilation, the classifier shall provide a more detailed explanation of the reason for classification.

(4) Declassification instructions. The duration of the original classification decision shall be placed on the “Declassify On” line. The classifier will apply one of the following instructions.

481
§ 2001.21

(i) The classifier will apply a date or event for declassification that corresponds to the lapse of the information’s national security sensitivity, which may not exceed 10 years from the date of the original decision. When linking the duration of classification to a specific date or event, mark that date or event as:

Classified By: David Smith, Chief, Division 5, Department of Good Works, Office of Administration

Reason: 1.5(g)

Declassify On: October 14, 2004 or

Declassify On: Completion of Operation

(ii) When a specific date or event within 10 years cannot be established, the classifier will apply the date that is 10 years from the date of the original decision. For example, on a document that contains information classified on October 14, 1995, mark the “Declassify On” line as:

Classified By: David Smith, Chief, Division 5, Department of Good Works, Office of Administration

Reason: 1.5(g)

Declassify On: October 14, 2005

(iii) Upon the determination that the information must remain classified beyond 10 years, the classifier will apply the letter “X” plus a brief recitation of the exemption category(ies), or the letter “X” plus the number that corresponds to that exemption category(ies) in section 1.6(d) of the Order.

(A) Exemption categories in E.O. 12958.

X1: reveal an intelligence source, method, or activity, or a cryptologic system or activity;

X2: reveal information that would assist in the development or use of weapons of mass destruction;

X3: reveal information that would impair the development or use of technology within a United States weapons system;

X4: reveal United States military plans, or national security emergency preparedness plans;

X5: reveal foreign government information;

X6: damage relations between the United States and a foreign government, reveal a confidential source, or seriously undermine diplomatic activities that are reasonably expected to be ongoing for a period greater than that provided in paragraph (b) above, (section 1.6(b) of the Order);

X7: impair the ability of responsible United States Government officials to protect the President, the Vice President, and other individuals for whom protection services, in the interest of national security, are authorized;

X8: violate a statute, treaty, or international agreement.

(B) Example. A document containing information exempted from automatic declassification may appear as:

Classified By: David Smith, Chief, Division 5, Department of Good Works, Office of Administration

Reason: 1.5(g)

Declassify On: X-U.S. military plans or

Declassify On: X4

(b) Overall marking. The highest level of classified information contained in a document shall appear in a way that will distinguish it clearly from the informational text.

(1) Conspicuously place the overall classification at the top and bottom of the outside of the front cover (if any), on the title page (if any), on the first page, and on the outside of the back cover (if any).

(2) For documents containing information classified at more than one level, the overall marking shall be the highest level. For example, if a document contains some information marked “Secret,” and other information marked “Confidential,” the overall marking would be “Secret.”

(3) Each interior page of a classified document shall be marked at the top and bottom either with the highest level of classification of information contained on that page, including the designation “Unclassified” when it is applicable, or with the highest overall classification of the document.

(c) Portion marking. Each portion of a document, ordinarily a paragraph, but including subjects, titles, graphics and the like, shall be marked to indicate its classification level by placing a parenthetical symbol immediately preceding or following the portion to which it applies.

(1) To indicate the appropriate classification level, the symbols “(TS)” for Top Secret, “(S)” for Secret, “(C)” for Confidential, and “(U)” for Unclassified shall be used.

(2) Unless the original classification authority indicates otherwise on the document, each classified portion of a document exempted from automatic
Information Security Oversight Office, NARA  § 2001.21

Declassification shall be presumed to be exempted from automatic declassification also.

(3) An agency head or senior agency official may request a waiver from the portion marking requirement for a specific category of information. Such a request shall be submitted to the Director of ISOO and should include the reasons that the benefits of portion marking are outweighed by other factors. Statements citing administrative burden alone will ordinarily not be viewed as sufficient grounds to support a waiver.

(d) Classification extensions. (1) An original classification authority may extend the duration of classification for successive periods not to exceed 10 years at a time. For information contained in records determined to be permanently valuable, multiple extensions shall not exceed 25 years from the date of the information's origin.

(2) The "Declassify On" line shall be revised to include the new declassification instructions, and shall include the identity of the person authorizing the extension and the date of the action.

(3) The office of origin shall make reasonable attempts to notify all holders of such information. Classification guides shall be updated to reflect such revisions.

(4) An example of an extended duration of classification may appear as:

Classified By: David Smith, Chief, Division 5, Department of Good Works, Office of Administration
Reason: 1.5(g)
Declassify On: Classification extended on December 1, 2000, until December 1, 2010, by David Jones, Chief, Division 5

(e) Marking information exempted from automatic declassification at 25 years. (1) When an agency head or senior agency official exempts permanently valuable information from automatic declassification at 25 years, the "Declassify On" line shall be revised to include the symbol "25X" plus a brief reference to the pertinent exemption category(ies) or the number(s) that corresponds to that category(ies) in section 3.4(b) of the Order. Other than when the exemption pertains to the identity of a confidential human source, or a human intelligence source, the revised "Declassify On" line shall also include the new date or event for declassification.

(2) The pertinent exemptions, using the language of section 3.4(b) of the Order, are:

25X1: reveal the identity of a confidential human source, or reveal information about the application of an intelligence source or method, or reveal the identity of a human intelligence source when the unauthorized disclosure of that source would clearly and demonstrably damage the national security interests of the United States;

25X2: reveal information that would assist in the development or use of weapons of mass destruction;

25X3: reveal information that would impair U.S. cryptologic systems or activities;

25X4: reveal information that would impair the application of state-of-the-art technology within a U.S. weapon system;

25X5: reveal actual U.S. military war plans that remain in effect;

25X6: reveal information that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States;

25X7: reveal information that would clearly and demonstrably impair the current ability of United States Government officials to protect the President, Vice President, and other officials for whom protection services, in the interest of national security, are authorized;

25X8: reveal information that would seriously and demonstrably impair current national security emergency preparedness plans; or

25X9: violate a statute, treaty, or international agreement.

(3) The pertinent portion of the marking would appear as:

Declassify On: 25X-State-of-the-art technology within U.S. weapon system, October 1, 2010 or
Declassify On: 25X4, October 1, 2010

(4) Documents should not be marked with a "25X" marking until the agency has been informed that the President or the Interagency Security Classification Appeals Panel concurs with the proposed exemption.

(5) Agencies need not apply a "25X" marking to individual documents contained in a file series exempted from automatic declassification under section 3.4(c) of the Order until the individual document is removed from the file.
§ 2001.22 Derivative classification [2.2].

(a) General. Information classified derivatively on the basis of source documents or classification guides shall bear all markings prescribed in §2001.20 and §2001.21, except as provided in this section. Information for these markings shall be carried forward from the source document or taken from instructions in the appropriate classification guide.

(b) Source of derivative classification.

(1) The derivative classifier shall concisely identify the source document or the classification guide on the “Derived From” line, including the agency and, where available, the office of origin, and the date of the source or guide. An example might appear as:

Derived From: Memo, “Funding Problems,” October 20, 1995, Ofc. of Admin., Department of Good Works or

Derived From: CG No. 1, Department of Good Works, dated October 20, 1995

(i) When a document is classified derivatively based on more than one source document or classification guide, the “Derived From” line shall appear as:

Derived From: Multiple Sources

(ii) The derivative classifier shall maintain the identification of each source with the file or record copy of the derivatively classified document. When practicable, this list should be included in or with all copies of the derivatively classified document.

(2) A document derivatively classified on the basis of a source document that is itself marked “Multiple Sources” shall cite the source document on its “Derived From” line rather than the term “Multiple Sources.” An example might appear as:

Derived From: Report entitled, “New Weapons,” dated October 20, 1995, Department of Good Works, Office of Administration

(c) Reason for classification. The reason for the original classification decision, as reflected in the source document(s) or classification guide, is not required to be transferred in a derivative classification action. If included, however, it shall conform to the standards in §2001.21(a)(3).

(d) Declassification instructions. (1) The derivative classifier shall carry forward the instructions on the “Declassify On” line from the source document to the derivative document, or the duration instruction from the classification guide.

(2) When a document is classified derivatively on the basis of more than one source document or more than one element of a classification guide, the “Declassify On” line shall reflect the longest duration of any of its sources.

(i) When a document is classified derivatively from a source document(s) or classification guide that contains the declassification instruction, “originating Agency’s Determination Required,” or “OADR,” unless otherwise instructed by the original classifier, the derivative classifier shall carry forward:

(A) The fact that the source document(s) was marked with this instruction; and

(B) The date of origin of the most recent source document(s), classification guide, or specific information, as appropriate to the circumstances.

(ii) An example might appear as:

Declassify On: Source marked “OADR,” Date of source: October 20, 1990

(iii) This marking will permit the determination of when the classified information is 25 years old and, if permanently valuable, subject to automatic declassification under section 3.4 of the Order.

(e) Overall marking. The derivative classifier shall conspicuously mark the classified document with the highest level of classification of information included in the document, as provided in §2001.21(b).

(f) Portion marking. Each portion of a derivatively classified document shall be marked in accordance with its source, and as provided in §2001.21(c).

§ 2001.23 Additional requirements [1.7].

(a) Marking prohibitions. Markings other than “Top Secret,” “Secret,” and “Confidential,” such as “For Official Use Only,” or “Limited Official Use,” shall not be used to identify classified national security information. No other term or phrase shall be used in conjunction with these markings, such as “Secret Sensitive” or “Agency

484
Confidential,” to identify classified national security information. The terms “Top Secret,” “Secret,” and “Confidential” should not be used to identify non-classified executive branch information.

(b) Agency prescribed special markings. Agencies shall refrain from the use of special markings when they merely restate or emphasize the principles and standards of the Order and this part. Upon request, the senior agency official shall provide the Director of ISOO with a written explanation for the use of agency special markings.

(c) Transmittal documents. A transmittal document shall indicate on its face the highest classification level of any classified information attached or enclosed. The transmittal shall also include conspicuously on its face the following or similar instructions, as appropriate:

Unclassified When Classified Enclosure Removed or Upon Removal of Attachments. This Document is (Classification Level)

(d) Foreign government information. Documents that contain foreign government information shall include the marking, “This Document Contains (indicate country of origin) Information.” The portions of the document that contain the foreign government information shall be marked to indicate the government and classification level, e.g., “(UK-C).” If the identity of the specific government must be concealed, the document shall be marked, “This Document Contains Foreign Government Information.” and pertinent portions shall be marked “FGI” together with the classification level, e.g., “(FGI-C).” In such cases, a separate record that identifies the foreign government shall be maintained in order to facilitate subsequent declassification actions. When classified records are transferred to the National Archives and Records Administration for storage or archival purposes, the accompanying documentation shall, at a minimum, identify the boxes that contain foreign government information. If the fact that information is foreign government information must be concealed, the markings described in this paragraph shall not be used and the document shall be marked as if it were wholly of U.S. origin.

(e) Working papers. A working paper is defined as documents or materials, regardless of the media, which are expected to be revised prior to the preparation of a finished product for dissemination or retention. Working papers containing classified information shall be dated when created, marked with the highest classification of any information contained in them, protected at that level, and destroyed when no longer needed. When any of the following conditions applies, working papers shall be controlled and marked in the same manner prescribed for a finished document at the same classification level:

(1) Released by the originator outside the originating activity;
(2) Retained more than 180 days from the date of origin; or
(3)Filed permanently.

(f) Other material. Bulky material, equipment and facilities, etc., shall be clearly identified in a manner that leaves no doubt about the classification status of the material, the level of protection required, and the duration of classification. Upon a finding that identification would itself reveal classified information, such identification is not required. Supporting documentation for such a finding must be maintained in the appropriate security facility and in any applicable classification guide.

(g) Unmarked materials. Information contained in unmarked records, or presidential or related materials, and which pertains to the national defense or foreign relations of the United States and has been maintained and protected as classified information under prior orders shall continue to be treated as classified information under the Order, and is subject to its provisions regarding declassification.

§ 2001.30 General

Subpart C—Self-Inspections

§ 2001.30 [Reserved].

§ 2001.24 Declassification markings

[Reserved].

Subpart C—Self-Inspections
classified product. “Self-inspection” means the internal review and evaluation of individual agency activities and the agency as a whole with respect to the implementation of the program established under the Order.

(b) **Applicability.** These standards are binding on all executive branch agencies that create or handle classified information. Pursuant to Executive Order 12829, the National Industrial Security Program Operating Manual (NISPOM) prescribes the security requirements, restrictions and safeguards applicable to industry, including the conduct of contractor self-inspections. The standards established in the NISPOM should be consistent with the standards prescribed in Executive Order 12958 and this part.

(c) **Responsibility.** The senior agency official is responsible for the agency’s self-inspection program. The senior agency official shall designate agency personnel to assist in carrying out this responsibility.

(d) **Approach.** The official(s) responsible for the program shall determine the means and methods for the conduct of self-inspections. These may include:

1. A review of relevant security directives, guides and instructions;
2. Interviews with producers and users of classified information;
3. A review of access and control records and procedures; and
4. A review of a sample of classified documents generated by agency activities.

(e) **Frequency.** The official(s) responsible for the program shall set the frequency of self-inspections on the basis of program needs and the degree of classification activity. Activities that originate significant amounts of classified information should conduct at least one document review per year.

(f) **Reporting.** The format for documenting findings shall be set by the official(s) responsible for the program.

§ 2001.31 Coverage [5.6(c)(4)].

(a) **General.** These standards are not all-inclusive. Each agency may expand upon the coverage according to program and policy needs. Each self-inspection of an agency activity need not include all the elements covered in this section. Agencies without original classification authority need not include in their self-inspections those elements of coverage pertaining to original classification.

(b) **Elements of coverage—** (1) **Original classification.** (i) Evaluate original classifiers’ general understanding of the process of original classification, including the:

(A) Applicable standards for classification;
(B) Levels of classification and the damage criteria associated with each; and
(C) Required classification markings.

(ii) Determine if delegations of original classification authority conform with the requirements of the Order, including whether:

(A) Delegations are limited to the minimum required to administer the program;
(B) Designated original classifiers have a demonstrable and continuing need to exercise this authority;
(C) Delegations are in writing and identify the official by name or position title; and
(D) New requests for delegation of classification authority are justified.

(iii) Assess original classifiers’ familiarity with the duration of classification requirements, including:

(A) Assigning a specific date or event for declassification when possible;
(B) Establishing ordinarily a maximum 10-year duration of classification when an earlier date or event cannot be determined;
(C) Limiting extensions of classification for specific information not to exceed 10 years at a time; and
(D) Exempting from declassification within 10 years specific information as provided in section 1.6 of the Order.

(iv) Conduct a review of a sample of classified information generated by the inspected activity to determine the propriety of classification and the application of proper and full markings.

(v) Evaluate classifiers’ actions to comply with the standards specified in §2001.14 and §2001.53 of this part, relating to classification and declassification guides, respectively.

(vi) Verify observance with the prohibitions on classification and limitations on reclassification.
(vii) Assess whether the agency’s classification challenges program meets the requirements of the Order and this part.

(2) Derivative classification. Assess the general familiarity of individuals who classify derivatively with the:
(i) Conditions for derivative classification;
(ii) Requirement to consult with the originator of the information when questions concerning classification arise;
(iii) Proper use of classification guides; and
(iv) Proper and complete application of classification markings to derivatively classified documents.

(3) Declassification. (i) Verify whether the agency has established, to the extent practical, a system of records management to facilitate public release of declassified documents.
(ii) Evaluate the status of the agency declassification program, including the requirement to:
(A) Comply with the automatic declassification provisions regarding historically valuable records over 25 years old;
(B) Declassify, when possible, historically valuable records prior to accession into the National Archives;
(C) Provide the Archivist with adequate and current declassification guides;
(D) Ascertain that the agency’s mandatory review program conforms to established requirements; and
(E) Determine whether responsible agency officials are cooperating with the Archivist in the development and maintenance of a Government-wide database of information that has been declassified.

(4) Safeguarding. (i) Monitor agency adherence to established safeguarding standards.
(ii) Assess compliance with controls for access to classified information.
(iii) Evaluate the effectiveness of the agency’s program in detecting and processing security violations and preventing recurrences.
(iv) Assess compliance with the procedures for identifying, reporting and processing unauthorized disclosures of classified information.

(v) Evaluate the effectiveness of procedures to ensure that:
(A) The originating agency exercises control over the classified information it generates;
(B) Holders of classified information do not disclose information originated by another agency without that agency’s authorization; and
(C) Departing or transferred officials return all classified information in their possession to authorized agency personnel.

(5) Security education and training. Evaluate the effectiveness of the agency’s security education and training program in familiarizing appropriate personnel with classification procedures; and determine whether the program meets the standards specified in subpart D of this part.

(6) Management and oversight. (i) Determine whether original classifiers have received prescribed training.
(ii) Verify whether the agency’s special access programs:
(A) Adhere to specified criteria in the creation of these programs;
(B) Are kept to a minimum;
(C) Provide for the conduct of internal oversight; and
(D) Include an annual review of each program to determine whether it continues to meet the requirements of the Order.
(iii) Assess whether:
(A) Senior management demonstrates commitment to the success of the program, including providing the necessary resources for effective implementation;
(B) Producers and users of classified information receive guidance with respect to security responsibilities and requirements;
(C) Controls to prevent unauthorized access to classified information are effective;
(D) Contingency plans are in place for safeguarding classified information used in or near hostile areas;
(E) The performance contract or other system used to rate civilian or military personnel includes the management of classified information as a critical element or item to be evaluated in the rating of: Original classifiers; security managers; classification
management officers; and security specialists; and other employees significantly involved with classified information; and

(F) A method is in place for collecting information on the costs associated with the implementation of the Order.

Subpart D—Security Education and Training

§ 2001.40 General [5.6].

(a) Purpose. This subpart sets standards for agency security education and training programs. Implementation of these standards should:

(1) Ensure that all executive branch employees who create, process or handle classified information have a satisfactory knowledge and understanding about classification, safeguarding, and declassification policies and procedures;

(2) Increase uniformity in the conduct of agency security education and training programs; and

(3) Reduce improper classification, safeguarding and declassification practices.

(b) Applicability. These standards are binding on all executive branch departments and agencies that create or handle classified information. Pursuant to Executive Order 12829, the NISPOM prescribes the security requirements, restrictions, and safeguards applicable to industry, including the conduct of contractor security education and training. The standards established in the NISPOM should be consistent with the standards prescribed in Executive Order 12958 of this part.

(c) Responsibility. The senior agency official is responsible for the agency’s security education and training program. The senior agency official shall designate agency personnel to assist in carrying out this responsibility.

(d) Approach. Security education and training should be tailored to meet the specific needs of the agency’s security program, and the specific roles employees are expected to play in that program. The agency official(s) responsible for the program shall determine the means and methods for providing security education and training. Training methods may include briefings, interactive videos, dissemination of instructional materials, and other media and methods. Agencies shall maintain records about the programs it has offered and employee participation in them.

(e) Frequency. The frequency of agency security education and training will vary in accordance with the needs of the agency’s security classification program. Each agency shall provide some form of refresher security education and training at least annually.

§ 2001.41 Coverage [5.6(c)(3)].

(a) General. Each department or agency shall establish and maintain a formal security education and training program which provides for initial and refresher training, and termination briefings. This subpart establishes security education and training standards for original classifiers, declassification authorities, security managers, classification management officers, security specialists, and all other personnel whose duties significantly involve the creation or handling of classified information. These standards are not intended to be all-inclusive. The official responsible for the security education and training program may expand or modify the coverage provided in this part according to the agency’s program and policy needs.

(b) Elements of initial coverage. All cleared agency personnel shall receive initial training on basic security policies, principles and practices. Such training must be provided in conjunction with the granting of a security clearance, and prior to granting access to classified information. The following areas should be considered for inclusion in initial briefings.

(1) Roles and responsibilities. (i) What are the responsibilities of the senior agency official, classification management officers, the security manager and the security specialist?

(ii) What are the responsibilities of agency employees who create or handle classified information?

(iii) Who should be contacted in case of questions or concerns about classification matters?

(2) Elements of classifying and declassifying information. (i) What is classified
information and why is it important to protect it?
(ii) What are the levels of classified information and the damage criteria associated with each level?
(iii) What are the prescribed classification markings and why is it important to have classified information fully and properly marked?
(iv) What are the general requirements for declassifying information?
(v) What are the procedures for challenging the classification status of information?
(3) Elements of safeguarding. (i) What are the proper procedures for safeguarding classified information?
(ii) What constitutes an unauthorized disclosure and what are the penalties associated with these disclosures?
(iii) What are the general conditions and restrictions for access to classified information?
(iv) What should an individual do when he or she believes safeguarding standards may have been violated?
(c) Specialized security education and training. Original classifiers, authorized declassification authorities, individuals specifically designated as responsible for derivative classification, classification management officers, security specialists, and all other personnel whose duties significantly involve the creation or handling of classified information should receive more detailed training. This training should be provided before or concurrent with the date the employee assumes any of the positions listed above, but in any event no later than six months from that date. Coverage considerations should include:
(1) Original classifiers. (i) What is the difference between original and derivative classification?
(ii) Who can classify information originally?
(iii) What are the standards that a designated classifier must meet to classify information?
(iv) What is the process for determining duration of classification?
(v) What are the prohibitions and limitations on classifying information?
(vi) What are the basic markings that must appear on classified information?
(vii) What are the general standards and procedures for declassification?
(2) Declassification authorities other than original classifiers. (i) What are the standards, methods and procedures for declassifying information under Executive Order 12958?
(ii) What are the standards for creating and using agency declassification guides?
(iii) What is contained in the agency’s automatic declassification plan?
(iv) What are the agency responsibilities for the establishment and maintenance of a declassification database?
(3) Individuals specifically designated as responsible for derivative classification, security managers, classification management officers, security specialists or any other personnel whose duties significantly involve the management and oversight of classified information. (i) What are the original and derivative classification processes and the standards applicable to each?
(ii) What are the proper and complete classification markings, as described in subpart B of this part?
(iii) What are the authorities, methods and processes for downgrading and declassifying information?
(iv) What are the methods for the proper use, storage, reproduction, transmission, dissemination and destruction of classified information?
(v) What are the requirements for creating and updating classification and declassification guides?
(vi) What are the requirements for controlling access to classified information?
(vii) What are the procedures for investigating and reporting instances of security violations, and the penalties associated with such violations?
(viii) What are the requirements for creating, maintaining, and terminating special access programs, and the mechanisms for monitoring such programs?
(ix) What are the procedures for the secure use, certification and accreditation of automated information systems and networks which use, process, store, reproduce, or transmit classified information?
(x) What are the requirements for oversight of the security classification program, including agency self-inspections?
§ 2001.50  Subpart E—Declassification

Refresher security education and training. Agencies shall provide refresher training to employees who create, process or handle classified information. Refresher training should reinforce the policies, principles and procedures covered in initial and specialized training. Refresher training should also address the threat and the techniques employed by foreign intelligence activities attempting to obtain classified information, and advise personnel of penalties for engaging in espionage activities. Refresher training should also address issues or concerns identified during agency self-inspections. When other methods are impractical, agencies may satisfy the requirement for refresher training by means of audiovisual products or written materials.

Termination briefings. Each agency shall ensure that each employee granted access to classified information who leaves the service of the agency receives a termination briefing. Also, each agency employee whose clearance is withdrawn must receive such a briefing. At a minimum, termination briefings must impress upon each employee: The continuing responsibility not to disclose any classified information to which the employee had access and the potential penalties for non-compliance; and the obligation to return to the appropriate agency official all classified documents and materials in the employee’s possession.

Other security education and training. Agencies are encouraged to develop additional security education and training according to program and policy needs. Such security education and training could include:

1. Practices applicable to U.S. officials traveling overseas;
2. Procedures for protecting classified information processed and stored in automated information systems;
3. Methods for dealing with unclesed personnel who work in proximity to classified information;
4. Responsibilities of personnel serving as couriers of classified information; and
5. Security requirements that govern participation in international programs.

§ 2001.50 Definition [3.1].

A file series is a body of related records created or maintained by an agency, activity, office or individual. The records may be related by subject, topic, form, function, or filing scheme. An agency, activity, office, or individual may create or maintain several different file series, each serving a different function. Examples may include a subject file, alphabetical name index, chronological file, or a record set of agency publications. File series frequently correspond to items on a NARA-approved agency records schedule. Some very large series may contain several identifiable sub-series, and it may be appropriate to treat sub-series as discrete series for the purposes of the Order.

§ 2001.51 Automatic declassification [3.4].

(a) General. All departments and agencies that have original classification authority, or previously had original classification authority, and maintain records appraised as having permanent historical value that contain information classified by that agency shall comply with the automatic declassification provisions of the Order. All agencies with original classification authority shall cooperate with NARA in carrying out an automatic declassification program involving accessioned Federal records, presidential papers and records, and donated historical materials under the control of the Archivist of the United States. The Archivist will not declassify information created by another agency without the prior consent of that agency.

(b) Presidential records. The Archivist of the United States shall establish procedures for the declassification of presidential or White House materials accessioned into the National Archives of the United States or maintained in the presidential libraries.

(c) Transferred information. In the case of classified information transferred in conjunction with a transfer of functions, and not merely for storage or archival purposes, the receiving
agency shall be deemed to be the originating agency.

(d) Unofficially transferred information. In the case of classified information that is not officially transferred as described in paragraph (c), of this section, but that originated in an agency that has ceased to exist and for which there is no successor agency, the Director of ISOO will designate an agency or agencies to act on provisions of the Order.

(e) Processing records originated by another agency. When an agency uncovers classified records originated by another agency that appear to meet the criteria for the application of the automatic declassification provisions of the Order, the finding agency should alert the originating agency and seek instruction regarding the handling and disposition of pertinent records.

(f) Unscheduled records. Classified information in records that have not been scheduled for disposal or retention by NARA is not subject to section 3.4 of the Order. Classified information in records that are scheduled as permanently valuable when that information is already more than 20 years old shall be subject to the automatic declassification provisions of section 3.4 of the Order five years from the date the records are scheduled. Classified information in records that are scheduled as permanently valuable when that information is less than 20 years old shall be subject to the automatic declassification provisions of section 3.4 of the Order when the information is 25 years old.

(g) Foreign government information. The declassifying agency is the agency that initially received or classified the information. When foreign government information appears to be subject to automatic declassification, the declassifying agency shall determine whether the information is subject to a treaty or international agreement that would prevent its declassification at that time. The declassifying agency shall also determine if another exemption under section 3.4(b) of the Order, such as the exemption that pertains to United States foreign relations, may apply to the information. If the declassifying agency believes such an exemption may apply, it should consult with any other concerned agencies in making its declassification determination. The declassifying agency or the Department of State, as appropriate, should consult with the foreign government prior to declassification.

(h) Assistance to the Archivist of the United States. Agencies shall consult with NARA before establishing automatic declassification programs. Agencies shall cooperate with NARA in developing schedules for the declassification of records in the National Archives of the United States and the presidential libraries to ensure that declassification is accomplished in a timely manner. NARA will provide information about the records proposed for automatic declassification. Agencies shall consult with NARA before reviewing records in their holdings to ensure that appropriate procedures are established for maintaining the integrity of the records and that NARA receives accurate information about agency declassification actions when records are transferred to NARA. NARA will provide guidance to the agencies about the requirements for notification of declassification actions on transferred records, box labeling, and identifying exempt information in the records.

(i) Use of approved declassification guides. Approved declassification guides may be used as a tool to assist in the exemption from automatic declassification of specific information as provided in section 3.4(d) of the Order. These guides must include additional pertinent detail relating to the exemptions described in section 3.4(b) of the Order, and follow the format required of declassification guides for systematic review as described in §2001.53 of this part. In order for such guides to be used in place of the identification of specific information within individual documents, the information to be exempted must be narrowly defined, with sufficient specificity to allow the user to identify the information with precision. Exemptions for general categories of information will not be acceptable.

The actual items to be exempted are specific documents. All such declassification guides used in conjunction with section 3.4(d) of the Order must be submitted to the Director of ISOO,
§ 2001.52 Systematic declassification review [3.5].

(a) Listing of declassification authorities. Agencies shall maintain a current listing of officials delegated declassification authority by name, position, or other identifier. If possible, this listing shall be unclassified.

(b) Responsibilities. Agencies shall establish systematic review programs for those records containing information that is exempt from automatic declassification. Agencies may also conduct systematic review of information contained in permanently valuable records that is less than 25 years old.

§ 2001.53 Declassification guides [3.5(b)].

(a) Preparation of declassification guides. Declassification guides shall be prepared to facilitate the declassification of information contained in records determined to be of permanent historical value. When it is sufficiently detailed and understandable, and identified for both purposes, a classification guide may also be used as a declassification guide.

(b) General content of declassification guides. Declassification guides shall, at a minimum:

(1) Identify the subject matter of the declassification guide;
(2) Identify the original declassification authority by name or personal identifier, and position;
(3) Provide the date of issuance or last review;
(4) State precisely the categories or elements of information:
   (i) To be declassified;
   (ii) To be downgraded;
   (iii) Not to be declassified.
(5) Identify any related file series that have been exempted from automatic declassification pursuant to section 3.4(c) of the Order;
(6) To the extent a guide is used in conjunction with the automatic declassification provisions in section 3.4 of the Order, state precisely the elements of information to be exempted from declassification to include:
   (i) The appropriate exemption category listed in section 3.4(b) of the Order, and, when citing the exemption category listed in section 3.4(b)(9) of the Order, specify the applicable statute, treaty or international agreement; and
   (ii) A date or event for declassification.
(c) External review. Agencies shall submit declassification guides for review to the Director of ISOO. To the extent such guides are used in conjunction with the automatic declassification provisions in section 3.4 of the Order, the Director shall submit them
for approval by the Interagency Security Classification Appeals Panel.

(d) Internal review and update. Agency declassification guides shall be reviewed and updated as circumstances require, but at least once every five years. Each agency shall maintain a list of its declassification guides in use.

§ 2001.54 Mandatory review for declassification [3.6, 3.7].

(a) U.S. originated information—(1) Receipt of requests. Each agency shall publish in the FEDERAL REGISTER the identity of the person(s) or office(s) to which mandatory declassification review requests should be addressed.

(2) Processing. (i) Requests for classified records in the custody of the originating agency. A valid mandatory declassification review request need not identify the requested information by date or title of the responsive records, but must be of sufficient specificity to allow agency personnel to locate the records containing the information sought with a reasonable amount of effort. In responding to mandatory declassification review requests, agencies shall either make a prompt declassification determination and notify the requester accordingly, or inform the requester of the additional time needed to process the request. Agencies shall ordinarily make a final determination within 180 days from the date of receipt. When information cannot be declassified in its entirety, agencies will make reasonable efforts to release, consistent with other applicable law, those declassified portions of the requested information that constitute a coherent segment. Upon denial of an initial request, the agency shall also notify the requester of the right of an administrative appeal, which must be filed within 60 days of receipt of the denial.

(ii) Requests for classified records in the custody of an agency other than the originating agency. When an agency receives a mandatory declassification review request for records in its possession that were originated by another agency, it shall refer the request and the pertinent records to the originating agency. However, if the originating agency has previously agreed that the custodial agency may review its records, the custodial agency shall review the requested records in accordance with declassification guides or guidelines provided by the originating agency. Upon receipt of a request from the referring agency, the originating agency shall process the request in accordance with this section. The originating agency shall communicate its declassification determination to the referring agency.

(iii) Appeals of denials of mandatory declassification review requests. The agency appellate authority shall normally make a determination within 60 working days following the receipt of an appeal. If additional time is required to make a determination, the agency appellate authority shall notify the requester of the additional time needed and provide the requester with the reason for the extension. The agency appellate authority shall notify the requester in writing of the final determination and of the reasons for any denial.

(iv) Appeals to the Interagency Security Classification Appeals Panel. In accordance with section 5.4 of the Order, the Interagency Security Classification Appeals Panel shall publish in the FEDERAL REGISTER no later than February 12, 1996, the rules and procedures for bringing mandatory declassification appeals before it.

(b) Foreign government information. Except as provided in this paragraph, agency heads shall process mandatory declassification review requests for classified records containing foreign government information in accordance with this section. The declassifying agency is the agency that initially received or classified the information. When foreign government information is being considered for declassification, the declassifying agency shall determine whether the information is subject to a treaty or international agreement that would prevent its declassification at that time. The declassifying agency shall also determine if another exemption under section 1.6(d) of the Order (other than section 1.6(b)(5)), such as the exemption that pertains to United States foreign relations, as previously agreed by the declassifying agency believes such

(a) Purpose. Under E.O. 12958, agencies reviewing records for declassification must facilitate the review of equities of other agencies contained in their records. Because agencies have a variety of processes for review and referral, common language and standards are needed to ensure clear, concise communication and coordinated action among all agencies involved in the referral process. Common language and standards are needed for declassification, exemption from automatic declassification, and proper marking of information subject to the automatic declassification provision of the Order. Consistent declassification of information through standardized procedures should result in lower cost and greater process efficiency, review accuracy, and the protection of the equities of all executive branch agencies.

(b) Applicability. These standards are binding on all executive branch agencies that create or handle classified information and are applicable to records covered under Section 3.4 of the Order. With respect to records reviewed prior to the issuance of these standards, deviations are acceptable as long as prior practice does not completely obstruct record referral.

(c) Responsibility. The senior agency official is responsible for the agency’s referral program. The senior agency official shall designate agency personnel to assist in carrying out this responsibility.

(d) Definitions. For the purpose of this section:

*Declassified or Declassification* means the authorized change in the status of information from classified information to unclassified information.

*Equity* means information originally classified by or under the control of an agency, as control is defined in section 1.1(b) of E.O. 12958.

Exempted means nomenclature and marking indicating information has been determined to fall within an enumerated exemption from automatic declassification under E.O. 12958.
Pass/fail (P/F) means a declassification technique that regards information at the full document level. Any exemptible portion of a document may result in exemption (failure) of the entire document. Documents that contain no exemptible information are passed and therefore declassified. Declassified documents may be subject to other FOIA exemptions other than the security exemption (b)(1), and the requirements placed by legal authorities governing Presidential holdings. Record means the statutory definition as provided under title 44 U.S.C. 3301 and 44 U.S.C. 2111, 2111 note, and 2201.

Redaction means a sanitization technique that involves removal (editing out) of exempted information from a document.

Tab means a narrow paper sleeve placed around a document or group of documents in such a way that it would be readily visible

(e) Approaches to declassification. The exchange of information between agencies and the final disposition of documents are affected by differences in the approaches to declassification. Agencies conducting pass/fail reviews may refer documents to agencies that redact. Actions taken by the sender and the recipient may differ as noted below:

(1) When referral is from a pass/fail agency to a pass/fail agency, both agencies conduct pass/fail reviews and annotate the classification or declassification decisions on the tabs and/or documents in accordance with NARA guidelines. The receiving agency should also notify the referring agency that the review has been completed.

(2) When referral is from a pass/fail agency to a redaction agency, the redaction agency is only required to conduct pass/fail reviews of documents referred by a pass/fail agency. If the redaction agency wishes to redact the document, it must do so on a copy of the referred document, then file the redacted version with the original. The redaction agency should also notify the pass/fail referring agency that the review has been completed.

(3) Referrals from redaction agencies to pass/fail agencies will be in the form of document copies. In the course of review the pass/fail agency may either pass or fail the document or its equities. Failed documents will be reviewed and redacted when practicable.

(4) Referrals between redaction agencies may result in redaction of any exemptible equities.

(f) Referral decisions. When agencies review documents only to the point at which exemptible information is identified, they must take one of the following actions to protect any other unidentified equities that may be in the unreviewed portions of the document:

(1) Complete a review of the document to identify other agency equities and notify those agencies; or

(2) Exempt the document and assign a Date/Event for automatic declassification, before which time they must provide timely notification to any equity agencies. Agencies reviewing previously exempted documents may apply a different exemption and new Date/Event for automatic declassification based upon the content of previously unreviewed equities.

(g) Unmarked or improperly marked documents. Agencies that find other agency information in unmarked or improperly marked documents that have been maintained and protected as classified information must afford those documents appropriate protection and tab or refer the documents as described in paragraph (h) of this section. Agencies must provide other pertinent information, if available, regarding additional copies or possible public disclosure.

(h) Means of Referral. The reviewing agency must communicate referrals to equity agencies. They may use either of the methods below:

(1) Full text referral. Agencies will make referrals on media and in a format mutually agreed to by the referring and receiving agencies. Each referral request will clearly identify the referring agency and may identify the sections or areas of the document containing the receiving agency’s equities and the requested action.

(2) Tab and notify.

(i) Agencies will use NARA-approved tabs and will clearly indicate on them the agency or agencies having equity in the document(s) held within the
§ 2001.55  
32 CFR Ch. XX (7–1–01 Edition)

tabs. Successive documents with identical equity(ies) may be grouped within a single tab. Documents with differing equities, or non-successive documents, must be tabbed individually. In general, document order may not be changed to facilitate tabbing. In cases where there are so many tabbed documents in a box that tabbing documents individually would seriously overfill the box, the reviewer may group documents under a single tab for each agency equity at the back of each file folder, or back of the box if there are no file folders.

(ii) Agency notification must include, at a minimum, the following information: the approximate volume of equity, the highest classification of documents, the exact location (to box level) of the documents so marked, and instructions related to access to the boxes containing the documents.

(iii) Agencies will acknowledge receipt of referral notifications. They should notify the agency that placed the tabs that the review is complete. Any additional equities noted in the review must be annotated on the tab and brought to the attention of the agency that tabbed the document so the tabbing agency can notify those newly identified agencies.

(i) [Reserved].

(j) Reviewed document marking. Consistency in marking is essential in the referral of significant numbers of documents under the Executive Order. Decisions made during review must be communicated clearly to all subsequent reviewers.

(1) Redactions must never be indicated on original documents, only on copies. Redaction agencies need a means of tracking the results of review (at the document level) by all reviewing agencies and a reason for each redaction.

(2) If only one exemption from declassification applies to all redacted portions of a document, the applicable exemption may be indicated on the front page of the redacted copy. If more than one exemption applies to a document, each redacted portion for which an exemption is asserted must be marked on the redacted copy.

(3) Redacted portions must be marked to indicate the agency and the number of the applicable exemption, for example, DIA25X1.

(4) Agencies reviewing a referred document must indicate on the tab, folder, or box the result of the review (i.e., exemption or declassification). The original document should be marked with the final action only by the agency responsible for the final declassification decision. Options include marking a copy of the document, marking the tab, notification as part of a transmittal, or marking the box or folder according to NARA guidelines. Automated agencies may forgo marking documents, provided the required information is maintained in an agency database and is accessible to other agencies. Exempt documents may be marked.

(i) Sample Exempted Document Stamp. Exempt documents may be stamped as shown in the following example:
(A) Normally, only one stamp should be placed on the document with any subsequent reviewing agencies adding their information to the stamp on the document, if possible. The stamp should not cover any writing on the document.

(B) Specific fields in the stamp must be completed as follows:

(1) Exemption Code: Agency(ies) ID and 25X plus exemption code(s).
(2) Date/Event: A specific date or event for declassification.
(3) Other Agency Equity: This line is used to track other agency equities and their review. The declassification authority enters "NONE" if no other agency equities are present, the identifiers of agencies with equity, or "TBD" (To be determined) if equities are unknown. Agency identifiers are crossed off as the reviews are completed and names may be added if additional equities are found.
(4) Reviewed by: Optional. If used, enter name or other personal identifier.
(5) Date: Enter date the action was taken.

(ii) Sample Stamp for Document Declassification. (A) When agencies mark declassified documents, the stamp must, at a minimum, include the information shown in the following example:

EXEMPTED PER E.O. 12958

Exemption Code: ____________
Date/Event _________________
Other Agency Equity: ___________
Reviewed By: ______ Date: _____

(B) Specific fields in the stamp must be completed as follows:

(1) Agency: Name of the agency.
(2) By: Name or personal identifier of the reviewer. (Optional)
(3) Date: Date the action was taken.

[64 FR 49389, Sept. 13, 1999; 64 FR 62113, Nov. 16, 1999; 65 FR 16320, Mar. 28, 2000]
§ 2001.60 Statistical reporting [5.3].

Each agency that creates or handles classified information shall report annually to the Director of ISOO statistics related to its security classification program. The Director shall solicit recommendations from the member agencies of the Security Policy Forum regarding the reporting requirements. The Director will instruct agencies what data elements are required, and how and when they are to be reported.

§ 2001.61 Accounting for costs [5.6(c)(8)].

(a) Information on the costs associated with the implementation of the Order will be collected from the agencies by the Office of Management and Budget (OMB). OMB will provide data to ISOO on the cost estimates for classification-related activities. ISOO will include these cost estimates in its annual report to the President. The agency senior official should work closely with the agency comptroller to ensure that the best estimates are collected.

(b) The Secretary of Defense, acting as the executive agent for the National Industrial Security Program under Executive Order 12829, and consistent with agreements entered into under section 202 of E.O. 12829, will collect cost estimates for classification-related activities of contractors, licensees, certificate holders, and grantees, and report them to ISOO annually. ISOO will include these cost estimates in its annual report to the President.

§ 2001.62 Effective date [6.2].

Part 2001 shall become effective October 14, 1995.

APPENDIX A TO PART 2001—INTERAGENCY SECURITY CLASSIFICATION APPEALS PANEL BYLAWS

ARTICLE I. PURPOSE

The purpose of the Interagency Security Classification Appeals Panel (ISCAP) and these bylaws is to fulfill the functions assigned to the ISCAP by Executive Order 12958, “Classified National Security Information.”
any member or the Executive Secretary. Acting through the Executive Secretary, the Chair will distribute the agenda and supporting materials to the members as soon as possible before a scheduled meeting.

F. Minutes. The Executive Secretary shall be responsible for the preparation of each meeting’s minutes, and the distribution of draft minutes to each member. The minutes will include a record of the members present at the meeting and the result of each vote. At the subsequent meeting of the ISCAP, the Chair will read or reference the draft minutes of the previous meeting. At that time the minutes will be corrected, as necessary, and approved by the membership and certified by the Chair. The approved minutes will be maintained among the records of the ISCAP.

ARTICLE V. VOTING

A. Motions. When a decision or recommendation of the ISCAP is required to resolve a matter before it, the Chair shall request or accept a motion for a vote. Any member, including the Chair, may make a motion for a vote. No second shall be required to bring any motion to a vote. A quorum must be present when a vote is taken.

B. Eligibility. Only the members, including the Chair, may vote on a motion before the ISCAP, with each agency or office represented having one vote.

C. Voting Procedures. Votes shall ordinarily be taken and tabulated by a show of hands.

D. Passing a Motion. In response to a motion, members may vote affirmatively, negatively, or abstain from voting. Except as otherwise provided in these bylaws, a motion passes when it receives a majority of affirmative votes of the members voting. However, in no instance will the ISCAP reverse an agency’s decision without the affirmative vote of at least a majority of the members present.

E. Votes in a Non-meeting Context. In extraordinary circumstances, the Chair may call for a vote of the membership outside the context of a formal ISCAP meeting. An alternate member may also participate in such a vote if the primary member cannot. The Executive Secretary shall record and retain such votes in a documentary form and immediately report the results to the Chair and other primary and alternate members.

ARTICLE VI. FIRST FUNCTION: APPEALS OF AGENCY DECISIONS REGARDING CLASSIFICATION CHALLENGES

In accordance with section 5.4(b) of the Order, the ISCAP shall decide on appeals by authorized persons who have filed classification challenges under section 1.9 of the Order.

A. Jurisdiction. The ISCAP will consider appeals from classification challenges that otherwise meet the standards of the Order if:
1. The appeal is filed in accordance with these bylaws.
2. The appellant has previously challenged the classification action at the agency that originated or is otherwise responsible for the information in question in accordance with the agency’s procedures or, if the agency has failed to establish procedures for classification challenges, by filing a written challenge directly with the agency head or designated senior agency official, as defined in section 1.1(j) of the Order.
3. The appellant has (a) received a final agency decision denying his or her challenge; or (b) Not received (i) an initial written response to the classification challenge from the agency within 120 days of its filing, or (ii) a written response to an internal agency appeal within 90 days of the filing of the appeal.
4. There is no action pending in the federal courts regarding the information in question; and
5. The information in question has not been the subject of review by the federal courts or the ISCAP within the past two years.

B. Addressing of Appeals. Appeals should be addressed to: Executive Secretary, Interagency Security Classification Appeals Panel, Attn: Classification Challenge Appeals, c/o Information Security Oversight Office, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Room SW, Washington, DC 20408.

The appeal must contain enough information for the Executive Secretary to be able to obtain all pertinent documents about the classification challenge from the affected agency. No classified information should be included within the initial appeal document. The Executive Secretary will arrange for the transmittal of classified information from the agency after receiving the appeal. If it is impossible for the appellant to file an appeal without including classified information, prior arrangements must be made by contacting the Information Security Oversight Office.

C. Timeliness of Appeals. An appeal to the ISCAP must be filed within 60 days of:
1. The date of the final agency decision; or
2. The agency’s failure to meet the time frames established in paragraph (A)(3)(b) of this Article.

D. Rejection of Appeal. If the Executive Secretary determines that the appeal does not meet the requirements of the Order or these bylaws, the Executive Secretary shall notify the appellant in writing that the appeal will not be considered by the ISCAP. The notification shall include an explanation of why the appeal is deficient.
E. Preparation. The Executive Secretary shall notify the Chair and the designated senior agency official(s) of the affected agency(ies) when an appeal is lodged. Under the direction of the ISCAP, the Executive Secretary shall supervise the preparation of an appeal file, pertinent portions of which will be presented to the members of the ISCAP for their review prior to a vote on the appeal. The appeal file will eventually include all records pertaining to the appeal.

F. Resolution of Appeals. The ISCAP may vote to affirm the agency’s decision, to reverse the agency’s decision in whole or in part, or to remand the matter to the agency for further consideration. A decision to reverse an agency’s decision requires the affirmative vote of at least a majority of the members present.

G. Notification. The Executive Secretary shall promptly notify in writing the appellant, the agency head, and designated senior agency official of the ISCAP’s decision.

H. Agency Appeals. Within 60 days of receipt of an ISCAP decision that reverses a final agency decision, the agency head may petition the President through the Assistant to the President for National Security Affairs to overrule the decision of the ISCAP.

I. Protection of Classified Information. All persons involved in the appeal shall make every effort to minimize the inclusion of classified information in the appeal file. Any classified information contained in the appeal file shall be handled and protected in accordance with the Order and its implementing directives. Information being challenged for classification shall remain classified unless and until a final decision is made to declassify it. In no instance will the ISCAP declassify properly classified information solely because of an agency’s failure to prescribe or follow appropriate procedures for handling classification challenges.

J. Maintenance of File. The Executive Secretary shall maintain the appeal file among the records of the ISCAP.

ARTICLE VII. SECOND FUNCTION: REVIEW OF AGENCY EXEMPTIONS FROM AUTOMATIC DECLASSIFICATION

In accordance with section 5.4(b) of the Order, the ISCAP shall approve, deny or amend agency exemptions from automatic declassification as provided in section 3.4(d) of the Order.

A. Agency Notification of Exemptions. The agency head or designated senior agency official shall notify the Executive Secretary of agency exemptions in accordance with the requirements of the Order and its implementing directives. Agencies shall provide any additional information or justification that the Executive Secretary believes is necessary or helpful in order for the ISCAP to review and decide on the exemption. The agency head may seek relief from the ISCAP from any request for information by the Executive Secretary to which the agency objects.

B. Preparation. The Executive Secretary shall notify the Chair of the agency submission. At the direction of the ISCAP, the Executive Secretary shall supervise the preparation of an exemption file, pertinent portions of which will be presented to the members of the ISCAP for their review prior to a vote on the exemptions. The exemption file will eventually include all records pertaining to the ISCAP’s consideration of the agency’s exemptions.

C. Resolution. The ISCAP may vote to approve an agency exemption, to deny an agency exemption, to amend an agency exemption, or to remand the matter to the agency for further consideration. A decision to deny or amend an agency exemption requires the affirmative vote of a majority of the members present.

D. Notification. The Executive Secretary shall promptly notify in writing the agency head and designated senior agency official of the ISCAP’s decision.

E. Agency Appeals. Within 60 days of receipt of an ISCAP decision that denies or amends an agency exemption, the agency head may petition the President through the Assistant to the President for National Security Affairs to overrule the decision of the ISCAP.

F. Protection of Classified Information. Any classified information contained in the exemption file shall be handled and protected in accordance with the Order and its implementing directives. Information that the agency maintains is exempt from declassification shall remain classified unless and until a final decision is made to declassify it.

G. Maintenance of File. The Executive Secretary shall maintain the exemption file among the records of the ISCAP.

ARTICLE VIII. THIRD FUNCTION: APPEALS OF AGENCY DECISIONS DENYING DECLASSIFICATION UNDER MANDATORY REVIEW PROVISIONS OF THE ORDER

In accordance with section 5.4(b) of the Order, the ISCAP shall decide on appeals by parties whose requests for declassification under section 3.6 of the Order have been denied.

A. Jurisdiction. The ISCAP will consider appeals from denials of mandatory review for declassification requests that otherwise meet the standards of the Order if:

1. The appeal is filed in accordance with these bylaws;

2. The appellant has previously filed a request for mandatory declassification review at the agency that originated or is otherwise responsible for the information in question in accordance with the agency’s procedures or, if the agency has failed to establish procedures for mandatory review, by filing a
written request directly with the agency head or designated senior agency official;

3. The appellant has
   (a) Received a final agency decision denying his or her request; or
   (b) Not received (i) an initial decision on the request for mandatory declassification review from the agency within one year of its filing, or (ii) a final decision on an internal agency appeal within 180 days of the filing of the appeal;

4. There is no action pending in the federal courts regarding the information in question; and

5. The information in question has not been the subject of review by the federal courts or the ISCAP within the past two years.

B. Addressing of Appeals. Appeals should be addressed to: Executive Secretary, Interagency Security Classification Appeals Panel, Attn: Mandatory Review Appeals, c/o Information Security Oversight Office, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Room SW 501, Washington, DC 20408.

The appeal must contain enough information for the Executive Secretary to be able to obtain all pertinent documents about the request for mandatory declassification review from the affected agency.

C. Timeliness of Appeals. An appeal to the ISCAP must be filed within 60 days of:
   1. The date of the final agency decision; or
   2. The agency’s failure to meet the time frames established in paragraph (A)(3)(b) of this Article.

D. Rejection of Appeal. If the Executive Secretary determines that the appeal does not meet the requirements of the Order or these bylaws, the Executive Secretary shall notify the appellant in writing that the appeal will not be considered by the ISCAP. The notification shall include an explanation of why the appeal is deficient.

E. Preparation. The Executive Secretary shall notify the Chair and the designated senior agency official(s) of the affected agency(ies) when an appeal is lodged. Under the direction of the ISCAP, the Executive Secretary shall supervise the preparation of an appeal file, pertinent portions of which will be presented to the members of the ISCAP for their review prior to a vote on the appeal. The appeal file will eventually include all records pertaining to the appeal.

F. Narrowing Appeals. To expedite the resolution of appeals and minimize backlogs, the Executive Secretary is authorized to consult with appellants with the objective of narrowing or prioritizing the information subject to the appeal.

G. Resolution of Appeals. The ISCAP may vote to affirm the agency’s decision, to reverse the agency’s decision in whole or in part, or to remand the matter to the agency for further consideration. A decision to reverse an agency’s decision requires the affirmative vote of at least a majority of the members present.

H. Notification. The Executive Secretary shall promptly notify in writing the appellant, the agency head, and designated senior agency official of the ISCAP’s decision.

I. Agency Appeals. Within 60 days of receipt of an ISCAP decision that reverses a final agency decision, the agency head may petition the President through the Assistant to the President for National Security Affairs to overrule the decision of the ISCAP.

J. Protection of Classified Information. All persons involved in the appeal shall make every effort to minimize the inclusion of any classified information in the appeal file. Any classified information contained in the appeal file shall be handled and protected in accordance with the Order and its implementing directives. Information that is subject to an appeal from an agency decision denying declassification under the mandatory review provisions of the Order shall remain classified unless and until a final decision is made to declassify it. In no instance will the ISCAP declassify properly classified information solely because of an agency’s failure to prescribe or follow appropriate procedures for handling mandatory review for declassification requests and appeals.

K. Maintenance of File. The Executive Secretary shall maintain the appeal file among the records of the ISCAP. All information declassified as a result of ISCAP action shall be available for inclusion within the database established by the Archivist of the United States in accordance with section 3.8 of the Order.

ARTICLE IX. ADDITIONAL FUNCTIONS

In its consideration of the matters before it, the ISCAP shall perform such additional advisory functions as are consistent with and supportive of the successful implementation of the Order.

ARTICLE X. SUPPORT STAFF

As provided in section 5.4(a) of the Order, the Director of the Information Security Oversight Office will serve as Executive Secretary to the ISCAP, and the staff of the Information Security Oversight Office will provide program and administrative support for the ISCAP. The Executive Secretary will supervise the staff in this function pursuant to the direction of the Chair and ISCAP. On an as-needed basis, the ISCAP may seek detailees from its member agencies to augment the staff of the Information Security Oversight Office in support of the ISCAP.

ARTICLE XI. RECORDS

A. Integrity of ISCAP Records. The Executive Secretary shall maintain separately documentary materials, regardless of their
physical form or characteristics, that are produced by or presented to the ISCAP or its staff in the performance of the ISCAP’s functions, consistent with applicable federal law.

B. Referrals. Any Freedom of Information Act request or other access request for a document that originated within an agency other than the ISCAP shall be referred to that agency for processing.

ARTICLE XII. ANNUAL REPORTS TO THE PRESIDENT

The ISCAP has been established for the sole purpose of advising and assisting the President in the discharge of his constitutional and discretionary authority to protect the national security of the United States (section 5.4(e) of the Order). As provided in section 5.4(a) of the Order, pertinent information and data about the activities of the ISCAP shall be included in the Reports to the President issued by the Information Security Oversight Office. The Chair, in coordination with the other members of the ISCAP and the Executive Secretary, shall determine what information and data to include in each Report.

ARTICLE XIII. APPROVAL, AMENDMENT, AND PUBLICATION OF BYLAWS

The approval and amendment of these bylaws shall require the affirmative vote of at least four of the ISCAP’s members. In accordance with the Order, the Executive Secretary shall submit the approved bylaws and their amendments for publication in the Federal Register.

[61 FR 10854, Mar. 15, 1996]
States Government or its agents, and has been incorporated into records determined by the Archivist of the United States to have permanent value.

(b) Atomic energy information (including information originated prior to 1947 and not marked as such: information received from the United Kingdom or Canada marked “Atomic,” or information received from NATO marked “Atomic”) that is defined and identified as “Restricted Data” or “Formerly Restricted Data” in Sections 11y and 142d of the Atomic Energy Act of 1954, as amended, is outside the scope of these guidelines. Such information is not subject to systematic review and may not be automatically downgraded or declassified. Any document containing information within the definition of “Restricted Data” or “Formerly Restricted Data” that is not so marked shall be referred to the Department of Energy Office of Classification for review and appropriate marking, except for licensing and related regulatory matters which shall be referred to the Division of Security, U.S. Nuclear Regulatory Commission.

§ 2002.4 Responsibilities.

(a) Foreign government information transferred to the General Services Administration for accession into the National Archives of the United States shall be reviewed by the Archivist of the United States for declassification in accordance with Executive Order 12356, the directives of the Information Security Oversight Office, these general guidelines, and any specific systematic declassification guidelines provided by the agency with declassification authority over the information.

(b) Accessioned foreign government information in file series concerning intelligence activities (including special activities), or intelligence sources or methods created after 1945, and cryptology records created after 1945, shall be subject to review by the Archivist for declassification as it becomes 50 years old. All other accessioned foreign government information shall be subject to review by the Archivist for declassification as it becomes 30 years old.

(c) Agency heads who have declassification jurisdiction over permanently valuable foreign government information in agency records not yet accessioned into the National Archives of the United States are encouraged to conduct systematic declassification reviews of it in accordance with the time limits specified in paragraph (b) of this section. These reviews shall comply with the provisions of Executive Order 12356, the directives of the Information Security Oversight Office, these general guidelines, and specific agency systematic review guidelines that have been issued in consultation with the Archivist of the United States and the ISOO Director.

(d) Foreign government information falling within any of the categories listed in §2002.6 of these guidelines shall be declassified or downgraded only upon specific authorization of the agency that has declassification authority over it. Such information shall be referred to the responsible agency(ies) for review. Information so referred shall remain classified until the responsible agency(ies) has declassified it. If the responsible agency cannot be readily identified from the document or material, referral shall be made in accordance with §2002.7 of these guidelines.

(e) When required, the agency having declassification authority over the information shall consult with foreign governments concerning its proposed declassification.

§ 2002.5 Effect of publication.

(a) Foreign government information shall be considered declassified when published in an unclassified United States Government executive branch publication (e.g., the Foreign Relations of the United States series) or when cleared for publication by United States Government executive branch officials authorized to declassify the information; or if officially published as unclassified by the foreign government(s) or international organization(s) of governments that furnished the information unless the fact of the U.S. Government’s possession of the information requires continued protection.
§ 2002.6 Categories requiring item-by-item review.

Foreign government information falling into the following categories require item-by-item review for declassification by agencies having declassification authority over it.

(a) Information exempted from declassification under any joint arrangement evidenced by an exchange of letters, memorandum of understanding, or other written record, with the foreign government or international organization of governments, or element(s) thereof, that furnished the information. Questions concerning the existence or applicability of such arrangements shall be referred to the agency or agencies having declassification authority over the records under review.

(b) Information related to the safeguarding of nuclear materials or facilities, foreign and domestic, including but not necessarily limited to vulnerabilities and vulnerability assessments of nuclear facilities and Special Nuclear Material.

(c) Nuclear arms control information (see also paragraph (k) of this section).

(d) Information regarding foreign nuclear programs (other than “Restricted Data” and “Formerly Restricted Data”), such as:

(1) Nuclear weapons testing.

(2) Nuclear weapons storage and stockpile.

(3) Nuclear weapons effects, hardness, and vulnerability.

(4) Nuclear weapons safety.

(5) Cooperation in nuclear programs including, but not limited to, peaceful and military applications of nuclear energy.

(6) Exploration, production and import of uranium and thorium from foreign countries.

(e) Information concerning intelligence activities (including special activities) or intelligence or counterintelligence sources or methods including but not limited to intelligence, counterintelligence and covert action programs, plans, policies, operations, or assessments; or which would reveal or identify:

(1) Any present, past or prospective undercover personnel, installation, unit, or clandestine human agent, of the United States or a foreign government;

(2) Any present, past or prospective method, procedure, mode, technique or requirement used or being developed by the United States or by foreign governments, individually or in combination to produce, acquire, transmit, analyze, correlate, assess, evaluate or process intelligence or counterintelligence, or to support an intelligence or counterintelligence source, operation, or activity;

(3) The present, past or proposed existence of any joint United States and foreign government intelligence, counterintelligence, or covert action activity or facility, or the nature thereof.

(For guidance on protecting United States foreign intelligence liaison relationships, see Director of Central Intelligence Directive “Security Classification Guidance and Foreign Security Services,” effective January 18, 1982.)

(f) Information that could result in or lead to actions which would place an individual in jeopardy attributable to disclosure of the information, including but not limited to:

(1) Information identifying any individual or organization as a confidential source of intelligence or counterintelligence.
(2) Information revealing the identity of an intelligence or covert action agent or agents.

(3) Information identifying any individual or organization used to develop or support intelligence, counterintelligence, or covert action agents, sources, or activities.

(g) Information about foreign individuals, organizations or events which if disclosed, could be expected to:
   (1) Adversely affect a foreign country’s or international organization’s present or future relations with the United States.
   (2) Adversely affect present or future confidential exchanges between the United States and any foreign government or international organization of governments.

(h) Information related to plans (whether executed or not, whether presented in whole or in part), programs, operations, negotiations, and assessments shared by one or several foreign governments with the United States, including but not limited to those involving the territory, political regime or government of another country, and which if disclosed could be expected to adversely affect the conduct of U.S. foreign policy or the conduct of another country’s foreign policy with respect to a third country or countries. This item would include contingency plans, plans for covert political, military or paramilitary activities or operations by a foreign government acting alone or jointly with the United States Government, and positions or actions taken by a foreign government alone or jointly with the United States concerning border disputes or other territorial issues.

(i) Information concerning arrangements with respect to foreign basing of cryptologic operations and/or foreign policy considerations relating thereto.

(j) Scientific information such as that concerning space, energy, climatology, communications, maritime, undersea, and polar projects, the disclosure of which could be expected to adversely affect current and/or future exchanges of such information between the United States and any foreign governments or international organizations of governments.

(k) Information on foreign policy aspects of nuclear matters, the disclosure of which could be expected to adversely affect cooperation between one or more foreign governments and the United States Government.

(l) Information concerning physical security arrangements, plans or equipment for safeguarding United States Government embassies, missions or facilities abroad, the disclosure of which could reasonably be expected to increase the vulnerability of such facilities to penetration, attack, take-over, and the like.

(m) Nuclear propulsion information.

(n) Information concerning the establishment, operation, and support of nuclear detection systems.

(o) Information concerning or revealing military or paramilitary escape, evasion, cover or deception plans, procedures, and techniques, whether executed or not.

(p) Information which could adversely affect the current or future usefulness of military defense policies, programs, weapons systems, operations, or plans.

(q) Information concerning research, development, testing and evaluation of chemical and biological weapons and defense systems; specific identification of chemical and biological agents and munitions; and chemical and biological warfare plans.

(r) Technical information concerning weapons systems and military equipment that reveals the capabilities, limitations, or vulnerabilities of such systems, or equipment that could be exploited to destroy, counter, render ineffective or neutralize such weapons or equipment.

(s) Cryptologic information, including cryptologic sources and methods, currently in use. This includes information concerning or revealing the processes, techniques, operations, and scope of signals intelligence comprising communications intelligence, electronics intelligence, and telemetry intelligence, the cryptosecurity and emission security components of communications security, and the communications portion of cover and deception plans.

(t) Information concerning electronic warfare (electronic warfare support...
§ 2002.7 Referral and decision.

(a) When the identity of the agencies having declassification authority over foreign government information is not apparent to the agency holding the information, or when reviewing officials do not possess the requisite expertise, the information shall be referred for review and a declassification determination as follows:

(1) Categories 2002.6 (b) through (d), Department of Energy or Nuclear Regulatory Commission (as appropriate).

(2) Categories 2002.6 (e) and (f), Central Intelligence Agency.

(3) Categories 2002.6 (g) through (l), Department of State.

(4) Categories 2002.6 (m) through (t), Department of Defense.

(5) Categories 2002.6 (u) and (w), Department of the Treasury.

(6) Categories 2002.6 (x) through (bb), National Security Council.

(b) Referrals to agencies shall include copies of the documents containing the
foreign government information. Agencies shall review the referred documents and promptly notify the Archivist of the United States of the declassification determination. Forwarded copies of the documents shall be marked to reflect any downgrading or declassification action and shall be returned to the National Archives.

§ 2002.8 Downgrading.

Foreign government information classified “Top Secret” may be downgraded to “Secret” after 30 years unless the agency with declassification authority over it determines on its own, or after consultation, as appropriate, with the foreign government or international organization of governments which furnished the information, that it requires continued protection at the “Top Secret” level.

PART 2003—NATIONAL SECURITY INFORMATION—STANDARD FORMS

Subpart A—General Provisions

Sec. 2003.1 Purpose.
2003.2 Scope.
2003.3 Waivers.
2003.4 Availability.

Subpart B—Prescribed Forms

2003.24 TOP SECRET Cover Sheet: SF 703.
2003.25 SECRET Cover Sheet: SF 704.
2003.26 CONFIDENTIAL Cover Sheet: SF 705.
2003.27 TOP SECRET Label SF 706.
2003.28 SECRET Label SF 707.
2003.29 CONFIDENTIAL Label SF 708.
2003.30 CLASSIFIED Label SF 709.
2003.31 UNCLASSIFIED Label SF 710.
2003.32 DATA DESCRIPTOR Label SF 711.

AUTHORITY: Sec. 5.2(b)(7) of E.O. 12356.

§ 2003.1 Purpose.

The purpose of the standard forms prescribed in subpart B is to promote the implementation of the government-wide information security program. Standard forms are prescribed when their use will enhance the protection of national security information and/or will reduce the costs associated with its protection.

[48 FR 40649, Sept. 9, 1983]

§ 2003.2 Scope.

The use of the standard forms prescribed in subpart B is mandatory for all departments, and independent agencies or offices of the executive branch that create and/or handle national security information. As appropriate, these departments, and independent agencies or offices may mandate the use of these forms by their contractors, licensees or grantees who are authorized access to national security information.

[48 FR 40649, Sept. 9, 1983]

§ 2003.3 Waivers.

Except as specifically provided, waivers from the mandatory use of the standard forms prescribed in subpart B may be granted only by the Director of ISOO.

[52 FR 10190, Mar. 30, 1987]

§ 2003.4 Availability.

Agencies may obtain copies of the standard forms prescribed in subpart B by ordering through FEDSTRIP/ MILSTRIP or from the General Services Administration (GSA) Customer Supply Centers (CSCs). The national stock number of each form is cited with its description in subpart B.

[50 FR 51826, Dec. 19, 1985]
§ 2003.20

Subpart B—Prescribed Forms


(a) SF 312, SF 189, and SF 189-A are nondisclosure agreements between the United States and an individual. The prior execution of at least one of these agreements, as appropriate, by an individual is necessary before the United States Government may grant that individual access to classified information. From the effective date of this rule, September 29, 1988, the SF 312 shall be used in lieu of both the SF 189 and the SF 189-A for this purpose. In any instance in which the language in the SF 312 differs from the language in either the SF 189 or SF 189-A, agency heads shall interpret and enforce the SF 189 or SF 189-A in a manner that is fully consistent with the interpretation and enforcement of the SF 312.

(b) All employees of executive branch departments, and independent agencies or offices, who have not previously signed the SF 189, must sign the SF 312 before being granted access to classified information. An employee who has previously signed the SF 189 is permitted, at his or her own choosing, to substitute a signed SF 312 for the SF 189. In these instances, agencies shall take all reasonable steps to dispose of the superseded nondisclosure agreement or to indicate on it that it has been superseded.

(c) All Government contractor, licensee, grantee, or other non-Government personnel requiring access to classified information in the performance of their duties, who have not previously signed either the SF 189 or the SF 189-A, must sign the SF 312 before being granted access to classified information. An employee who has previously signed either the SF 189 or the SF 189-A is permitted, at his or her own choosing, to substitute a signed SF 312 for the SF 189 or the SF 189-A. In these instances, agencies shall take all reasonable steps to dispose of the superseded nondisclosure agreement or to indicate on it that it has been superseded.

(d) Agencies may require other persons, who are not included under paragraphs (b) or (c) of this section, and who have not previously signed either the SF 189 or the SF 189-A, to execute SF 312 before receiving access to classified information. A person in such circumstances who has previously signed either the SF 189 or the SF 189-A is permitted, at his or her own choosing, to substitute a signed SF 312 for either the SF 189 or the SF 189-A. In these instances, agencies shall take all reasonable steps to dispose of the superseded nondisclosure agreement or to indicate on it that it has been superseded.

(e) The use of the “Security Debriefing Acknowledgement” portion of the SF 312 is optional at the discretion of the implementing agency.

(f) An authorized representative of a contractor, licensee, grantee, or other non-Government organization, acting as a designated agent of the United States, may witness the execution of the SF 312 by another non-Government employee, and may accept it on behalf of the United States. Also, an employee of a United States agency may witness the execution of the SF 312 by an employee, contractor, licensee or grantee of another United States agency, provided that an authorized United States Government official or, for non-Government employees only, a designated agent of the United States subsequently accepts by signature the SF 312 on behalf of the United States.

(g) The provisions of the SF 312, the SF 189, and the SF 189-A do not supersede the provisions of section 2302, title 5, United States Code, which pertain to the protected disclosure of information by Government employees, or any other laws of the United States.

(h)(1) Modification of the SF 189. The second sentence of paragraph 1 of every executed copy of the SF 189 is clarified to read:

As used in this Agreement, classified information is marked or unmarked classified information, including oral communications, that is classified under the standards of Executive Order 12356, or under any other Executive order or statute that prohibits the unauthorized disclosure of information in the interest of national security; and unclassified information that meets the standards
for classification and is in the process of a classification determination as provided in sections 1.1(c) and 1.2(e) of Executive Order 12356, or under any other Executive order or statute that requires protection for such information in the interest of national security.

(2) Scope of “classified information”. As used in the SF 312, the SF 189, and the SF 189–A, “classified information” is marked or unmarked classified information, including oral communications; and unclassified information that meets the standards for classification and is in the process of a classification determination, as provided in sections 1.1(c) and 1.2(e) of Executive Order 12356 or any other statute or Executive order that requires interim protection for certain information while a classification determination is pending. “ Classified information” does not include unclassified information that may be subject to possible classification and is in the process of a classification determination.

(3) Basis for liability. A party to the SF 312, SF 189 or SF 189–A may be liable for disclosing “classified information” only if he or she knows or reasonably should know that: (i) The marked or unmarked information is classified, or meets the standards for classification and is in the process of a classification determination; and (ii) his or her action will result, or reasonably could result in the unauthorized disclosure of that information.

In no instance may a party to the SF 312, SF 189 or SF 189–A be liable for violating its nondisclosure provisions by disclosing information when, at the time of the disclosure, there is no basis to suggest, other than pure speculation, that the information is classified or in the process of a classification determination.

(4) Modification of the SF 312, SF 189 and SF 189–A.

(i) Each executed copy of the SF 312, SF 189 and SF 189–A, whether executed prior to or after the publication of this rule, is amended to include the following paragraphs 10 and 11.

10. These restrictions are consistent with and do not supersede, conflict with or otherwise alter the employee obligations, rights or liabilities created by Executive Order 12356; section 7211 of title 5 U.S.C. (governing disclosures to Congress); section 1034 of title 10 U.S.C., as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5 U.S.C., as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents), and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18 U.S.C. and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. section 783(b)). The definitions, requirements, obligations, rights, sanctions and liabilities created by said Executive Order and listed statutes are incorporated into this Agreement and are controlling.

11. I have read this Agreement carefully and my questions, if any, have been answered. I acknowledge that the briefing officer has made available to me the Executive Order and statutes referenced in this Agreement and its implementing regulation (32 CFR 2003.20) so that I may read them at this time, if I so choose.

(ii) The first sentence of paragraph 7 of each executed copy of the SF 312, SF 189 and SF 189–A, whether executed prior to or after the publication of this rule, is amended to read:

I understand that all classified information to which I have access or may obtain access by signing this Agreement is now and will remain the property of, or under the control of the United States Government unless and until otherwise determined by an authorized official or final ruling of a court of law.

The second sentence of paragraph 7 of each executed copy of the SF 312 (September 1988 version), SF 189 and SF 189–A, which reads, “I do not now, nor will I ever, possess any right, interest, title or claim whatsoever to such information,” and whether executed prior to or after the publication of this rule, is deleted.

(1) Points of clarification. (1) As used in paragraph 3 of SF 189 and SF 189–A, the word “indirect” refers to any situation in which the knowing, willful or negligent action of a party to the agreement results in the unauthorized disclosure of classified information even though the party to the agreement does not directly communicate, deliver or transmit classified information to a
§ 2003.21  
32 CFR Ch. XX (7-1-01 Edition)

person who is not authorized to receive it.

(2) As used in paragraph 7 of SF 189, “information” refers to “classified information,” exclusively.

(3) As used in the third sentence of paragraph 7 of SF 189 and SF 189-A, the words “all materials which have, or may have, come into my possession,” refer to “all classified materials which have or may come into my possession,” exclusively.

(j) Each agency must retain its executed copies of the SF 312, SF 189, and SF 189-A in file systems from which an agreement can be expeditiously retrieved in the event that the United States must seek its enforcement or a subsequent employer must confirm its prior execution. The original, or a legally enforceable facsimile that is retained in lieu of the original, such as microfiche, microfilm, computer disk, or electronic storage medium, must be retained for 50 years following its date of execution. For agreements executed by civilian employees of the United States Government, an agency may store the executed copy of the SF 312 and SF 189 in the United States Office of Personnel Management’s Official Personnel Folder (OPF) as a long-term (right side) document for that employee. An agency may permit its contractors, licensees and grantees to retain the executed agreements of their employees during the time of employment. Upon the termination of employment, the contractors, licensees or grantee shall deliver the original or legally enforceable facsimile of the executed SF 312, SF 189 or SF 189-A of that employee to the Government agency primarily responsible for his or her classified work. A contractor, licensee or grantee of an agency participating in the Defense Industrial Security Program shall deliver the copy or legally enforceable facsimile of the executed SF 312, SF 189 or SF 189-A to a designated employee to the Defense Industrial Security Clearance Office. Each agency shall inform ISOO of the file systems that it uses to store these agreements for each category of affected individuals.

(k) Only the National Security Council may grant an agency’s request for a waiver from the use of the SF 312. To apply for a waiver, an agency must submit its proposed alternative non-disclosure agreement to the Director of ISOO, along with a justification for its use. The Director of ISOO will request a determination about the alternative agreement’s enforceability from the Department of Justice and provide a recommendation to the National Security Council. An agency that has previously received a waiver from the use of the SF 189 or the SF 189-A need not seek a waiver from the use of the SF 312.

(1) The national stock number for the SF 312 is 7540-01-280-5499.


(a) SF 700 provides the names, addresses and telephone numbers of employees who are to be contacted if the security container to which the form pertains is found open and unattended. The form also includes the means to maintain a current record of the security container’s combination and provides the envelope to be used to forward this information to the appropriate agency activity or official.

(b) SF 700 shall be used in all situations that call for the use of a security container information form. Agencywide use of SF 700 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) Parts 2 and 2A of each completed copy of SF 700 shall be classified at the highest level of classification of the information authorized for storage in the security container. A new SF 700 must be completed each time the combination to the security container is changed as required by applicable executive order(s), statute(s) or implementing security regulations.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant an agency’s application for a waiver from the use of SF 700. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The ISOO Director
(a) SF 701 provides a systematic means to make a thorough end-of-day security inspection for a particular work area and to allow for employee accountability in the event that irregularities are discovered.
(b) SF 701 shall be used in all situations that call for the use of an activity security checklist. Agency-wide use of SF 701 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.
(c) Completion, storage and disposition of SF 701 will be in accordance with each agency’s security regulations.
(d) Only the Director of the Information Security Oversight Office (ISOO) may grant an agency’s application for a waiver from the use of SF 701. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The ISOO Director will review the request and notify the agency of the decision.
(e) The national stock number for the SF 701 is 7540–01–213–7899.

(a) SF 702 provides a record of the names and times that persons have opened, closed or checked a particular container that holds classified information.
(b) SF 702 shall be used in all situations that call for the use of a security container check sheet. Agency-wide use of SF 702 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.
(c) Completion, storage and disposal of SF 702 will be in accordance with each agency’s security regulations.
(d) Only the Director of the Information Security Oversight Office (ISOO) may grant an agency’s application for a waiver from the use of SF 702. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The ISOO Director will review the request and notify the agency of the decision.
(e) The national stock number of the SF 702 is 7540–01–213–7900.

§ 2003.24 TOP SECRET Cover Sheet: SF 703.
(a) SF 703 serves as a shield to protect TOP SECRET classified information from inadvertent disclosure and to alert observers that TOP SECRET information is attached to it.
(b) SF 703 shall be used in all situations that call for the use of a TOP SECRET cover sheet. Agency-wide use of SF 703 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.
(c) SF 703 is affixed to the top of the TOP SECRET document and remains attached until the document is destroyed. At the time of destruction, SF 703 is removed and, depending upon its condition, reused.
(d) Only the Director of the Information Security Oversight Office (ISOO) may grant any agency’s application for a waiver from the use of SF 703. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The ISOO Director will review the request and notify the agency of the decision.
(e) The national stock number of the SF 703 is 7540–01–213–7901.

§ 2003.25 SECRET Cover Sheet: SF 704.
(a) SF 704 serves as a shield to protect SECRET classified information from inadvertent disclosure and to alert observers that SECRET information is attached to it.
(b) SF 704 shall be used in all situations that call for the use of a SECRET cover sheet. Agency-wide use of SF 704 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.
§ 2003.26 CONFIDENTIAL Cover Sheet: SF 705.

(a) SF 705 serves as a shield to protect CONFIDENTIAL classified information from inadvertent disclosure and to alert observers that CONFIDENTIAL information is attached to it.

(b) SF 705 shall be used in all situations that call for the use of a CONFIDENTIAL cover sheet. Agency-wide use of SF 705 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) SF 705 is affixed to the top of the CONFIDENTIAL document and remains attached until the document is destroyed. At the time of destruction, SF 705 is removed and, depending upon its condition, reused.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant any agency’s application for a waiver from the use of SF 705. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The ISOO Director will review the request and notify the agency of the decision.

(e) The national stock number for the SF 705 is 7540–01–213–7903.

[50 FR 51827, Dec. 19, 1985]

§ 2003.28 SECRET Label SF 707.

(a) SF 707 is used to identify and protect automatic data processing (ADP) media and other media that contain SECRET information. SF 707 is used instead of the SF 704 for media other than documents.

(b) SF 707 shall be used in all situations that call for the use of a TOP SECRET Label. Agency-wide use of SF 707 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) SF 707 is affixed to the medium containing TOP SECRET information in a manner that would not adversely affect operation of equipment in which the medium is used. Once the Label has been applied, it cannot be removed.

(d) Only the Director of ISOO may grant a waiver from the use of SF 707. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The Director of ISOO will review the request and notify the agency of the decision.

(e) The national stock number for the SF 707 is 7540–01–207–5536.

[52 FR 10190, Mar. 30, 1987]
§ 2003.29 CONFIDENTIAL Label SF 708.

(a) SF 708 is used to identify and protect automatic data processing (ADP) media and other media that contain CONFIDENTIAL information. SF 708 is used instead of the SF 705 for media other than documents.

(b) SF 708 shall be used in all situations that call for the use of a CONFIDENTIAL Label. Agency-wide use of SF 708 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) SF 708 is affixed to the medium containing CONFIDENTIAL information in a manner that would not adversely affect operation of equipment in which the medium is used. Once the Label has been applied, it cannot be removed.

(d) Only the Director of ISOO may grant a waiver from the use of SF 708. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The Director of ISOO will review the request and notify the agency of the decision.

(e) The national stock number of the SF 709 is 7540–01–207–5538.
[52 FR 10190, Mar. 30, 1987]

§ 2003.30 CLASSIFIED Label SF 709.

(a) SF 709 is used to identify and protect automatic data processing (ADP) media and other media that contain classified information pending a determination by the classifier of the specific classification level of the information.

(b) SF 709 shall be used in all situations that require the use of a CLASSIFIED Label. Agency-wide use of SF 709 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) SF 709 is affixed to the medium containing classified information in a manner that would not adversely affect operation of equipment in which the medium is used. Once the Label has been applied, it cannot be removed. When a classifier has made a determination of the specific level of classification of the information contained on the medium, either SF 706, SF 707, or SF 708 shall be affixed on top of SF 709 so that only the SF 706, SF 707, or SF 708 is visible.

(d) Only the Director of ISOO may grant a waiver from the use of SF 709. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The Director of ISOO will review the request and notify the agency of the decision.

(e) The national stock number of the SF 709 is 7540–01–207–5540.
[52 FR 10190, Mar. 30, 1987]

§ 2003.31 UNCLASSIFIED Label SF 710.

(a) In a mixed environment in which classified and unclassified information are being processed or stored, SF 710 is used to identify automatic data processing (ADP) media and other media that contain unclassified information. Its function is to aid in distinguishing among those media that contain either classified or unclassified information in a mixed environment.

(b) SF 710 shall be used in all situations that require the use of an UNCLASSIFIED Label. Agency-wide use of SF 710 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) SF 710 is affixed to the medium containing unclassified information in a manner that would not adversely affect operation of equipment in which the medium is used. Once the Label has been applied, it cannot be removed. However, the label is small enough so that it can be wholly covered by a SF 706, SF 707, SF 708 or SF 709 if the medium subsequently contains classified information.

(d) Only the Director of ISOO may grant a waiver from the use of SF 710. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The Director of ISOO will review the request and notify the agency of the decision.

(e) The national stock number of the SF 710 is 7540–01–207–5539.
[52 FR 10191, Mar. 30, 1987]
§ 2003.32 DATA DESCRIPTOR Label SF 711.

(a) SF 711 is used to identify additional safeguarding controls that pertain to classified information that is stored or contained on automatic data processing (ADP) or other media.

(b) SF 711 shall be used in all situations that require the use of a DATA DESCRIPTOR Label. Agency-wide use of SF 711 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) SF 711 is affixed to the ADP medium containing classified information in a manner that would not adversely affect operation of equipment in which the medium is used. SF 711 is ordinarily used in conjunction with the SF 706, SF 707, SF 708 or SF 709, as appropriate. Once the Label has been applied, it cannot be removed. The SF 711 provides spaces for information that should be completed as required.

(d) Only the Director of ISOO may grant a waiver from the use of SF 711. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The Director of ISOO will review the request and notify the agency of the decision.

(e) The national stock number of the SF 711 is 7540–01–207–5541.

[52 FR 10191, Mar. 30, 1987]

PART 2004—DIRECTIVE ON SAFE-GUARDING CLASSIFIED NATIONAL SECURITY INFORMATION

APPENDIX B TO PART 2004—FOREIGN GOVERNMENT INFORMATION.


SOURCE: 64 FR 51854, Sept. 24, 1999, unless otherwise noted.

§ 2004.1 Authority.

This Directive is issued pursuant to Section 5.2 (c) of Executive Order (E.O.) 12958, “Classified National Security Information.” The E.O. and this Directive set forth the requirements for the safeguarding of classified national security information (hereinafter classified information) and are applicable to all U.S. Government agencies.

§ 2004.2 General.

(a) Classified information, regardless of its form, shall be afforded a level of protection against loss or unauthorized disclosure commensurate with its level of classification.

(b) Except for NATO and other foreign government information, agency heads or their designee(s) (hereinafter referred to as agency heads) may adopt alternative measures, using risk management principles, to protect against loss or unauthorized disclosure when necessary to meet operational requirements. When alternative measures are used for other than temporary, unique situations, the alternative measures shall be documented and provided to the Director, Information Security Oversight Office (ISOO), to facilitate that office’s oversight responsibility. Upon request, the description shall be provided to any other agency with which classified information or secure facilities are shared. In all cases, the alternative measures shall provide protection sufficient to reasonably deter and detect loss or unauthorized disclosure. Risk management factors considered will include sensitivity, value and crucial nature of the information; analysis of known and anticipated threats; vulnerability; and countermeasures benefits versus cost.

(c) NATO classified information shall be safeguarded in compliance with U.S.
Security Authority for NATO Instructions I-69 and I-70. Other foreign government information shall be safeguarded as described herein for U.S. information except as required by an existing treaty, agreement or other obligation (hereinafter obligation). When the information is to be safeguarded pursuant to an existing obligation, the additional requirements at Appendix B may apply to the extent they were required in the obligation as originally negotiated or are agreed upon during amendment. Negotiations on new obligations or amendments to existing obligations shall strive to bring provisions for safeguarding foreign government information into accord with standards for safeguarding U.S. information as described in this Directive.

(d) An agency head who originates or handles classified information shall refer any matter pertaining to the implementation of this Directive that he or she cannot resolve to the Director, ISOO for resolution.

§ 2004.3 Definitions.

(a) Open storage area. An area, constructed in accordance with Appendix A and authorized by the agency head for open storage of classified information.

(b) Authorized person. A person who has a favorable determination of eligibility for access to classified information, has signed an approved nondisclosure agreement, and has a need-to-know for the specific classified information in the performance of official duties.

(c) Cleared commercial carrier. A carrier that is authorized by law, regulatory body, or regulation, to transport SECRET and CONFIDENTIAL material and has been granted a SECRET facility clearance in accordance with the National Industrial Security Program.

(d) Security-in-depth. A determination by the agency head that a facility’s security program consists of layered and complementary security controls sufficient to deter and detect unauthorized entry and movement within the facility. Examples include, but are not limited to, use of perimeter fences, employee and visitor access controls, use of an Intrusion Detection System (IDS), random guard patrols through-out the facility during non-working hours, closed circuit video monitoring or other safeguards that mitigate the vulnerability of open storage areas without alarms and security storage cabinets during non-working hours.

(e) Vault. An area approved by the agency head which is designed and constructed of masonry units or steel lined construction to provide protection against forced entry. A modular vault approved by the General Services Administration (GSA) may be used in lieu of a vault as prescribed in the first sentence of this paragraph (e). Vaults shall be equipped with a GSA-approved vault door and lock.

§ 2004.4 Responsibilities of holders.

Authorized persons who have access to classified information are responsible for:

(a) Protecting it from persons without authorized access to that information, to include securing it in approved equipment or facilities whenever it is not under the direct control of an authorized person;

(b) Meeting safeguarding requirements prescribed by the agency head; and

(c) Ensuring that classified information is not communicated over unsecured voice or data circuits, in public conveyances or places, or in any other manner that permits interception by unauthorized persons.

§ 2004.5 Standards for security equipment.

The Administrator of General Services shall, in coordination with agency heads originating classified information, establish and publish uniform standards, specifications and supply schedules for security equipment designed to provide secure storage for and destruction of classified information. Whenever new security equipment is procured, it shall be in conformance with the standards and specifications established by the Administrator of General Services, and shall, to the maximum extent possible, be of the type available through the Federal Supply System.
§ 2004.6 Storage.

(a) General. Classified information shall be stored only under conditions designed to deter and detect unauthorized access to the information. Storage at overseas locations shall be at U.S. Government controlled facilities unless otherwise stipulated in treaties or international agreements. Overseas storage standards for facilities under a Chief of Mission are promulgated under the authority of the Overseas Security Policy Board.

(b) Requirements for physical protection. (1) Top Secret. Top Secret information shall be stored by one of the following methods:

(i) In a GSA-approved security container with one of the following supplemental controls:

(A) Continuous protection by cleared guard or duty personnel;

(B) Inspection of the security container every two hours by cleared guard or duty personnel;

(C) An Intrusion Detection System (IDS) with the personnel responding to the alarm arriving within 15 minutes of the alarm annunciation; [Acceptability of Intrusion Detection Equipment (IDE): All IDE must be UL-listed (or equivalent as defined by the agency head) and approved by the agency head. Government and proprietary installed, maintained, or furnished systems are subject to approval only by the agency head.]; or

(D) Security-In-Depth conditions, provided the GSA-approved container is equipped with a lock meeting Federal Specification FF-L-2746.

(ii) An open storage area constructed in accordance with Appendix A, which is equipped with an IDS with the personnel responding to the alarm arriving within 15 minutes of the alarm annunciation if the area is covered by Security-In-Depth or a five minute alarm response if it is not.

(iii) An IDS-equipped vault with the personnel responding to the alarm arriving within 15 minutes of the alarm annunciation.

(2) Secret. Secret information shall be stored by one of the following methods:

(i) In the same manner as prescribed for Top Secret information;

(ii) In a GSA-approved security container or vault without supplemental controls; or

(iii) In either of the following:

(A) Until October 1, 2012, in a non-GSA-approved container having a built-in combination lock or in a non-GSA approved container secured with a rigid metal lockbar and an agency head approved padlock; or

(B) An open storage area. In either case, one of the following supplemental controls is required:

(I) The location that houses the container or open storage area shall be subject to continuous protection by cleared guard or duty personnel;

(2) Cleared guard or duty personnel shall inspect the security container or open storage area once every four hours; or

(3) An IDS (per paragraph (b)(1)(i)(C) of this section) with the personnel responding to the alarm arriving within 30 minutes of the alarm annunciation. [In addition to one of these supplemental controls specified in paragraphs (b)(2)(iii)(B)(1) through (3), security-in-depth as determined by the agency head is required as part of the supplemental controls for a non-GSA approved container or open storage area storing Secret information.]

(3) Confidential. Confidential information shall be stored in the same manner as prescribed for Top Secret or Secret information except that supplemental controls are not required.

(c) Combinations. Use and maintenance of dial-type locks and other changeable combination locks.

(1) Equipment in service. The classification of the combination shall be the same as the highest level of classified information that is protected by the lock. Combinations to dial-type locks shall be changed only by persons having a favorable determination of eligibility for access to classified information and authorized access to the level of information protected unless other sufficient controls exist to prevent access to the lock or knowledge of the combination. Combinations shall be changed under the following conditions:

(i) Whenever such equipment is placed into use;

(ii) When the information protected by the lock is declassified or reclassified to a lower level of classification;

(iii) When a change in the personnel assigned to the location justifies such action;

(iv) When an accident or break-in occurs at the location;

(v) When the lock is tampered with or otherwise damaged or destroyed; or

(vi) For any other reason the authority of the agency head determines that a change is required.

(2) When combinations are removed from service, the combination shall be changed to a unique combination.

(3) When combinations are lost or are not found, the next time the equipment is used for the purpose for which it was originally purchased, the combination shall be changed to a unique combination.


(a) General. The handling of classified information shall be done in accordance with the provisions of this part and the directives of the agency head.

(b) Top Secret. Top Secret information shall be handled in accordance with the policies and procedures specified in this section and any additional instructions issued by the agency head.

(c) Secret. Secret information shall be handled in accordance with the policies and procedures specified in this section and any additional instructions issued by the agency head.

(d) Confidential. Confidential information shall be handled in accordance with the policies and procedures specified in this section and any additional instructions issued by the agency head.

(e) Security-In-Depth. Security-In-Depth is a unique security procedure that is designed to protect classified information. Security-In-Depth procedures shall be used in accordance with the policies and procedures specified in this section and any additional instructions issued by the agency head.

(f) Intrusion Detection System (IDS). Intrusion Detection System (IDS) is a unique security procedure that is designed to detect unauthorized access to classified information. Intrusion Detection System (IDS) procedures shall be used in accordance with the policies and procedures specified in this section and any additional instructions issued by the agency head.

§ 2004.8 Security-In-Depth.

(a) General. Security-In-Depth is a unique security procedure that is designed to protect classified information. Security-In-Depth procedures shall be used in accordance with the policies and procedures specified in this section and any additional instructions issued by the agency head.

(b) Requirements. Security-In-Depth procedures shall be used in accordance with the policies and procedures specified in this section and any additional instructions issued by the agency head.
(ii) Whenever a person knowing the combination no longer requires access to it unless other sufficient controls exist to prevent access to the lock; or
(iii) Whenever a combination has been subject to possible unauthorized disclosure.

(2) Equipment out of service. When security equipment is taken out of service, it shall be inspected to ensure that no classified information remains and the built-in combination lock shall be reset to a standard combination.

d) Key operated locks. When special circumstances exist, an agency head may approve the use of key operated locks for the storage of Secret and Confidential information. Whenever such locks are used, administrative procedures for the control and accounting of keys and locks shall be established.

§ 2004.8 Transmission.

(a) General. Classified information shall be transmitted and received in an authorized manner which ensures that evidence of tampering can be detected, that inadvertent access can be precluded, and that provides a method which assures timely delivery to the intended recipient. Persons transmitting classified information are responsible for ensuring that intended recipients are authorized persons with the capability to store classified information in accordance with this Directive.

(b) Dispatch. Agency heads shall establish procedures which ensure that:

(1) All classified information physically transmitted outside facilities shall be enclosed in two layers, both of which provide reasonable evidence of tampering and which conceal the contents. The inner enclosure shall clearly identify the address of both the sender and the intended recipient, the highest classification level of the contents, and any appropriate warning notices. The outer enclosure shall be the same except that no markings to indicate that the contents are classified shall be visible. Intended recipients shall be identified by name only as part of an attention line. The following exceptions apply:

(i) If the classified information is an internal component of a packable item of equipment, the outside shell or body may be considered as the inner enclosure provided it does not reveal classified information;

(ii) If the classified information is an inaccessible internal component of a bulky item of equipment, the outside or body of the item may be considered to be a sufficient enclosure provided observation of it does not reveal classified information;

(iii) If the classified information is an item of equipment that is not reasonably packable and the shell or body is classified, it shall be concealed with
§ 2004.8 32 CFR Ch. XX (7–1–01 Edition)

an opaque enclosure that will hide all classified features;
(iv) Specialized shipping containers, including closed cargo transporters or diplomatic pouch, may be considered the outer enclosure when used; and
(v) When classified information is hand-carried outside a facility, a locked briefcase may serve as the outer enclosure.

(2) Couriers and authorized persons designated to hand-carry classified information shall ensure that the information remains under their constant and continuous protection and that direct point-to-point delivery is made. As an exception, agency heads may approve, as a substitute for a courier on direct flights, the use of specialized shipping containers that are of sufficient construction to provide evidence of forced entry, are secured with a high security padlock, are equipped with an electronic seal that would provide evidence of surreptitious entry and are handled by the carrier in a manner to ensure that the container is protected until its delivery is completed.

(c) Transmission methods within and between the U.S., Puerto Rico, or a U.S. possession or trust territory. (1) Top Secret. Top Secret information shall be transmitted by direct contact between authorized persons; the Defense Courier Service or an authorized government agency courier service; a designated courier or escort with Top Secret clearance; electronic means over approved communications systems. Under no circumstances will Top Secret information be transmitted via the U.S. Postal Service.

(2) Secret. Secret information shall be transmitted by:
(i) Any of the methods established for Top Secret; U.S. Postal Service Express Mail and U.S. Postal Service Registered Mail, as long as the Waiver of Signature and Indemnity block, item 11–B, on the U.S. Postal Service Express Mail Label shall not be completed; and cleared commercial carriers or cleared commercial messenger services. The use of street-side mail collection boxes is strictly prohibited; and
(ii) Agency heads may, on an exceptional basis and when an urgent requirement exists for overnight delivery within the U.S. and its Territories, authorize the use of the current holder of the General Services Administration contract for overnight delivery of information for the Executive Branch as long as applicable postal regulations (39 CFR chapter I) are met. Any such delivery service shall be U.S. owned and operated, provide automated in-transit tracking of the classified information, and ensure package integrity during transit. The contract shall require cooperation with government inquiries in the event of a loss, theft, or possible unauthorized disclosure of classified information. The sender is responsible for ensuring that an authorized person will be available to receive the delivery and verification of the correct mailing address. The package may be addressed to the recipient by name. The release signature block on the receipt label shall not be executed under any circumstances. The use of external (street side) collection boxes is prohibited. Classified Communications Security Information, NATO, and foreign government information shall not be transmitted in this manner.

(3) Confidential. Confidential information shall be transmitted by any of the methods established for Secret information or U.S. Postal Service Certified Mail. In addition, when the recipient is a U.S. Government facility, the confidential information may be transmitted via U.S. First Class Mail. However, confidential information shall not be transmitted to government contractor facilities via first class mail. When first class mail is used, the envelope or outer wrapper shall be marked to indicate that the information is not to be forwarded, but is to be returned to sender. The use of street-side mail collection boxes is prohibited.

(d) Transmission methods to a U.S. Government facility located outside the U.S. The transmission of classified information to a U.S. Government facility located outside the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, or a U.S. possession or trust territory, shall be by methods specified above for Top Secret information or by the Department of State Courier Service. U.S. Registered Mail through Military Postal Service facilities may be used to transmit Secret
and Confidential information provided that the information does not at any time pass out of U.S. citizen control nor pass through a foreign postal system.

(e) Transmission of U.S. classified information to foreign governments. Such transmission shall take place between designated government representatives using the transmission methods described in paragraph (d) of this section. When classified information is transferred to a foreign government or its representative a signed receipt is required.

(f) Receipt of classified information. Agency heads shall establish procedures which ensure that classified information is received in a manner which precludes unauthorized access, provides for inspection of all classified information received for evidence of tampering and confirmation of contents, and ensures timely acknowledgment of the receipt of Top Secret and Secret information by an authorized recipient. As noted in paragraph (e) of this section, a receipt acknowledgment of all classified material transmitted to a foreign government or its representative is required.

§ 2004.9 Destruction.

(a) General. Classified information identified for destruction shall be destroyed completely to preclude recognition or reconstruction of the classified information in accordance with procedures and methods prescribed by agency heads. The methods and equipment used to routinely destroy classified information include burning, cross-cut shredding, wet-pulping, melting, mutilation, chemical decomposition or pulverizing.

(b) Technical guidance. Technical guidance concerning appropriate methods, equipment, and standards for the destruction of classified electronic media and processing equipment components may be obtained by submitting all pertinent information to the National Security Agency/Central Security Service, Directorate for Information Systems Security, Fort Meade, MD 20755. Specifications concerning appropriate equipment and standards for the destruction of other storage media may be obtained from the GSA.

§ 2004.10 Loss, possible compromise or unauthorized disclosure.

(a) General. Any person who has knowledge that classified information has been or may have been lost, possibly compromised or disclosed to an unauthorized person(s) shall immediately report the circumstances to an official designated for this purpose.

(b) Cases involving information originated by a foreign government or another U.S. government agency. Whenever a loss or possible unauthorized disclosure involves the classified information or interests of a foreign government agency, or another government agency, the department or agency in which the compromise occurred shall advise the other government agency or foreign government of the circumstances and findings that affect their information or interests. However, foreign governments normally will not be advised of any security system vulnerabilities that contributed to the compromise.

(c) Inquiry/investigation and corrective actions. Agency heads shall establish appropriate procedures to conduct an inquiry/investigation of a loss, possible compromise or unauthorized disclosure of classified information, in order to implement appropriate corrective actions, which may include disciplinary sanctions, and to ascertain the degree of damage to national security.

(d) Department of Justice and legal counsel coordination. Agency heads shall establish procedures to ensure coordination with legal counsel whenever a formal action, beyond a reprimand, is contemplated against any person believed responsible for the unauthorized disclosure of classified information. Whenever a criminal violation appears to have occurred and a criminal prosecution is contemplated, agency heads shall use established procedures to ensure coordination with—

(1) The Department of Justice, and

(2) The legal counsel of the agency where the individual responsible is assigned or employed.

§ 2004.11 Special access programs.

(a) General. The safeguarding requirements of this Directive may be enhanced for information in Special Access Programs (SAP), established under the provisions of Section 4.4 of E.O.
§ 2004.12 Telecommunications, automated information systems and network security.

Each agency head shall ensure that classified information electronically accessed, processed, stored or transmitted is protected in accordance with applicable national policy issuances identified in the Index of National Security Telecommunications and Information Systems Security Issuances (NSTISSI) and Director of Central Intelligence Directive (DCID) 6/3.


Based upon the risk management factors referenced in §2004.2 of this directive agency heads shall determine the requirement for technical countermeasures such as Technical Surveillance Countermeasures (TSCM) and TEMPEST necessary to detect or deter exploitation of classified information through technical collection methods and may apply countermeasures in accordance with NSTISSI 7000, entitled Tempest Countermeasures for Facilities, and SPB Issuance 6-97, entitled National Policy on Technical Surveillance Countermeasures.


Agency heads may prescribe special provisions for the dissemination, transmission, destruction, and safeguarding of classified information during military operations or other emergency situations.

APPENDIX A TO PART 2004—OPEN STORAGE AREAS

This Appendix describes the construction standards for open storage areas.

1. Construction. The perimeter walls, floors, and ceiling will be permanently constructed and attached to each other. All construction must be done in a manner as to provide visual evidence of unauthorized penetration.

2. Doors. Doors shall be constructed of wood, metal, or other solid material. Entrance doors shall be secured with a built-in GSA-approved three-position combination lock. When special circumstances exist, the agency head may authorize other locks on entrance doors for Secret and Confidential storage. Doors other than those secured with the aforementioned locks shall be secured from the inside with either deadbolt emergency egress hardware, a deadbolt, or a rigid wood or metal bar which extends across the width of the door, or by other means approved by the agency head.

3. Vents, ducts, and miscellaneous openings. All vents, ducts, and similar openings in excess of 96 square inches (and over 6 inches in its smallest dimension) that enter or pass through an open storage area shall be protected with either bars, expanded metal grills, commercial metal sound baffles, or an intrusion detection system.


   a. All windows which might reasonably afford visual observation of classified activities within the facility shall be made opaque or equipped with blinds, drapes, or other coverings.

   b. Windows at ground level will be constructed from or covered with materials which provide protection from forced entry. The protection provided to the windows need be no stronger than the strength of the contiguous walls. Open storage areas which are located within a controlled compound or equivalent may eliminate the requirement for forced entry protection if the windows are made inoperable either by permanently sealing them or equipping them on the inside with a locking mechanism and they are covered by an IDS (either independently or by the motion detection sensors within the area.)

APPENDIX B TO PART 2004—FOREIGN GOVERNMENT INFORMATION

The requirements described below are additional baseline safeguarding standards that may be necessary for foreign government information, other than NATO information, that requires protection pursuant to an existing treaty, agreement, or other obligation. NATO classified information shall be safeguarded in compliance with United States Security Authority for NATO Instructions I-69 and I-70. To the extent practical,
and to facilitate its control, foreign government information should be stored separately from other classified information. To avoid additional costs, separate storage may be accomplished by methods such as separate drawers of a container. The safeguarding standards described below may be modified if required or permitted by treaties or agreements, or for other obligations, with the prior written consent of the National Security Authority of the originating government.

1. **Top Secret.** Records shall be maintained of the receipt, internal distribution, destruction, access, reproduction, and transmittal of foreign government Top Secret information. Reproduction requires the consent of the originating government. Destruction will be witnessed.

2. **Secret.** Records shall be maintained of the receipt, external dispatch and destruction of foreign government Secret information. Other records may be necessary if required by the originator. Secret foreign government information may be reproduced to meet mission requirements unless prohibited by the originator. Reproduction shall be recorded unless this requirement is waived by the originator.

3. **Confidential.** Records need not be maintained for foreign government Confidential information unless required by the originator.

4. **Restricted and other foreign government information provided in confidence.** In order to assure the protection of other foreign government information provided in confidence (e.g., foreign government “Restricted,” “Designated,” or unclassified provided in confidence), such information must be classified under E.O. 12609. The receiving agency, or a receiving U.S. contractor, licensee, grantee, or certificate holder acting in accordance with instructions received from the U.S. Government, shall provide a degree of protection to the foreign government information at least equivalent to that required by the government or international organization that provided the information. When adequate to achieve equivalency, these standards may be less restrictive than the safeguarding standards that ordinarily apply to US CONFIDENTIAL information. If the foreign protection requirement is lower than the protection required for US CONFIDENTIAL information, the following requirements shall be met:

   a. Documents may retain their original foreign markings if the responsible agency determines that these markings are adequate to meet the purposes served by U.S. classification markings. Otherwise, documents shall be marked, “This document contains (insert name of country) (insert classification level) information to be treated as US (insert classification level).” The notation, “Modified Handling Authorized,” may be added to either the foreign or U.S. markings authorized for foreign government information. If remarking foreign originated documents or matter is impractical, an approved cover sheet is an authorized option.

   b. Documents shall be provided only to those who have an established need-to-know, and where access is required by official duties;

   c. Individuals being given access shall be notified of applicable handling instructions. This may be accomplished by a briefing, written instructions, or by applying specific handling requirements to an approved cover sheet;

   d. Documents shall be stored in such a manner so as to prevent unauthorized access;

   e. Documents shall be transmitted in a method approved for classified information, unless this method is waived by the originating government.

5. **Third-country transfers.** The release or disclosure of foreign government information to any third-country entity must have the prior consent of the originating government if required by a treaty, agreement, bilateral exchange, or other obligation.
### CHAPTER XXI—NATIONAL SECURITY COUNCIL

<table>
<thead>
<tr>
<th>Part</th>
<th>Rule Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2102</td>
<td>Rules and regulations to implement the Privacy Act of 1974</td>
<td>525</td>
</tr>
<tr>
<td>2103</td>
<td>Regulations to implement E.O. 12065—including procedures for public access to</td>
<td>528</td>
</tr>
<tr>
<td></td>
<td>documents that may be declassified</td>
<td></td>
</tr>
</tbody>
</table>
PART 2102—RULES AND REGULATIONS TO IMPLEMENT THE PRIVACY ACT OF 1974

Sec.
2102.1 Introduction.
2102.2 Purpose and scope.
2102.3 Definitions.
2102.4 Procedures for determining if an individual is the subject of a record.
2102.13 Requirements for access to a record.
2102.15 Requirements for requests to amend records.
2102.21 Procedures for appeal of determination to deny access to or amendment of requested records.
2102.31 Disclosure of a record to persons other than the individual to whom it pertains.
2102.41 Fees.
2102.51 Penalties.
2102.61 Exemptions.

AUTHORITY: 5 U.S.C. 552a (f) and (k).
SOURCE: 40 FR 47746, Oct. 9, 1975, unless otherwise noted.

§ 2102.1 Introduction.
(a) Insofar as the Privacy Act of 1974 (5 U.S.C. 552a) applies to the National Security Council (hereafter NSC), it provides the American public with expanded opportunities to gain access to records maintained by the NSC Staff which may pertain to them as individuals. These regulations are the exclusive means by which individuals may request personally identifiable records and information from the National Security Council.

(b) The NSC Staff, in addition to performing the functions prescribed in the National Security Act of 1947, as amended (50 U.S.C. 401), also serves as the supporting staff to the President in the conduct of foreign affairs. In doing so the NSC Staff is acting not as an agency but as an extension of the White House Office. In that the White House Office is not considered an agency for the purposes of this Act, the materials which are used by NSC Staff personnel in their role as supporting staff to the President are not subject to the provisions of the Privacy Act of 1974. A description of these White House Office files is, nevertheless, appended to the NSC notices of systems of files and will be published annually in the Federal Register.

(c) In general, Records in NSC files pertain to individual members of the public only if these individuals have been (1) employed by the NSC, (2) have corresponded on a foreign policy matter with a member of the NSC or its staff, or (3) have, as a U.S. Government official, participated in an NSC meeting or in the preparation of foreign policy-related documents for the NSC.

§ 2102.2 Purpose and scope.
(a) The following regulations set forth procedures whereby individuals may seek and gain access to records concerning themselves and will guide the NSC Staff response to requests under the Privacy Act. In addition, they outline the requirements applicable to the personnel maintaining NSC systems of records.

(b) These regulations, published pursuant to the Privacy Act of 1974, Pub. L. 93–579, Section 552a (f) and (k), 5 U.S.C. (hereinafter the Act), advise of procedures whereby an individual can:

1. Request notification of whether the NSC Staff maintains or has disclosed a record pertaining to him or her in any non-exempt system of records;
2. Request a copy of such record or an accounting of that disclosure;
3. Request an amendment to a record; and,
4. Appeal any initial adverse determination of any request under the Act.

(c) These regulations also specify those systems of records which the NSC has determined to be exempt from certain provisions of the Act and thus not subject to procedures established by this regulation.

§ 2102.3 Definitions.
As used in these regulations:
(a) Individual. A citizen of the United States or an alien lawfully admitted for permanent residence.

(b) Maintain. Includes maintain, collect, use or disseminate. Under the Act it is also used to connote control over, and, therefore, responsibility for, systems of records in support of the NSC statutory function (50 U.S.C. 401, et seq.).

(c) Systems of Records. A grouping of any records maintained by the NSC from which information is retrieved by
§2102.4 Procedures for determining if an individual is the subject of a record.

(a) Individuals desiring to determine if they are the subject of a record or system of records maintained by the NSC Staff should address their inquiries, marking them plainly as a PRIVACY ACT REQUEST, to:

Staff Secretary, National Security Council,
Room 374, Old Executive Office Building,
Washington, DC 20506.

All requests must be made in writing and should contain:

(1) A specific reference to the system of records maintained by the NSC as listed in the NSC Notices of Systems and Records (copies available upon request); or

(2) A description of the record or systems of records in sufficient detail to allow the NSC to determine whether the record does, in fact, exist in an NSC system of records.

(b) All requests must contain the printed or typewritten name of the individual to whom the record pertains, the signature of the individual making the request, and the address to which the reply should be sent. In instances when the identification is insufficient to insure disclosure to the individual to whom the information pertains in view of the sensitivity of the information, NSC reserves the right to solicit from the requestor additional identifying information.

(c) Responses to all requests under the Act will be made by the Staff Secretary, or by another designated member of the NSC Staff authorized to act in the name of the Staff Secretary in responding to a request under this Act. Every effort will be made to inform the requestor if he or she is the subject of a specific record or system of records within ten working days (excluding Saturdays, Sundays and legal Federal Holidays) of receipt of the request. Such a response will also contain the procedures to be followed in order to gain access to any record which may exist and a copy of the most recent NSC notice, as published in the FEDERAL REGISTER, on the system of records in which the record is contained.

(d) Whenever it is not possible to respond in the time period specified above, the NSC Staff Secretary or a designated alternate will, within ten working days (excluding Saturdays, Sundays, and legal Federal Holidays), inform the requestor of the reasons for the delay (e.g., insufficient requestor information, difficulties in record location, etc.), steps that need to be taken in order to expedite the request, and the date by which a response is anticipated.

§2102.13 Requirements for access to a record.

(a) Individuals requesting access to a record or system of records in which there is information concerning them must address a request in writing to the Staff Secretary of the NSC (see §2102.1). Due to restricted access to NSC offices in the Old Executive Office Building where the files are located, requests cannot be made in person.

(b) All written requests should contain a concise description of the records to which access is requested. In addition, the requestor should include any other information which he or she feels would assist in the timely identification of the record. Verification of the requestor’s identity will be determined under the same procedures used in requests for learning of the existence of a record.

(c) To the extent possible, any request for access will be answered by the Staff Secretary or a designated alternate within ten working days (excluding Saturdays, Sundays, and legal Federal holidays) of the receipt of the
request. In the event that a response cannot be made within this time, the requestor will be notified by mail of the reasons for the delay and the date upon which a reply can be expected.

(d) The NSC response will forward a copy of the requested materials unless further identification or clarification of the request is required. In the event access is denied, the requestor shall be informed of the reasons therefore and the name and address of the individual to whom an appeal should be directed.

§ 2102.15 Requirements for requests to amend records.

(a) Individuals wishing to amend a record contained in the NSC systems of records pertaining to them must submit a request in writing to the Staff Secretary of the NSC in accordance with the procedures set forth herein.

(b) All requests for amendment or correction of a record must state concisely the reason for requesting the amendment. Such requests should include a brief statement which describes the information the requestor believes to be inaccurate, incomplete, or unnecessary and the amendment or correction desired.

(c) To the extent possible, every request for amendment of a record will be answered within ten working days (excluding Saturdays, Sundays, and legal Federal holidays) of the receipt of the request. In the event that a response cannot be made within this time, the requestor will be notified by mail of the reasons for the delay and the date upon which a reply can be expected. A final response to a request for amendment will include the NSC Staff determination on whether to grant or deny the request. If the request is denied, the response will include:

(1) The reasons for the decision;
(2) The name and address of the individual to whom an appeal should be directed;
(3) A description of the process for review of the appeal within the NSC; and
(4) A description of any other procedures which may be required of the individual in order to process the appeal.

§ 2102.21 Procedures for appeal of determination to deny access to or amendment of requested records.

(a) Individuals wishing to appeal an NSC Staff denial of a request for access or to amend a record concerning them must address a letter of appeal to the Staff Secretary of the NSC. The letter must be received within thirty days from the date of the Staff Secretary’s notice of denial and, at a minimum, should include the following:

(1) The records involved;
(2) The dates of the initial request and subsequent NSC determination; and
(3) A brief statement of the reasons supporting the request for reversal of the adverse determination.

(b) Within thirty working days (excluding Saturdays, Sundays and legal Federal holidays) of the date of receipt of the letter of appeal, the Assistant to the President for National Security Affairs (hereinafter the “Assistant”), or the Deputy Assistant to the President for National Security Affairs (hereinafter the “Deputy Assistant”), acting in his name, shall issue a determination on the appeal. In the event that a final determination cannot be made within this time period, the requestor will be informed of the delay, the reasons therefor and the date on which a final response is expected.

(c) If the original request was for access and the initial determination is reversed, a copy of the records sought will be sent to the individual. If the initial determination is upheld, the requestor will be so advised and informed of the right to judicial review pursuant to 5 U.S.C. 552a(g).

(d) If the initial denial of a request to amend a record is reversed, the records will be corrected and a copy of the amended record will be sent to the individual. If the original decision is upheld by the Assistant to the President, the requestor will be so advised and informed in writing of his or her right to seek judicial review of the final agency determination, pursuant to section 552a(g) of title 5, U.S.C. In addition, the requestor will be advised of his right to have a concise statement of the reasons for disagreeing with the final determination appended to the disputed records. This statement
§ 2102.31 Disclosure of a record to persons other than the individual to whom it pertains.

(a) Except as provided by the Privacy Act, 5 U.S.C. 552a(b), the NSC will not disclose a record concerning an individual to another person or agency without the prior written consent of the individual to whom the record pertains.

§ 2102.41 Fees.

(a) Individuals will not be charged for:

(1) The first copy of any record provided in response to a request for access or amendment;
(2) The search for, or review of, records in NSC files;
(3) Any copies reproduced as a necessary part of making a record or portion thereof available to the individual.
(b) After the first copy has been provided, records will be reproduced at the rate of twenty-five cents per page for all copying of four pages or more.
(c) The Staff Secretary may provide copies of a record at no charge if it is determined to be in the interest of the Government.
(d) The Staff Secretary may require that all fees be paid in full prior to the issuance of the requested copies.
(e) Remittances shall be in the form of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the “United States Treasury” and mailed to the Staff Secretary, National Security Council, Washington, DC 20506.
(f) A receipt for fees paid will be given only upon request. Refund of fees paid for services actually rendered will not be made.

§ 2102.51 Penalties.

Title 18, U.S.C. section 1001, Crimes and Criminal Procedures, makes it a criminal offense, subject to a maximum fine of $10,000 or imprisonment for not more than five years or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. Section (i)(3) of the Privacy Act (5 U.S.C. 552a) makes it a misdemeanor, subject to a maximum fine of $5,000, to knowingly and willfully request or obtain any record concerning an individual under false pretenses. Sections (i)(1) and (2) of 5 U.S.C. 552a provide penalties for violations by agency employees, of the Privacy Act or regulations established thereunder.

§ 2102.61 Exemptions.

Pursuant to subsection (k) of the Privacy Act (5 U.S.C. 552a), the Staff Secretary has determined that certain NSC systems of records may be exempt in part from sections 553(c)(3), (d), (e)(1), (e)(4), (G), (H), (I), and (f) of title 5, and from the provisions of these regulations. These systems of records may contain information which is classified pursuant to Executive Order 11652. To the extent that this occurs, records in the following systems would be exempt under the provision of 5 U.S.C. 552a(k)(1):

NSC 1.1—Central Research Index,
NSC 1.2—NSC Correspondence Files, and
NSC 1.3—NSC Meetings Registry.

PART 2103—REGULATIONS TO IMPLEMENT E.O. 12065—including procedures for public access to documents that may be declassified

Subpart A—Introduction

Sec.
2103.1 References.
2103.2 Purpose.
2103.3 Applicability.

Subpart B—Original Classification

2103.11 Basic policy.
2103.12 Level of original classification.
2103.13 Duration of original classification.
2103.14 Challenges to classification.

Subpart C—Derivative Classification

2103.21 Definition and application.
Subpart A—Introduction

§ 2103.1 References.


§ 2103.2 Purpose.

The purpose of this regulation is to ensure, consistent with the authorities listed in §2103.1, that national security information processed by the National Security Council Staff is protected from unauthorized disclosure, but only to the extent, and for such period, as is necessary to safeguard the national security.

§ 2103.3 Applicability.

This regulation governs the National Security Council Staff Information Security Program. In consonance with the authorities listed in §2103.1, it establishes the policy and procedures for the security classification, downgrading, declassification, and safeguarding of information that is owned by, is produced for or by, or is under the control of the National Security Council Staff.

Subpart B—Original Classification

§ 2103.11 Basic policy.

It is the policy of the National Security Council Staff to make available to the public as much information concerning its activities as is possible, consistent with its responsibility to protect the national security.

§ 2103.12 Level of original classification.

Unnecessary classification, and classification at a level higher than is necessary, shall be avoided. If there is reasonable doubt as to which designation in section 1–1 of Executive Order 12065 is appropriate, or whether information should be classified at all, the less restrictive designation should be used, or the information should not be classified.

§ 2103.13 Duration of original classification.

Original classification may be extended beyond six years only by officials with Top Secret classification authority. This extension authority shall be used only when these officials determine that the basis for original classification will continue throughout the entire period that the classification will be in effect and only for the following reasons:

(a) The information is “foreign government information” as defined by the authorities in §2301.1;

(b) The information reveals intelligence sources and methods;

(c) The information pertains to communication security;

(d) The information reveals vulnerability or capability data, the unauthorized disclosure of which can reasonably be expected to render ineffective a system, installation, or project important to the national security;

(e) The information concerns plans important to the national security, the unauthorized disclosure of which reasonably can be expected to nullify the effectiveness of the plan;

(f) The information concerns specific foreign relations matters, the continued protection of which is essential to the national security;
§ 2103.14 Challenges to classification.

If holders of classified information believe that the information is improperly or unnecessarily classified, or that original classification has been extended for too long a period, they should discuss the matter with their immediate superiors or the classifier of the information. If these discussions do not satisfy the concerns of the challenger, the matter should be brought to the attention of the chairperson of the NSC Information Security Oversight Committee (see § 2103.51 of this part).

Subpart C—Derivative Classification

§ 2103.21 Definition and application.

Derivative classification is the act of assigning a level of classification to information that is determined to be the same in substance as information that is currently classified. Thus, derivative classification may be accomplished by any person cleared for access to that level of information, regardless of whether the person has original classification authority at that level.

Subpart D—Declassification and Downgrading

§ 2103.31 Declassification authority.

The Staff Secretary, Staff Counsel, and Director of Freedom of Information of the National Security Council Staff are authorized to declassify NSC documents after consultation with the appropriate NSC Staff members.

§ 2103.32 Mandatory review for declassification.

(a) Receipt. (1) Requests for mandatory review for declassification under section 3–501 of Executive Order 12065 must be in writing and should be addressed to:

National Security Council, ATTN: Staff Secretary (Mandatory Review Request), Old Executive Office Building, Washington, DC 20506.

(2) The requestor shall be informed of the date of receipt of the request. This date will be the basis for the time limits specified in paragraph (b) of this section.

(3) If the request does not reasonably describe the information sought, the requestor shall be notified that, unless additional information is provided or the request is made more specific, no further action will be taken.

(b) Review. (1) The requestor shall be informed of the National Security Council Staff determination within sixty days of receipt of the initial request.

(2) If the determination is to withhold some or all of the material requested, the requestor may appeal the determination. The requestor shall be informed that such an appeal must be made in writing within sixty days of receipt of the denial and should be addressed to the chairperson of the National Security Council Classification Review Committee.

(3) The requestor shall be informed of the appellate determination within thirty days of receipt of the appeal.

(c) Fees. (1) Fees for the location and reproduction of information that is the subject of a mandatory review request shall be assessed according to the following schedule:

(i) Search for records. $5.00 per hour when the search is conducted by a clerical employee; $8.00 per hour when the search is conducted by a professional employee. No fee shall be assessed for searches of less than one hour.

(ii) Reproduction of documents. Documents will be reproduced at a rate of $.25 per page for all copying of four pages or more. No fee shall be assessed for reproducing documents that are three pages or less, or for the first three pages of longer documents.
(2) Where it is anticipated that the fees chargeable under this section will amount to more than $25, and the requestor has not indicated in advance a willingness to pay fees as high as are anticipated, the requestor shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed $25, an advance deposit may be required. Dispatch of such a notice or request shall suspend the running of the period for response by the NSC Staff until a reply is received from the requestor.

(3) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the Treasury of the United States and mailed to the Staff Secretary, National Security Council, Washington, DC 20506.

(4) [Reserved]

(5) A receipt for fees paid will be given only upon request. Refund of fees paid for services actually rendered will not be made.

(6) If a requestor fails to pay within thirty days for services rendered, further action on any other requests submitted by that requestor shall be suspended.

(7) The Staff Secretary, National Security Council may waive all or part of any fee provided for in this section when it is deemed to be in either the interest of the NSC Staff or of the general public.

§ 2103.33 Downgrading authority.

The Staff Secretary, Staff Counsel, and Director of Freedom of Information of the National Security Council Staff are authorized to downgrade NSC documents, after consultation with the appropriate NSC Staff members.

§ 2103.52 Classification Review Committee.

The NSC Classification Review Committee shall be chaired by the Staff Secretary of the National Security Council. The Committee shall consist of the chairperson, the NSC Director of Freedom of Information, and the NSC Staff member with primary subject matter responsibility for the material under review.

Subpart E—Safeguarding

§ 2103.41 Reproduction controls.

The Staff Secretary shall maintain records to show the number and distribution of all Top Secret documents, of all documents covered by special access programs distributed outside the originating agency, and of all Secret and Confidential documents that are marked with special dissemination or reproduction limitations.

Subpart F—Implementation and Review

§ 2103.51 Information Security Oversight Committee.

The NCS Information Security Oversight Committee shall be chaired by the Staff Counsel of the National Security Council Staff. The Committee shall be responsible for acting on all suggestions and complaints concerning the administration of the National Security Council information security program. The chairperson, who shall represent the NSC Staff on the Inter-agency Information Security Committee shall also be responsible for conducting an active oversight program to ensure effective implementation of Executive Order 12065.

§ 2103.52 Classification Review Committee.

The NSC Classification Review Committee shall be chaired by the Staff Secretary of the National Security Council. The Committee shall decide appeals from denials of declassification requests submitted pursuant to section 3-5 of Executive Order 12065. The Committee shall consist of the chairperson, the NSC Director of Freedom of Information, and the NSC Staff member with primary subject matter responsibility for the material under review.
PART 2400—REGULATIONS TO IMPLEMENT E.O. 12356; OFFICE OF SCIENCE AND TECHNOLOGY POLICY INFORMATION SECURITY PROGRAM

Subpart A—General Provisions

Sec.
2400.1 Authority.
2400.2 Purpose.
2400.3 Applicability.
2400.4 Atomic Energy Material.

Subpart B—Original Classification

2400.5 Basic policy.
2400.6 Classification levels.
2400.7 Original classification authority.
2400.8 Limitations on delegation of original classification authority.
2400.9 Classification requirements.
2400.10 Presumption of damage.
2400.11 Duration of classification.
2400.12 Identification and markings.
2400.13 Limitations on classification.

Subpart C—Derivative Classification

2400.14 Use of derivative classification.
2400.15 Classification guides.
2400.16 Derivative classification markings.

Subpart D—Declassification and Downgrading

2400.17 Policy.
2400.18 Declassification and downgrading authority.
2400.19 Declassification by the Director of the Information Security Oversight Office.
2400.20 Systematic review for declassification.
2400.21 Mandatory review for declassification.
2400.22 Freedom of Information Act and Privacy Act requests.
2400.23 Prohibition.
2400.24 Downgrading.

Subpart E—Safeguarding

2400.25 Access.
2400.26 Access by historical researchers and former Presidential appointees.
2400.27 Storage of classification information.
2400.28 Dissemination of classified information.
2400.29 Accountability and control.
2400.30 Reproduction of classified information.
2400.31 Destruction of classified information.
2400.32 Transmittal of classified information.
2400.33 Loss or possible compromise.

Subpart F—Foreign Government Information

2400.34 Classification.
2400.35 Duration of classification.
2400.36 Declassification.
2400.37 Mandatory review.
2400.38 Protection of foreign government information.

Subpart G—Security Education

2400.39 Responsibility and objectives.

Subpart H—Office of Science and Technology Policy Information Security Program Management

2400.40 Responsibility.
2400.41 Office Review Committee.
2400.42 Security Officer.
2400.43 Heads of offices.
2400.44 Custodians.
2400.45 Information Security Program Review.
2400.46 Suggestions or complaints.


SOURCE: 48 FR 10821, Mar. 15, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 2400.1 Authority.


§ 2400.2 Purpose.

The purpose of this Regulation is to ensure, consistent with the authorities of §2400.1 that information of the Office of Science and Technology Policy (OSTP) relating to national security is protected from unauthorized disclosure, but only to the extent and for such period as is necessary to safeguard the national security.
§ 2400.3 Applicability.

This Regulation governs the Office of Science and Technology Policy Information Security Program. In accordance with the provisions of Executive Order 12356 and Directive No. 1 it establishes, for uniform application throughout the Office of Science and Technology Policy, the policies and procedures for the security classification, downgrading, declassification and safeguarding of information that is owned by, produced for or by, or under the control of the Office of Science and Technology Policy.

§ 2400.4 Atomic Energy Material.

Nothing in this Regulation supersedes any requirement made by or under the Atomic Energy Act of 1954, as amended. ‘‘Restricted Data’’ and information designated as ‘‘Formerly Restricted Data’’ shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of theAtomic Energy Act of 1954, as amended, and regulations issued pursuant thereto by the Department of Energy.

Subpart B—Original Classification

§ 2400.5 Basic policy.

Except as provided in the Atomic Energy Act of 1954, as amended, Executive Order 12356, as implemented by Directive No. 1 and this Regulation, provides the only basis for classifying information. The policy of the Office of Science and Technology Policy is to make available to the public as much information concerning its activities as is possible, consistent with its responsibility to protect the national security. Information may not be classified unless its disclosure reasonably could be expected to cause damage to the national security.

§ 2400.6 Classification levels.

(a) National security information (hereinafter “classified information”) shall be classified at one of the following three levels:

(1) ‘‘Top Secret’’ shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.

(2) ‘‘Secret’’ shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security.

(3) ‘‘Confidential’’ shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security.

(b) Except as otherwise provided by statute, no other terms shall be used to identify classified information. Markings other than ‘‘Top Secret,’’ ‘‘Secret,’’ and ‘‘Confidential,’’ such as ‘‘For Official Use Only,’’ shall not be used to identify national security information. In addition, no other term or phrase shall be used in conjunction with one of the three authorized classification levels, such as ‘‘Secret Sensitive’’ or ‘‘Agency Confidential.’’ The terms ‘‘Top Secret,’’ ‘‘Secret,’’ and ‘‘Confidential’’ should not be used to identify nonclassified executive branch information.

(c) Unnecessary classification, and classification at a level higher than is necessary shall be scrupulously avoided.

(d) If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified ‘‘Confidential’’ pending a determination by an original classification authority, who shall make this determination within thirty (30) days. If there is reasonable doubt about the appropriate level of classification, the originator of the information shall safeguard it at the higher level of classification pending a determination by an original classification authority, who shall make this determination within thirty (30) days. Upon the determination of a need for classification and/or the proper classification level, the information that is classified shall be marked as provided in §2400.12 of this part.

§ 2400.7 Original classification authority.

(a) Authority for original classification of information as Top Secret shall be exercised within OSTP only by the
Director and by such principal subordinate officials having frequent need to exercise such authority as the Director shall designate in writing.

(b) The authority to classify information originally as Secret shall be exercised within OSTP only by the Director, other officials delegated in writing to have original Top Secret classification authority, and any other officials delegated in writing to have original Secret classification authority.

(c) The authority to classify information originally as Confidential shall be exercised within OSTP only by officials with original Top Secret or Secret classification authority and any officials delegated in writing to have original Confidential classification authority.

§ 2400.8 Limitations on delegation of original classification authority.

(a) The Director, OSTP is the only official authorized to delegate original classification authority.

(b) Delegations of original classification authority shall be held to an absolute minimum.

(c) Delegations of original classification authority shall be limited to the level of classification required.

(d) Original classification authority shall not be delegated to OSTP personnel who only quote, restate, extract or paraphrase, or summarize classified information or who only apply classification markings derived from source material or as directed by a classification guide.

(e) The Executive Director, OSTP, shall maintain a current listing of persons or positions receiving any delegation of original classification authority. If possible, this listing shall be unclassified.

(f) Original classification authority may not be redelegated.

(g) Exceptional Cases. When an employee, contractor, licensee, or grantee of OSTP that does not have original classification authority originates information believed by that person to require classification, the information shall be protected in a manner consistent with these Regulations as provided in §2400.6(d) of this part. The information shall be transmitted promptly as provided in these Regulations to the official in OSTP who has appropriate subject matter interest and classification authority with respect to this information. That official shall decide within thirty (30) days whether to classify this information. If the information is not within OSTP’s area of classification responsibility, OSTP shall promptly transmit the information to the responsible agency. If it is not clear which agency has classification responsibility for this information, it shall be sent to the Director of the Information Security Oversight Office. The Director shall determine the agency having primary subject matter interest and forward the information, with appropriate recommendations, to that agency for a classification determination.

§ 2400.9 Classification requirements.

(a) Information may be classified only if it concerns one or more of the categories cited in Executive Order 12356, as subcategorized below, and an official having original classification authority determines that its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security.

(1) Military plans, weapons or operations;
(2) The vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security;
(3) Foreign government information;
(4) Intelligence activities (including special activities), or intelligence sources or methods;
(5) Foreign relations or foreign activities of the United States;
(6) Scientific, technological, or economic matters relating to the national security;
(7) United States Government programs for safe-guarding nuclear materials or facilities;
(8) Cryptology;
(9) A confidential source; or
(10) Other categories of information which are related to national security and that require protection against unauthorized disclosure as determined by the Director, Office of Science and Technology Policy. Each such determination shall be reported promptly to
§ 2400.10

the Director of the Information Security Oversight Office.

(b) Foreign government information need not fall within any other classification category listed in paragraph (a) of this section to be classified.

(c) Certain information which would otherwise be unclassified may require classification when combined or associated with other unclassified or classified information. Classification on this basis shall be fully supported by a written explanation that, at a minimum, shall be maintained with the file or referenced on the record copy of the information.

(d) Information classified in accordance with this section shall not be declassified automatically as a result of any unofficial publication or inadvertent or unauthorized disclosure in the United States or abroad of identical or similar information. Following an inadvertent or unauthorized publication or disclosure of information identical or similar to information that has been classified in accordance with Executive Order 12356 or predecessor orders, OSTP, if the agency of primary interest, shall determine the degree of damage to the national security, the need for continued classification, and in coordination with the agency in which the disclosure occurred, what action must be taken to prevent similar occurrences. If the agency of primary interest is other than OSTP, the matter shall be referred to that agency.

§ 2400.11

(a) Information shall be classified as long as required by national security considerations. 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.

(b) Automatic declassification determinations under predecessor Executive Orders shall remain valid unless the classification is extended by an authorized official of the originating agency. These extensions may be by individual documents or categories of information. The originating agency shall be responsible for notifying holders of the information of such extensions.

(c) Information classified under predecessor Executive Orders and marked for declassification review shall remain classified until reviewed for declassification under the provisions of Executive Order 12356.

(d) Information classified under predecessor Executive Orders that does not bear a specific date or event for declassification shall remain classified until reviewed for declassification. The authority to extend the classification of information subject to automatic declassification under predecessor Orders is limited to those officials who have classification authority over the information and are designated in writing to have original classification authority at the level of the information to remain classified. Any decision to extend this classification on other than a document-by-document basis shall be reported to the Director of the Information Security Oversight Office.

§ 2400.12 Identification and markings.

(a) At the time of original classification, the following information shall be shown on the face of all classified documents, or clearly associated with other forms of classified information in a manner appropriate to the medium involved, unless this information itself would reveal a confidential source or relationship not otherwise evident in the document or information:

(1) One of the three classification levels defined in §2400.6 of this part;

(2) The identity of the original classification authority if other than OSTP, the matter shall be referred to that agency.

§ 2400.10 Presumption of damage.

Unauthorized disclosure of foreign government information, the identity of a confidential foreign source, or intelligence sources or methods, is presumed to cause damage to the national security.

§ 2400.11 Duration of classification.

(1) The date or event for declassification, or the notation "Originating Agency’s Determination Required."

(b) Each classified document shall, by marking or other means, indicate which portions are classified, with the applicable classification level, and which portions are not classified. The
Director OSTP may, for good cause, grant and revoke waivers of this requirement for specified classes of documents or information. The Director of the Information Security Oversight Office shall be notified of any waivers.

(c) Marking designations implementing the provisions of Executive Order 12356, including abbreviations, shall conform to the standards prescribed in Directive No. 1 issued by the Information Security Oversight Office.

(d) Foreign government information shall either retain its original classification or be assigned a United States classification that shall ensure a degree of protection at least equivalent to that required by the entity that furnished the information.

(e) Information assigned a level of classification under predecessor Executive Orders shall be considered as classified at that level of classification despite the omission of other required markings. Omitted markings may be inserted on a document by the officials specified in §2400.18 of this part.

§2400.15 Classification guides.

(a) OSTP shall issue and maintain classification guides to facilitate the proper and uniform derivative classification of information. These guides shall be used to direct derivative classification.

(b) The classification guides shall be approved, in writing, by the Director or by officials having Top Secret original
classification authority. Such approval constitutes an original classification decision.

(c) Each classification guide shall specify the information subject to classification in sufficient detail to permit its ready and uniform identification and categorization and shall set forth the classification level and duration in each instance. Additionally, each classification guide shall prescribe declassification instructions for each element of information in terms of (1) a period of time, (2) the occurrence of an event, or (3) a notation that the information shall not be automatically declassified without the approval of OSTP.

(d) The classification guides shall be kept current and shall be fully reviewed at least every two years. The Executive Director, OSTP shall maintain a list of all OSTP classification guides in current use.

(e) The Executive Director, OSTP shall receive and maintain the record copy of all approved classification guides and changes thereto. He will assist the originator in determining the required distribution.

(f) The Director may, for good cause, grant and revoke waivers of the requirement to prepare classification guides for specified classes of documents or information. The Director of the Information Security Oversight Office shall be notified of any waivers. The Director’s decision to waive the requirement to issue classification guides for specific classes of documents or information will be based, at a minimum, on an evaluation of the following factors:

1. The ability to segregate and describe the elements of information;
2. The practicality of producing or disseminating the guide because of the nature of the information;
3. The anticipated usage of the guide as a basis for derivative classification; and
4. The availability of alternative sources for derivatively classifying the information in a uniform manner.

§ 2400.16 Derivative classification markings.

(a) Documents classified derivatively on the basis of source documents or classification guides shall bear all markings prescribed in §2400.12 of this part and Directive No. 1 as are applicable. Information for these markings shall be taken from the source document or instructions in the appropriate classification guide. When markings are omitted because they may reveal a confidential source or relationship not otherwise evident, as described in §2400.12 of this part, the information may not be used as a basis for derivative classification.

(b) The authority for classification shall be shown as directed in Directive No. 1.

Subpart D—Declassification and Downgrading

§ 2400.17 Policy.

Declassification of information shall be given emphasis comparable to that accorded classification. Information classified pursuant to Executive Order 12356 and prior orders shall be declassified or downgraded as soon as national security considerations permit. Decisions concerning declassification shall be based on the loss of sensitivity of the information with the passage of time or on the occurrence of an event which permits declassification. When information is reviewed for declassification pursuant to this regulation, that information shall be declassified unless the designated declassification authority determines that the information continues to meet the classification requirements prescribed in §2400.9 of this part despite the passage of time. The Office of Science and Technology Policy officials shall coordinate their review of classified information with other agencies that have a direct interest in the subject matter.

§ 2400.18 Declassification and downgrading authority.

Information shall be declassified or downgraded by the official who authorized the original classification, if that official is still serving the same position; the originator’s successor; a supervisory official of either; or officials delegated such authority in writing by the Director, OSTP. The Executive Director, OSTP shall maintain a current listing of persons or positions receiving
Office of Science and Technology Policy

§ 2400.21 Mandatory review for declassification.

(a) Except as provided in paragraph (d) of this section, all information classified under Executive Order 12356 or predecessor orders shall be subject to a review for declassification by the Office of Science and Technology Policy, if:

(1) The request is made by a United States citizen or permanent resident alien, a federal agency, or a State or local government; and

(2) The request is made in writing and describes the document or material containing the information with sufficient specificity to enable the Office of Science and Technology Policy to locate it with a reasonable amount of effort.

(b) Requests should be addressed to: Executive Director, Office of Science and Technology Policy, Executive Office of the President, Washington, DC 20506.

(c) If the request does not reasonably describe the information sought to allow identification of documents containing such information, the requester shall be notified that unless additional information is provided or the request is made more specific, no further action will be taken.

(d) Information originated by a President, the White House Staff, by committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or acting on behalf of a
§ 2400.21

President is exempted from the mandatory review provisions of § 2400.24(a) of this part. The Archivist of the United States shall have the authority to review, downgrade and declassify information under the control of the Administrator of General Services or the Archivist pursuant to sections 2107, 2107 note, or 2203 of title 44, United States Code. Review procedures developed by the Archivist shall provide for consultation with agencies having primary subject matter interest and shall be consistent with the provisions of applicable laws or lawful agreements that pertain to the respective presidential papers or records. Any decision by the Archivist may be appealed to the Director of the Information Security Oversight Office. Agencies with primary subject matter interest shall be notified promptly of the Director’s decision on such appeals and may further appeal to the National Security Council. The information shall remain classified pending a prompt decision on the appeal.

(e) Office of Science and Technology Policy officials conducting a mandatory review for declassification shall declassify information no longer requiring protection under Executive Order 12356. They shall release this information unless withholding is otherwise authorized under applicable law.

(f) Office of Science and Technology Policy responses to mandatory review requests shall be governed by the amount of search and review time required to process the request. Normally the requester shall be informed of the Office of Science and Technology Policy determination within thirty days of receipt of the original request (or within thirty days of the receipt of the required amplifying information in accordance with paragraph (c) of this section). In the event that a determination cannot be made within thirty days, the requester shall be informed of the additional time needed to process the request. However, OSTP, shall make a final determination within one year from the date of receipt of the request except in unusual circumstances.

(g) When information cannot be declassified in its entirety, OSTP will make a reasonable effort to release, consistent with other applicable law, those declassified portions of that requested information the constitute a coherent segment.

(h) If the information may not be released in whole or in part, the requester shall be given a brief statement as to the reason for denial, and notice of the right to appeal the determination in writing within sixty days of receipt of the denial to the chairperson of the Office of Science and Technology Policy Review Committee. If appealed, the requester shall be informed in writing of the appellate determination within thirty days of receipt of the appeal.

(i) When a request is received for information originated by another agency, the Executive Director, Office of Science and Technology Policy, shall:

(1) Forward the request to such agency for review together with a copy of the document containing the information requested, where practicable, and where appropriate, with the Office of Science and Technology Policy recommendation to withhold or declassify and release any of the information;

(2) Notify the requester of the referral unless the agency to which the request is referred objects to such notice on grounds that its association with the information requires protection; and

(3) Request, when appropriate, that the agency notify the Office of Science and Technology Policy of its determination.

(j) If the request requires the rendering of services for which fees may be charged under title 5 of the Independent Offices Appropriation Act, 31 U.S.C. 483a, the Executive Director, Office of Science and Technology Policy, may calculate the anticipated amount of fees to be charged.

(1) Search for records. $5.00 per hour when the search is conducted by a clerical employee; $8.00 per hour when the search is conducted by a professional employee. No fee shall be assessed for searches of less than one hour.

(ii) Reproduction of documents. Documents will be reproduced at a rate of
§ 2400.25 Access.

(a) A person is eligible for access to classified information provided that a determination of trustworthiness has
§ 2400.26 Personnel security clearances.

(1) Personnel security clearances shall be established by agency heads or designated officials and provided that such access is essential to the accomplishment of lawful and authorized Government purposes. A personnel security clearance is an indication that the trustworthiness decision has been made. Procedures shall be established by the head of each office to prevent access to classified information before a personnel security clearance has been granted. The number of people cleared and granted access to classified information shall be maintained at the minimum number that is consistent with operational requirements and needs.

No one has a right to have access to classified information solely by virtue of rank or position. The final responsibility for determining whether an individual's official duties require possession of or access to any element or item of classified information, and whether the individual has been granted the appropriate security clearance by proper authority, rests with the individual who has authorized possession, knowledge, or control of the information and not with the prospective recipient. These principles are equally applicable if the prospective recipient is an organizational entity, other Federal agencies, contractors, foreign governments, and others.

(b) When access to a specific classification category is no longer required for the performance of an individual's assigned duties, the security clearance will be administratively adjusted, without prejudice to the individual, to the classification category, if any, required.

(c) The Director, Office of Science and Technology Policy may create special access programs to control access, distribution, and protection of particularly sensitive information classified pursuant to Executive Order 12356 or successor orders if:

(1) Normal management and safeguarding procedures do not limit access sufficiently;

(2) The number of persons with access is limited to the minimum necessary to meet the objective of providing extra protection for the information;

(3) The special access program is established in writing; and

(4) A system of accounting for the program is established and maintained.

§ 2400.26 Access by historical researchers and former Presidential appointees.

(a) The requirement in Section 4.1(a) of Executive Order 12356 that access to classified information may be granted only as is essential to the accomplishment of authorized and lawful Government purposes may be waived as provided in paragraph (b) of this section for persons who:

(1) Are engaged in historical research projects, or

(2) Previously have occupied policymaking positions to which they were appointed by the President.

(b) Waivers under paragraph (a) of this section may be granted only if the Director, Office of Science and Technology Policy:

(1) Determines in writing that access is consistent with the interest of national security;

(2) Takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with Executive Order 12356;

(3) Limits the access granted to former presidential appointees to items that the person originated, reviewed, signed, or received while serving as a presidential appointee; and

(4) Has received a written agreement from the researcher or former presidential appointee that his notes can be reviewed by OSTP for a determination that no classified material is contained therein.

§ 2400.27 Storage of classification information.

Whenever classified information is not under the personal control and observation of an authorized person, it will be guarded or stored in a locked security container approved for the storage and protection of the appropriate level of classified information as prescribed in §2001.43 of Directive No. 1.
§ 2400.28 Dissemination of classified information.

Heads of OSTP offices shall establish procedures consistent with this Regulation for dissemination of classified material. The originating official may prescribe specific restrictions on dissemination of classified information when necessary.

(a) Classified information shall not be disseminated outside the executive branch except under conditions that ensure that the information will be given protection equivalent to that afforded within the executive branch.

(b) Except as provided by directives issued by the President through the National Security Council, classified information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency. For purposes of this Section, the Department of Defense shall be considered one agency.

§ 2400.29 Accountability and control.

(a) Each item of Top Secret, Secret, and Confidential information is subject to control and accountability requirements.

(b) The Security Officer will serve as Top Secret Control Officer (TSCO) for the Office of Science and Technology Policy and will be responsible for the supervision of the Top Secret control program. He/she will be assisted by an Assistant Top Secret Control Officer (ATSCO) to effect the Controls prescribed herein for all Top Secret material.

(c) The TSCO shall receive, transmit, and maintain current access and accountability records for Top Secret information. The records shall show the number and distribution of all Top Secret documents, including any reproduced copies.

(d) Top Secret documents and material will be accounted for by a continuous chain of receipts.

(e) An inventory of Top Secret documents shall be made at least annually.

(f) Destruction of Top Secret documents shall be accomplished only by the TSCO or the ATSCO.

(g) Records shall be maintained to show the number and distribution of all classified documents covered by special access programs, and of all Secret and Confidential documents which are marked with special dissemination and reproduction limitations.

(h) The Security Officer will develop procedures for the accountability and control of Secret and Confidential Information. These procedures shall require all Secret and Confidential material originated or received by OSTP to be controlled. Control shall be accomplished by the ATSCO.

§ 2400.30 Reproduction of classified information.

Documents or portions of documents and materials that contain Top Secret information shall not be reproduced without the consent of the originator or higher authority. Any stated prohibition against reproduction shall be strictly observed. Copying of documents containing classified information at any level shall be minimized. Specific reproduction equipment shall be designated for the reproduction of classified information and rules for reproduction of classified information shall be posted on or near the designated equipment. Notices prohibiting reproduction of classified information shall be posted on equipment used only for the reproduction of unclassified information. All copies of classified documents reproduced for any purpose including those incorporated in a working paper are subject to the same controls prescribed for the document from which the reproduction is made.

§ 2400.31 Destruction of classified information.

(a) Classified information no longer needed in current working files or for reference or record purposes shall be processed for appropriate disposition in accordance with the provisions of chapters 21 and 33 of title 44, U.S.C., which governs disposition of classified records. Classified information approved for destruction shall be destroyed in accordance with procedures and methods prescribed by the Director, OSTP, as implemented by the Security Officer. These procedures and methods must provide adequate protection to prevent access by unauthorized persons and must preclude recognition
or reconstruction of the classified information or material.
(b) All classified information to be destroyed will be provided to the ATSCO for disposition. Controlled documents will be provided whole so that accountability records may be corrected prior to destruction by the ATSCO.

§ 2400.32 Transmittal of classified information.
The transmittal of classified information outside of the Office of Science and Technology Policy shall be in accordance with procedures of §2001.44 of Directive No. 1. The Security Officer shall be responsible for resolving any questions relative to such transmittal.

§ 2400.33 Loss or possible compromise.
(a) Any person who has knowledge of the loss or possible compromise of classified information shall immediately report the circumstances to the Security Officer. The Security Officer shall notify the Director and the agency that originated the information as soon as possible so that a damage assessment may be conducted and appropriate measures taken to negate or minimize any adverse effect of the compromise.
(b) The Security Officer shall initiate an inquiry to:
(1) Determine cause,
(2) Place responsibility, and
(3) Take corrective measures and appropriate administrative, disciplinary, or legal action.
(c) The Security Officer shall keep the Director advised on the details of the inquiry.

Subpart F—Foreign Government Information

§ 2400.34 Classification.
(a) Foreign government information classified by a foreign government or international organization of governments shall retain its original classification designation or be assigned a United States classification designation that will ensure a degree of protection equivalent to that required by the government or organization that furnished the information. Original classification authority is not required for this purpose.
(b) Foreign government information that was not classified by a foreign entity but was provided with the expectation, expressed or implied, that it be held in confidence must be classified because Executive Order 12356 states a presumption of damage to the national security in the event of unauthorized disclosure of such information.

§ 2400.35 Duration of classification.
Foreign government information shall not be assigned a date or event for automatic declassification unless specified or agreed to by the foreign entity.

§ 2400.36 Declassification.
Officials shall respect the intent of this regulation to protect foreign government information and confidential foreign sources.

§ 2400.37 Mandatory review.
Except as provided in this paragraph, OSTP shall process mandatory review requests for classified records containing foreign government information in accordance with §2400.21. The agency that initially received or classified the foreign government information shall be responsible for making a declassification determination after consultation with concerned agencies. If OSTP receives a request for mandatory review and is not the agency that received or classified the foreign government information, it shall refer the request to the appropriate agency for action. Consultation with the foreign originator through appropriate channels may be necessary prior to final action on the request.

§ 2400.38 Protection of foreign government information.
Classified foreign government information shall be protected as is prescribed by this regulation for United States classified information of a comparable level.
Subpart G—Security Education

§ 2400.39 Responsibility and objectives.

The OSTP Security Officer shall establish a security education program for OSTP personnel. The program shall be sufficient to familiarize all OSTP personnel with the provisions of Executive Order 12356 and Directive No. 1, and this regulation. It shall be designed to provide initial, refresher, and termination briefings to impress upon them their individual security responsibilities.

Subpart H—Office of Science and Technology Policy Information Security Program Management

§ 2400.40 Responsibility.

The Director, OSTP is the senior OSTP official having authority and responsibility to ensure effective and uniform compliance with and implementation of Executive Order 12356 and its implementing Directive No. 1. As such, the Director, OSTP, shall have primary responsibility for providing guidance, oversight and approval of policy and procedures governing the OSTP Information Security Program. The Director, OSTP, may approve waivers or exceptions to the provisions of this regulation to the extent such action is consistent with Executive Order 12356 and Directive No. 1.

§ 2400.41 Office Review Committee.

The Office of Science and Technology Policy Review Committee (hereinafter referred to as the Office Review Committee) is hereby established and will be responsible for the continuing review of the administration of this Regulation with respect to the classification and declassification of information or material originated or held by the Office of Science and Technology Policy. The Office Review Committee shall be composed of the Executive Director who shall serve as chairperson, the Assistant Director for National Security & Space, and the Security Officer.

§ 2400.42 Security Officer.

Under the general direction of the Director, the Special Assistant to the Executive Director will serve as the Security Officer and will supervise the administration of this Regulation. He/she will develop programs, in particular a Security Education Program, to insure effective compliance with and implementation of the Information Security Program. Specifically he/she also shall:

(a) Maintain a current listing by title and name of all persons who have been designated in writing to have original Top Secret, Secret, and Confidential Classification authority. Listings will be reviewed by the Director on an annual basis.

(b) Maintain the record copy of all approved OSTP classification guides.

(c) Maintain a current listing of OSTP officials designated in writing to have declassification and downgrading authority.

(d) Develop and maintain systematic review guidelines.

§ 2400.43 Heads of offices.

The Head of each unit is responsible for the administration of this regulation within his area. These responsibilities include:

(a) Insuring that national security information is properly classified and protected;

(b) Exercising a continuing records review to reduce classified holdings through retirement, destruction, downgrading or declassification;

(c) Insuring that reproduction of classified information is kept to the absolute minimum;

(d) Issuing appropriate internal security instructions and maintaining the prescribed control and accountability records on classified information under their jurisdiction.

§ 2400.44 Custodians.

Custodians of classified material shall be responsible for providing protection and accountability for such material at all times and particularly for locking classified material in approved security equipment whenever it is not in use or under direct supervision of authorized persons. Custodians shall follow procedures which insure that unauthorized persons
§ 2400.45 Information Security Program Review.

(a) The Director, OSTP, shall require an annual formal review of the OSTP Information Security Program to ensure compliance with the provisions of Executive Order 12356 and Directive No. 1, and this regulation.

(b) The review shall be conducted by a group of three to five persons appointed by the Director and chaired by the Executive Director. The Security Officer will provide any records and assistance required to facilitate the review.

(c) The findings and recommendations of the review will be provided to the Director for his determination.

§ 2400.46 Suggestions or complaints.

Persons desiring to submit suggestions or complaints regarding the Office of Science and Technology Policy Information Security Program should do so in writing. This correspondence should be addressed to: Executive Director, Office of Science and Technology Policy, Executive Office of the President, Washington, DC 20506.
CHAPTER XXVII—OFFICE FOR MICRONESIAN STATUS NEGOTIATIONS

<table>
<thead>
<tr>
<th>Part</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2700</td>
<td>551</td>
</tr>
</tbody>
</table>

Security information regulations .............................................
PART 2700—SECURITY INFORMATION REGULATIONS

Subpart A—Introduction

§ 2700.1 References.

§ 2700.2 Purpose.

The purpose of this Regulation is to ensure, consistent with the authorities listed in §2700.1, that national security information originated and/or held by the Office for Micronesian Status Negotiations (OMSN), which includes the Status Liaison Office, Saipan, Northern Mariana Islands (SLNO), is protected. To ensure that such information is protected, but only to the extent and for such period as is necessary, this regulation identifies the information to be protected and prescribes certain classification, declassification and safeguarding procedures to be followed.

§ 2700.3 Applicability.

This Regulation supplements E.O. 12065 within OMSN with regard to National Security Information. In consonance with the authorities listed in §2700.1, it establishes general policies and certain procedures for the classification, declassification and safeguarding of information which is owned by, is produced for or by, or is under the control of OMSN.

Subpart B—Original Classification

§ 2700.11 Basic policy.
(a) General.

It is the policy of OMSN to make available to the public as much information concerning its activities as is possible, consistent with its responsibility to protect the national security.

(b) Safeguarding national security information. Within the Federal Government there is some information which because it bears directly on the effectiveness of our national defense and the conduct of our foreign relations, must be subject to some constraints for the security of our nation.

(c) Balancing test. To balance the public’s interest in access to government information with the need to protect certain national security information from disclosure, these regulations identify the information to be protected, prescribe classification, downgrading, declassification, and safeguarding procedures to be followed, and establish education, monitoring and

Subpart C—Derivative Classification

§ 2700.21 Definition and application.

Subpart D—Declassification and Downgrading

§ 2700.31 Declassification authority.

§ 2700.33 Mandatory review for declassification.

§ 2700.34 Downgrading authority.

Subpart E—Safeguarding

§ 2700.41 General restrictions on access.

§ 2700.42 Responsibility for safeguarding classified information.

§ 2700.43 Reproduction controls.

§ 2700.44 Administrative sanctions.

Subpart F—Implementation and Review

§ 2700.51 Information Security Oversight Committee.

§ 2700.52 Classified Review Committee.


SOURCE: 44 FR 51574, Sept. 4, 1979. Correctly designated at 44 FR 51990, Sept. 6, 1979, unless otherwise noted.

Subpart A—Introduction

§ 2700.1 References.
sanctioning systems to insure their effectiveness. When questions arise as whether the need to protect information may be outweighed by the public interest in disclosure of the information, they shall be referred to OMSN pursuant to §2700.32(b) for a determination whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure.

§ 2700.12 Criteria for and level of original classification.

(a) General Policy. Documents or other material are to be classified only when protecting the national security requires that the information they contain be withheld from public disclosure. Information may not be classified to conceal violations of law, inefficiency, or administrative error, or to prevent embarrassment to a person, organization or agency, or to restrain competition. No material may be classified to limit dissemination, or to prevent or delay public release, unless its classification is consistent with E.O. 12065.

(b) Criteria. To be eligible for classification, information must meet two requirements:

(1) First, it must deal with one of the criteria set forth in section 1–301 of E.O. 12065;

(2) Second, the President’s Personal Representative for Micronesian Status Negotiations or his delegate who has original classification authority must determine that unauthorized disclosure of the information or material can reasonably be expected to cause at least identifiable harm to the national security.

(c) Classification designations. Only three designations of classification are authorized—“Top Secret,” “Secret,” “Confidential.” No other classification designation is authorized or shall have force.

(d) Unnecessary classification, and classification at a level higher than is necessary, shall be avoided. If there is reasonable doubt as to which designation in section 1–1 of E.O. 12065 is appropriate, or whether information should be classified at all, the less restrictive designation should be used, or the information should not be classified.

§ 2700.13 Duration of original classification.

(a) Information or material which is classified after December 1, 1978, shall be marked at the time of classification with the date or event for declassification or a date for review for declassification. This date or event shall be as early as national security permits and shall be no more than six years after original classification except as provided in paragraph (b) of this section.

(b) Only the President’s Personal Representative for Micronesian Status Negotiations may authorize a classification period exceeding six years. Originally classified information that is so designated shall be identified with the authority and reason for extension. This authority shall be used sparingly. In those cases where extension of classification is warranted, a declassification date or event, or a date for review shall be set. This date or event shall be early as national security permits and shall be no more than twenty years after original classification except that for foreign information the date or event may be up to thirty years after original classification.

§ 2700.14 Challenges to classification.

If holders of classified information believe the information is improperly or unnecessarily classified, or that original classification has been extended for too long a period, they should discuss the matter with their immediate superiors or the classifier of the information. If these discussions do not satisfy the concerns of the challenger, the matter should be brought to the attention of the chairman of the OMSN Information Security Oversight Committee, established pursuant to §2700.51. Action on such challenges shall be taken within 30 days from date of receipt and the challenger shall be notified of the results. When requested, anonymity of the challenger shall be preserved.
§ 2700.21 Definition and application.

Derivative classification is the act of assigning a level of classification to information which is determined to be the same in substance as information which is currently classified. Thus, derivative classification may be accomplished by any person cleared for access to that level of information, regardless of whether the person has original classification authority at that level.

§ 2700.22 Classification guides.

OMSN shall issue classification guides pursuant to section 2–2 of E.O. 12065. These guides, which shall be used to direct derivative classification, shall identify the information to be protected in specific and uniform terms so that the information involved can be readily identified. The classification guides shall be approved in writing by the President’s Personal Representative for Micronesian Status Negotiations. Such approval constitutes an original classification decision. The classification guides shall be kept current and shall be reviewed at least every two years.

Subpart D—Declassification and Downgrading

§ 2700.31 Declassification authority.

The Director, OMSN, is authorized to declassify OMSN originated documents after consultation with the appropriate OMSN staff members.

§ 2700.32 Declassification general.

Declassification of classified information shall be given emphasis comparable to that accorded to classification. The determination to declassify information shall not be made on the basis of the level of classification assigned, but on the loss of the sensitivity of the information with the passage of time, and with due regard for the public interest in access to official information. At the time of review, any determination not to declassify shall be based on a determination that despite the passage of time since classification, release of information reasonably could still be expected to cause at least identifiable damage to the national security.

§ 2700.33 Mandatory review for declassification.

(a) General. All information classified under the Order or prior orders, except as provided for in section 3–503 of E.O. 12065 shall be subject to review for declassification upon request of a member of the public, a government employee, or an agency.

(b) Receipt. (1) Requests for mandatory review for declassification under section 3–501 of E.O. 12065 must be in writing and should be addressed to: Office for Micronesian Status Negotiations, ATTN: Security Officer (Mandatory Review Request), Room 3356, Department of the Interior, Washington, DC 20240.

(2) The requestor shall be informed of the date of receipt of the request at OMSN. This date will be the basis for the time limits specified in paragraph (c) of this section.

(3) If the request does not reasonably describe the information sought, the requestor shall be notified that, unless additional information is provided or the request is made more specific, no further action will be taken.

(4) Subject to paragraph (b)(7) of this section, if the information requested is in the custody of and under the exclusive declassification authority of OMSN, OMSN shall determine whether the information or any reasonably segregable portion of it no longer requires protection. If so, OMSN shall promptly make such information available to the requester, unless withholding it is otherwise warranted under applicable law. If the information may not be released, in whole or in part, OMSN shall give the requester a brief statement of the reasons, a notice of the right to appeal the determination to the agency review committee, and notice that such an appeal must be filed with the review committee within 60 days.

(5) When OMSN receives a request for information in a document which is in its custody, but which was classified by
another agency, it shall refer the request to the appropriate agency for review, together with a copy of the document containing the information requested, where practicable. OMSN shall also notify the requester of the referral, unless the association of the reviewing agency with the information requires protection. The reviewing agency shall review a document in coordination with any other agency involved with the classification or having a direct interest in the subject matter. The reviewing agency shall respond directly to the requester in accordance with the pertinent procedures described above and, if requested, shall notify OMSN of its determination.

(6) Requests for declassification of classified documents originated by OMSN or another agency but in the possession and control of the Administrator of General Services, pursuant to 44 U.S.C 2107 or 2107 Note, shall be referred by the Archivist to the agency of origin for processing and for direct response to the requests. The Archivist will inform requesters of such referrals.

(7) In the case of requests for documents containing foreign government information, OMSN, if it is also the agency which initially received the foreign government information, shall determine whether the foreign government information in the document may be declassified and released in accordance with agency policies or guidelines, consulting with other agencies of subject matter interest as necessary. If OMSN is not the agency which received the foreign government information, it shall refer the request to the latter agency, which shall take action on the request. In those cases where available agency policies or guidelines do not apply, consultation with the foreign originator through appropriate channels may be advisable prior to final action on the request.

(8) If any agency makes a request on behalf of a member of the public, the request shall be considered as a request by that member of the public and handled accordingly.

(c) Review. (1) Within sixty days from its receipt, OMSN shall inform the requester of the determination of the mandatory review for declassification.

(2) If the determination is to withhold some or all of the material requested, the requester may appeal the determination. The requester shall be informed that an appeal must be made in writing within sixty days of receipt of the denial and should be addressed to the chairperson of the OMSN Classification Review Committee established pursuant to §2700.52.

(3) No agency in possession of a classified document may, in response to a request for the document made under the Freedom of Information Act (5 U.S.C. 552) or under section 3-5 of E.O. 12065, refuse to confirm the existence or non-existence of the document, unless the fact of its existence or non-existence would itself be classifiable.

(4) The requester shall be informed of the appellate determination within thirty days of receipt of the appeal.

(5) In considering requests for mandatory review, OMSN may decline to review again any request for material which has been recently reviewed and denied, except insofar as the request constitutes an appeal under paragraph (f) of this section.

(d) Processing of Requests. The processing of requests by OMSN shall be as follows:

(1) The Security Officer or his designee shall record the request, and arrange for search and review of the documents. The documents will be reviewed for declassification in accordance with these regulations or any applicable guidelines. If the documents remain classified and are not to be released, the reviewing office will also prepare a letter informing the requester as described in paragraph (b)(4) of this section. The letter to the requester shall be signed by the President’s Personal Representative for Micronesian Status Negotiations, his Deputy or the Status Liaison Officer. The Security Officer or his designee shall record disposition of the case and forward the letter of denial to the requester.

(2) If any request requires obtaining the views of other agencies, the receiving office shall arrange coordination of review with such other agencies.

(3) When all documents involved in the request are declassified and released, the receiving office will send a
release statement, to the requester, and shall inform the requester of any fees due before releasing documents.

(4) In the case of documents of agency origin requested by a Presidential Library on behalf of a member of the public, if there is a partial denial, the letter will advise the requester as described in paragraph (b)(4) of this section, but the requester will be referred to the Archivist for copies of the released document, with portions excised. The receiving office will transmit such documents, with portions marked to be excised, to Archives which will transmit them with portions excised to the Presidential Library for its records and for use in the case of further similar requests.

(5) The Security Officer or his designee shall also coordinate requests from other agencies seeking the views of OMSN as to declassification of documents originated by such other agencies but involving information of primary subject matter interest to OMSN. The Security Officer or his designee will transmit the documents to the reviewing individual for a determination as to declassification and will coordinate the reply of OMSN to the requesting agency.

(e) Appeals. (1) The President’s Personal Representative for Micronesian Status Negotiations shall receive appeals for denial of documents by OMSN. Such appeals shall be addressed to President’s Personal Representative for Micronesian Status Negotiations, Suite 3356, Interior Department Building, Washington, DC 20240. The appeal must be received in OMSN within 60 days of the date of the original denial letter or the final release of documents, whichever is later.

(2) Appeals shall be decided within 30 days of their receipt.

(f) Fees. (1) Fees for the location and reproduction of information which is the subject of a mandatory review request shall be assessed according to the following schedule:

   (i) Reproduction of documents: Documents will be reproduced at a rate of $.25 per page for all copying of four pages or more. No fee shall be assessed for reproducing documents which are three pages or less, or for the first three pages of longer documents.

   (2) Where it is anticipated that the fees chargeable under this section will amount to more than $25.00, and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed $25.00, an advance deposit may be required. Dispatch of such a notice or request shall suspend the running of the period for response by OMSN until a reply is received from the requester.

   (3) Remittance shall be in the form either of a personal check or bank draft on a bank in the United States, or a postal money order. Remittance shall be made payable to Treasurer of the United States and mailed to the address noted in paragraph (b)(1) of this section.

   (4) A receipt for fees paid will be provided only upon request. Refund of fees for services actually rendered will not be made.

   (5) OMSN may waive all or part of any fee provided for in this section when it is deemed to be in either the interest of OMSN or of the general public.

§ 2700.34 Downgrading authority. The Security Officer, OMSN is authorized to downgrade OMSN originated documents after consultation with the staff member who is charged with functional responsibility for the subject matter under question.

Subpart E—Safeguarding

§ 2700.41 General restrictions on access.

(a) Determination of need-to-know. Classified information shall be made available to a person only when the possessor of the classified information establishes in each instance, except as provided in section 4-3 of E.O. 12065,
§2700.42 Responsibility for safeguarding classified information.

(a) General Policy. The specific responsibility for the maintenance of the security of classified information rests with each person having knowledge or physical custody thereof, no matter how obtained. The ultimate responsibility for safeguarding classified information rests on each supervisor to the same degree that supervisor is charged with functional responsibility.

(b) Security and Top Secret Control Officers. The Director, OMSN, and the Status Liaison Officer, Saipan, are assigned specific security responsibilities as Security Officer and Top Secret Control Officer.

(c) Handling. All documents bearing the terms "Top Secret," "Secret," and "Confidential" shall be delivered to the Top Secret Control Officer or his designee immediately upon receipt. All potential recipients of such documents shall be advised of the names of such designees and updated information as necessary. In the event that the Top Secret Control Officer or his designee are not available to receive such documents, they shall be turned over to the office supervisor and secured, unopened, in a designated combination safe located in OMSN or SLNO, as appropriate until the Top Secret Control Officer is available. All materials not immediately deliverable to the Top Secret Control Officer shall be delivered at the earliest opportunity. Under no circumstances shall classified material that cannot be delivered to the Top Secret Control Officer be stored other than in the designated safe.

(d) Storage. All classified documents shall be stored in the designated combination safe or safe located in OMSN or SLNO as appropriate. The combination shall be changed as required by ISOO Directive No. 1, section IV F (5)(a). The combinations shall be known only to the Security Officer and his designees with the appropriate security clearance.

(e) Security Education Program. The Security Officer shall establish a program of briefings to familiarize personnel with the provisions of E.O. 12065 and implementing directives. Such briefings shall be held once per year, or more frequently. Before any new or newly assigned employee enters on duty, he shall be given instruction in sufficient detail in security procedures and practices to inform him of his responsibilities arising from his access to classified data.

(f) Access by Historical Researchers and Former Presidential Appointees. In keeping with provisions 4–301 and 4–302 of E.O. 12065, the President's Personal Representative for Micronesian Status Negotiations shall designate appropriate officials to determine, prior to granting access to classified information, the propriety of such action in the interest of national security and assurance of the recipient's trustworthiness and need-to-know.

§2700.43 Reproduction controls.

OMSN and SLNO shall maintain records to show the number and distribution of all OMSN originated classified documents. Reproduction of classified material shall take place only in accordance with section 4–4 of E.O. 12065 and any limitations imposed by the originator. Should copies be made, they are subject to the same controls as the original document. Records showing the number of distribution of copies shall be maintained by the Office Supervisor and the log stored with the original documents. These measures shall not restrict reproduction for the purposes of mandatory review.

§2700.44 Administrative sanctions.

Officers and employees of the United States Government assigned to OMSN shall be subject to appropriate administrative sanctions if they knowingly and willingly commit a violation under section 5–5 of E.O. 12065. These sanctions may include reprimand, suspension without pay, removal, termination...
§ 2700.51 Information Security Oversight Committee.

The OMSN Information Security Oversight Committee shall be chaired by the Security Officer, OMSN. The Committee shall be responsible for acting on all suggestions and complaints concerning the administration of the OMSN information security program.

§ 2700.52 Classified Review Committee.

The OMSN Classification Review Committee shall be chaired by the President’s Personal Representative for Micronesian Status Negotiations. The Committee shall decide appeals from denials of declassification requests submitted pursuant to section 3-5 of E.O. 12065. The Committee shall consist of the President’s Personal Representative, Department of Defense/Legal Advisor and Political/Economic Advisor.
CHAPTER XXVIII—OFFICE OF THE VICE PRESIDENT OF THE UNITED STATES

<table>
<thead>
<tr>
<th>Part</th>
<th>Security procedures</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2800</td>
<td></td>
<td>561</td>
</tr>
</tbody>
</table>
PART 2800—SECURITY PROCEDURES

Sec.
2800.1 Purpose.
2800.2 Guiding directives.
2800.3 Policy.
2800.4 General information.
2800.5 Policies.
2800.6 Delegation of classification and declassification authority.
2800.7 Designation of chairperson for Ad Hoc Committees.

ATTACHMENTS TO PART 2800
ATTACHMENT 1—EMPLOYMENT AGREEMENT & INDOCTRINATION STATEMENT
ATTACHMENT 2—SECURITY TERMINATION STATEMENT
ATTACHMENT 3—SAMPLE


SOURCE: 44 FR 66591, Nov. 20, 1979, unless otherwise noted.

§ 2800.1 Purpose.

To establish procedures and provide guidance for the security of classified information and material within the Office of the Vice President.

§ 2800.2 Guiding directives.


§ 2800.3 Policy.

The classification, declassification, safeguarding and handling of classified information within the Office of the Vice President will comply with the letter and spirit of those directives listed in §2800.2. All personnel of the Office of the Vice President are responsible individually for complying with the provisions of these regulations and the provisions of these regulations applicable to all personnel assigned or detailed to the Office of the Vice President.

§ 2800.4 General information.

(a) Staff Security Officer/Top Secret Control Officer. A Vice Presidential Staff Security Officer and Assistant Staff Security Officer will be assigned to perform the duties as outlined in these regulations. They will normally be on the staff of the Assistant to the Vice President for National Security Affairs. The Staff Security Officer and Assistant Staff Security Officer will serve as Top Secret Control Officer and Assistant Top Secret Control Officer and custodians of classified material for the Office of the Vice President respectively, and will be responsible for the overall supervision of the Top Secret Control program. They will maintain positive control over the movement of all Top Secret material under their jurisdiction.

(b) Custodian, Office of the Assistant to the Vice President for Congressional Relations. The Assistant to the Vice President for Congressional Relations, Office of the President of the Senate, will be designated as Custodian of classified material for that office. He will be responsible for compliance with the instructions contained herein. In this capacity, he will be charged with safeguarding classified material necessary to the operation of the office.

(c) National Security Classifications. Classifications of National Security Information are defined in Executive Order 12065, sections 1–102 through 1–104.

(d) Prohibited Markings. (1) The caveats “FOR OFFICIAL USE ONLY” and “ADMINISTRATIVELY RESTRICTED” are used within the Office of the Vice President to designate certain unclassified information which requires control. These caveats will under no circumstances be applied to information which qualifies as classified information. Further, neither they nor other terms will be used in conjunction with the prescribed security classifications of CONFIDENTIAL, SECRET and TOP SECRET.

(2) Unclassified information bearing either of the foregoing administrative designations cannot be protected from release under the national security exemption of the Freedom of Information Act (although other exemptions may be available).

(e) Security Clearances. No person shall be given access to classified information or material unless a favorable background investigation has been
§ 2800.4

completed determining that the individual is trustworthy and that access is necessary for the performance of official duties.

(1) Security Clearance Procedures. (i) The Counsel to the Vice President will:

(A) Be responsible for the processing of full field investigations for personnel assigned to the Vice President’s staff. Department of Defense detailees are processed by the Defense Investigative Service.

(B) Inform the Staff Security Office of individuals whose full field investigations have been satisfactorily completed and approved and of any subsequent changes.

(C) Notify the Staff Security Office as soon as he/she is aware that a staff member is planning to terminate his/her employment.

(ii) The Staff Security Office will provide newly cleared persons with a security orientation briefing covering policy and procedures for handling classified information and material. After the briefing individuals will sign a Statement of Understanding of Security Procedures (Attachment 1). This statement will be kept on file by the Staff Security Office.

(iii) There is no such thing as an “Interim Security Clearance” for persons employed by or detailed to the Office of the Vice President. Under no circumstances will uncleared persons be given access to classified material. Access to classified material will be denied until the individual has had a satisfactorily completed background investigation, has received the security orientation briefing and signed the Statement of Understanding of Security Procedures.

(iv) The Staff Security Office, as part of an individual’s departure debriefing, will remind them of their continuing responsibilities to protect classified information to which they have had access during the performance of their official duties. After being debriefed, the individual will sign a Security Termination Statement acknowledging his responsibilities (Attachment 2).

(2) Satisfactory completion of a background investigation does not in itself grant an individual access to classified information. Individual clearances for access to classified information or material will be controlled by the Staff Security Office and certified in writing on an individual basis.

(f) Access to Classified Material. Each member of the staff who has custody or possession of classified information is responsible for providing the required degree of protection from unauthorized disclosure at all times.

(1) Classified information and material will only be disclosed to an individual after it has been determined that the individual possesses the required clearance and has a valid “need to know.” Persons releasing the information shall be responsible in every case for determining the recipient’s eligibility for access.

(2) Access to Sensitive Compartmented Intelligence Information will be controlled by the Assistant to the Vice President for National Security Affairs.

(g) Custody and safekeeping of Classified Material. (i) Classified material addressed to the Office of the Vice President will normally be delivered to and receipted for by the Staff Security Office where it will be entered into the classified material control system.

(i) Staff members receiving classified material from any source by any means will personally deliver such material to the Staff Security Office for appropriate entry into the classified material control system.

(ii) Conversely, members of the staff desiring to transmit classified material will deliver the material to the Staff Security Office for handling in accordance with paragraph (h)(5) of this section.

(2) Storage of Classified Material. (i) Classified material will be stored only in accordance with the provisions of ISOO Directive No. 1, paragraph IV–F–1 through 4.

(ii) Filing of unclassified material in security containers is prohibited except where the unclassified material is an integral part of a file which contains classified material. If extenuating circumstances necessitate the use of a security container for storing only unclassified material, the container will be marked with a sign stating “This container is not used to store.
classified material” or “Do not store classified material in this container.”

(3) Record of safe locations. The Staff Security Office will assign numbers to all security containers used to store classified material in the Office of the Vice President. A record of safe numbers, locations and date of last combination change will be maintained in the Staff Security Office.

(4) Changing of lock combinations. Combinations of security containers will be changed by the Staff Security Office or the Secret Service. This service may be requested by contacting the Staff Security Office. Combinations will be changed in accordance with the provisions of ISOO Directive No. 1, paragraph IV–F–5.

(5) Records of combinations. Records of combinations shall be maintained by the Staff Security Office. Whenever a combination is changed, the new combination and other required information will be recorded on GSA Optional Form 63. The sealed envelope will then be delivered to the Staff Security Office for retention in the vault safe.

(6) Custodians. Each container used for storage of classified material within the Office of the Vice President will have assigned a primary and alternate custodian. Responsibility for security of these containers shall rest with those persons, and their names shall be affixed on the outside of the top drawer of each container positioned so as to be readily discernible. Optional Form 63 shall be used for this purpose.

(h) Handling of Classified Material—(1) Use of cover sheets. A separate cover sheet indicating the classification of the material will be fastened to the top page of cover of each CONFIDENTIAL, SECRET or TOP SECRET document.

(2) Unattended documents. Classified material will be under the direct supervision of a person with an appropriate security clearance and a verified need-to-know at all times when in use. Special care will be taken to insure that classified material is not left unsecured or unattended in an office.

(3) Working papers. Working papers are documents, including drafts, photographs, etc., created to assist in the formulation and preparation of finished papers. Working papers containing classified information will be marked with the appropriate classification and provided the same degree of protection as that given to other documents of an equal category of classification.

(4) Communications security. Classified information shall not be discussed over any voice communications device except as authorized over approved secure communications circuits. This restriction also applies to electrical transmission of classified material via any unsecure circuitry involving teletypes, DEX equipment or other systems of a like nature. Appropriate secure facilities for the discussion or transmittal of classified material may be arranged by contacting the Staff Security Office.

(5) Transmittal of Classified Material—

(i) Outside the Office of the Vice President and the White House Complex. The Staff Security Office is responsible for transmitting or transferring all classified material outside the Office of the Vice President and the White House Complex in accordance with the provisions of ISOO Directive No. 1, paragraphs I, G and H.

(ii) Within the Office of the Vice President and the White House Complex. Transfer or movement of classified material will be accomplished only by properly cleared persons handcarrying the material to the recipient. The material shall be carried in an envelope marked with the appropriate classification. Use of see through messenger envelopes is not authorized. Recipients will sign a receipt (GSA Optional Form 112) for all material classified SECRET and TOP SECRET. Whenever TOP SECRET material is transferred, the Staff Security Office will be notified in order to maintain accurate accountability of the material. Classified material will never be delivered to an uncleared person, left in an unoccupied office, or sent through unclassified mail delivery/distribution systems.

(iii) Staff members requiring the use of classified material at conferences or meetings held outside the Washington, DC Metropolitan area and who intend to use commercial transportation shall provide the material to the Staff Security Office far enough in advance to assure that the material will be available
§ 2800.4

32 CFR Ch. XXVIII (7–1–01 Edition)

on or before the date needed. This requirement does not apply when utilizing government/military transportation. In this case, material may be handcarried. The Staff Security Office will brief each staff member prior to departure concerning security requirements or arrangements needed to safeguard the material while away from his office. For meetings or conferences within the Washington, DC Metropolitan area, members may handcarry classified material. Use of classified material during a conference or meeting requires increased awareness and precautionary handling to avoid security violations and/or compromises. Staff members using classified material during a conference or meeting will be required to present personnel who possess the appropriate clearance for the material being presented.

(iv) Visits to foreign countries. Special precautions must be taken when visiting foreign countries to ensure classified material is protected at all times. For all visits to foreign countries a member of the staff will be appointed as custodian for all classified material required for the success of the mission. This individual will be the holder of a diplomatic passport which exempts him from customs inspections. Individual so designated will coordinate with United States embassy personnel in the country to be visited for securing of classified material within the embassy compound or other appropriate secure area during the course of the visit.

(6) Preparation and marking of Classified Material. All classified material originating within the office of the Vice President will be prepared and marked by properly authorized and cleared personnel in accordance with ISOO Directive No. 1, paragraphs I, G, and H. A sample letter is attached for your guidance (Attachment 3). Derivative information will be prepared and classified in accordance with ISOO Directive No. 1, paragraphs II A through C. Questions concerning procedures should be directed to the Staff Security Office.

(7) Reproduction of Classified Material.
(i) Reproduction of classified material will be accomplished only by properly cleared persons.
(ii) Reproduction of TOP SECRET material will be accomplished only by a member of the Staff Security Office or a designated representative of that office.
(iii) Accountability of reproduced classified material will be maintained by informing the Staff Security Office of the reproduction of SECRET and TOP SECRET material, the number of copies reproduced and their disposition.
(iv) Reproduction machines can retain the imagery of material passed through them. Therefore, to avoid inadvertent disclosure of classified information through subsequent use of machines, staff members will always run machines through four cycles (four blank pages) after the last page of the classified material has been reproduced. These pages will be destroyed in the same manner as classified material.

(8) Destruction of Classified Material.
(i) SECRET and TOP SECRET material will be given to the Staff Security Office for destruction to insure destruction is properly recorded and destroyed material is removed from the classified control system.
(ii) CONFIDENTIAL material may be destroyed in the holder’s office by tearing lengthwise and placing in a “Burn Bag” specifically designated for classified material.
(iii) Classified waste material will be separated from other office waste material and placed in “Burn Bags.” Classified waste material includes working papers, notes, drafts of classified correspondence, carbon paper, typewriter ribbons and any other material containing information requiring destruction. “Burn Bags” will be collected daily by a member of the White House Executive Protective Service who will then dispose of the bags in a secure facility.
(iv) Typewriter ribbons. Classified material can be reproduced from imprints on used typewriter ribbons. Therefore, ribbons which are used in the preparation of classified material must be safeguarded accordingly, i.e., they will
be stored in a safe at the close of business, destroyed as classified waste when no longer serviceable, etc.

(9) Inventories. The Staff Security Office will conduct inventories of all TOP SECRET material charged to the Office of the Vice President at least annually to determine the adequacy of control procedures and insure accountability.

(i) Loss or compromise. Any person who has knowledge of loss of possible compromise of classified information shall promptly report the circumstances to the Staff Security Office for appropriate action in accordance with ISOO Directive No. 1, paragraph IV, H.

(j) Penalties. Any individual breach of security may warrant penalties up to and including the separation of the individual from his employment or criminal prosecution.

(k) Special access. Special access authority is required for release of Sensitive Compartmented Intelligence Information. The names of personnel cleared for access to this category of information are on file in the Staff Security Office.

§ 2800.5 Policies.

(a) Basic policy. Except as provided in the Atomic Energy Act of 1943, as amended, Executive Order 12065, as implemented by ISOO Directive No. 1, provides the only basis for classifying information. It is the policy of this office to make available to the public as much information concerning its activities as possible consistent with the need to protect the national security.

(b) Duration of classification. Classification shall not be continued longer than necessary for the protection of national security. Each decision to classify requires a simultaneous determination of the duration such classification must remain in effect. For further guidance, refer to sections 1–401 and 1–402, E.O. 12065.

(c) Declassification. Declassification of information shall be given emphasis comparable to that accorded to classification. Decisions concerning declassification shall be based on the loss of the information’s sensitivity with the passage of time or upon the occurrence of a declassification event. For further guidance, refer to sections 3–102, 3–103 and 3–104 of E.O. 12065.

(d) Systematic review for declassification. Systematic review for declassification will be in accordance with sections 3–294, 3–401 and 3–503 of E.O. 12065.

(e) Mandatory review requests. Requests from a member of the public, a government employee, or an agency, to declassify and release information will be acted upon within 60 days provided the request reasonably identifies the information. After review, the information or any reasonably segregable portion thereof that no longer requires protection shall be declassified and released, except as provided in section 3–503, E.O. 12065, unless withholding is otherwise warranted under applicable law.

(f) Classification guides. The Chief Counsel, National Security Council, has determined that, in view of the limited amount of material originally classified by this office, the preparation and publication of classification guides is not required.

(g) Access to Classified Information by historical researchers and former Presidential appointees. Access may be granted under the provisions of section 4–3 of E.O. 12065; however, access is permissive and not mandatory.

§ 2800.6 Delegation of classification and declassification authority.

Pursuant to the provisions of sections 1–201 and 3–103 of E.O. 12065 of June 28, 1978, the following officials within the Office of the Vice President, are designated to originally classify and declassify information as “SECRET” and/or “CONFIDENTIAL”:

(a) Chief of Staff to the Vice President.

(b) Counsel to the Vice President.

(c) Executive Assistant to the Vice President.

(d) Assistant to the Vice President for National Security Affairs.

(e) Assistant to the Vice President for Issues Development and Domestic Policy.

(f) Additionally, the following individuals are designated to declassify “SECRET” and/or “CONFIDENTIAL”
§ 2800.7 Information in accordance with section 3–103 of E.O. 12065:
   (i) Staff Security Officer/Top Secret Control Officer.
   (ii) Assistant Staff Security Officer/Assistant Top Secret Control Officer.

§ 2800.7 Designation of chairperson for Ad Hoc Committees.

The Counsel to the Vice President is designated as the responsible official to chair Ad Hoc Committees as necessary to act on all suggestions and complaints with respect to the administration of the information security program.
As consideration for employment with the Office of the Vice President and as a condition for continued employment I hereby declare that I intend to be governed by and I will comply with the following provisions:

1. By virtue of the performance of my official duties while employed by or assigned to the Office of the Vice President, I expect to be the recipient of classified information, materials, plans or intelligence data which concern the national defense and foreign relations of the United States and which are the property of the United States Government. I have been furnished and I understand the provisions of (a) the Espionage Act, Title 18, USC, Section 793 and 794, concerning the disclosure of information relating to the national defense of the United States and the penalties provided for violations thereof; (b) Title 18, USC, Section 1001, concerning the making of false statements; and (c) Executive Order 12065 entitled "National Security Information."

2. I understand that one of the obligations of my employment by or assignment to the Office of the Vice President is strict compliance with the provisions of Federal laws, directives and regulations with respect to the safeguarding of classified information of the United States Government from unauthorized disclosure.

3. I agree that in the course of my employment by or assignment to the Vice President's staff and subsequent thereto, I will not divulge, publish or reveal by any means any classified information, intelligence data or knowledge which I may acquire by virtue of such employment, except as authorized by competent authority pursuant to the provisions of Federal statutes, regulations and directives. Should an attempt be made by any unauthorized person to obtain classified information from me I will report such incident to the Staff Security Officer for the Office of the Vice President, the nearest office of the Federal Bureau of Investigation or to the nearest U.S. Embassy, Consulate or U.S. Military Command.
4. I understand that upon the termination of my employment by or assignment to the Vice President's staff, none of the classified information or material to which I have access or which I have originated in the course of that employment or assignment may be removed or retained by me, except as authorized by competent authority.

5. I understand that a change in my assignment or employment will not relieve me of my obligations under this statement, and that the provisions of this statement will remain binding upon me after termination of my service with the Office of the Vice President and my services with the United States Government.

__________________________
Signature

Witnessed and accepted in behalf of the Vice President of the United States on

____________________, 19__, by ________________________________
SECURITY TERMINATION STATEMENT

On the occasion of the termination of my employment by or assignment to the staff of the Office of the Vice President, I hereby state that:

1) I am not retaining possession of or taking with me any document or other material containing classified information affecting the national defense or foreign relations of the United States.

2) I will not hereafter in any manner reveal or divulge any such classified information of which I have gained knowledge during my employment by or assignment to the Office of the Vice President, except as authorized by competent authority pursuant to the provisions of Federal statutes, regulations and directives. Should an attempt be made by any unauthorized person to obtain such classified information from me, I will report the incident to the Staff Security Officer of the Office of the Vice President, the nearest office of the Federal Bureau of Investigation, or the nearest U.S. Embassy, Consulate, or U.S. Military Command.

3) I have read and understand the provisions of the Espionage Act, Title 18, USC, Sections 793 and 794, concerning unlawful disclosure of information affecting the national defense, and the provisions of Title 18, USC, Section 1001, regarding the making of false statements. With this understanding, I state that the information I have given herein is, to the best of my knowledge and belief, correct and complete and is being furnished to the U.S. Government for purposes of protection of classified information which affects the national defense, or foreign relations, of the United States.

______________________________  _______________________________
Date                                              Signature

______________________________  _______________________________
Witness                                Name (typed or printed)
January 25, 1979

MEMORANDUM FOR The Vice President
FROM: A. Staff Member
SUBJECT: Classified Markings (U)

Xxxx xxxxxxx x x xxxxxxxxxx xxxxxxx xxxxxx xx

Xxxx x x xxxxxxx x x xxxxxxx xxxxxxxxxx x xx xxxxxxx

Xxxx x xxxxxxx x x xxxxxxx x xx xxxxxxxxxx x xxxxxxxxx.

Xxxx xxxxxx xxxxxxxx xx xxxx xxx xxxxxxxxxx xxxxxxxx.

Xxxx xxxxxx xxxxxxxxxx xx xxxxxxxxxx xxxxxxxxxx x xxxxxxxxx.

Xxxx xxxxxx xxxxxxxxxx xx xxxx xxxxxxxxxx xxxxxxxx.

X xxxxxxxxxx xxx xxxxxxxxxx xxxxxxxxxx xx xx xxxx

Xxxx xxxxxxxxxx x x xxxx xxxxxxxxxx xxxxxxxxxx xx xxxx

Xxxx xxxxxxxxxx x x xxxx x xxxxxxxxxx x x xxxxxxxxxx

Xxxx xxxxxxxxxx x x xxxx xxxxxxxxxx x xxxxxxxxxx x xxxxxxxxxx

X xxxxxxxxxx xxxxxxxxxx x xxxxxxxxxx. Xxxx xxxxxxxxxx xxxxxxxxxx xxxxxxxxxx.

Classified by Director, XXX
Declasify on January 24, 1984
Review for Declassification on January 24, 1984
Downgrade to on

Enter appropriate terminology