

## § 8.21

the record requested cannot be obtained with a reasonable amount of effort, the requester will be notified of the reasons why the request is denied and of his/her right to appeal the determination to the Departmental Information Security Review Committee.

### § 8.21 Burden of proof.

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

### § 8.23 Classified information transferred to the Department of Transportation.

(a) Classified information officially transferred to the Department in conjunction with a transfer of function, and not merely for storage purposes, will be considered to have been originated by the Department.

(b) Classified information in the custody of the Department originated by a department or agency that has ceased to exist and for whom there is no successor agency will be deemed to have been originated by the Department. This information may be declassified or downgraded by the Department after consultation with any other agency that has an interest in the subject matter of the information. Such agency will be allowed 30 calendar days in which to express an objection, if it so desires, before action is taken. A difference of opinion that cannot be resolved will be referred to the Departmental Information Security Review Committee, which will consult with its counterpart committee for the other agency.

(c) Classified information transferred to the National Archives and Records Administration (NARA) will be declassified or downgraded by the Archivist of the United States in accordance with Executive Order 12958, Departmental classification guides, and any existing procedural agreement between NARA and the Department. The Department will take all reasonable steps to declassify information contained in records determined to have permanent historical value before they are accessioned in NARA.

## 49 CFR Subtitle A (10–1–07 Edition)

(d) To the extent practicable, the Department will adopt a system of records management that will facilitate the public release of documents at the time such documents are declassified under the provisions of this part for automatic declassification. To the maximum extent possible without destroying the integrity of the Department's files, all such material will be segregated or set aside for public release upon request. The Department will cooperate with the Archivist in efforts to establish a Government-wide database of information that has been declassified.

## Subpart C—Access to Information

### § 8.25 Personnel Security Review Board.

(a) There is hereby established a Department of Transportation Personnel Security Review Board, which will, on behalf of the Secretary of Transportation (except in any case in which the Secretary personally makes the decision), make the administratively final decision on an appeal arising in any part of the Department from:

(1) A decision not to grant access to classified information;

(2) A decision to revoke access to classified information; or

(3) A decision under § 8.29 to deny access to classified information.

(b) The Personnel Security Review Board will be composed of:

(1) Two persons appointed by the Assistant Secretary for Administration: one from the Office of Personnel and Training, and one, familiar with personnel security adjudication, from the Office of Security and Administrative Management, who will serve as Chair;

(2) One person appointed by the General Counsel, who, in addition to serving as a member of the Board, will provide to the Board whatever legal services it may require; and

(3) One person appointed by each of the Commandant of the Coast Guard and the Federal Aviation Administrator.

(4) Any member may designate a representative, meeting the same criteria as the member, with full power to serve in his/her place.

(c) In carrying out its responsibilities to review final decisions to revoke or deny access to classified information, the Board will establish whatever procedures it deems fit.

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

(a) It is a fundamental policy of the Department to make information available to the public to the maximum extent permitted by law. Information that is declassified for any reason loses its status as material protected in the interest of national security. Accordingly, declassified information will be handled in every respect on the same basis as all other unclassified information. Declassified information is subject to the Departmental public information policies and procedures, with particular reference to the Freedom of Information Act (5 U.S.C. 552) and implementing Departmental regulations (49 CFR Part 7).

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

**§ 8.29 Access by historical researchers and former Presidential appointees.**

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

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

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

(2) Only the provisions of this paragraph apply to persons who are conducting historical research as private individuals or under private sponsorship and do not apply to research conducted under Government contract or

sponsorship. The provisions are applicable only to situations where the classified information concerned, or any part of it, was originated by the Department or its contractors, or where the information, if originated elsewhere, is in the sole custody of the Department. Any person requesting access to material originated in another agency or to information under the exclusive jurisdiction of the National Archives and Records Administration (NARA) will be referred to the other agency or to NARA, as appropriate.

(3) When a request for access to classified information for historical research is received, it will be referred to the appropriate local security office. That office will obtain from the applicant completed Standard Form 86, Questionnaire for National Security Positions, in triplicate, and Standard Form 87, Fingerprint Chart; a statement in detail to justify access, including identification of the kind of information desired and the organization or organizations, if any, sponsoring the research; and a written statement (signed, dated, and witnessed) with respect to the following:

(i) That the applicant will abide by regulations of the Department:

(A) To safeguard classified information; and

(B) To protect information that has been determined to be proprietary or privileged and is therefore not eligible for public dissemination.

(ii) That the applicant understands that any classified information that the applicant receives affects the security of the United States.

(iii) That the applicant acknowledges an obligation to safeguard classified information or privileged information of which the applicant gains possession or knowledge as a result of the applicant's access to files of the Department.

(iv) That the applicant agrees not to reveal to any person or agency any classified information or privileged information obtained as a result of the applicant's access except as specifically authorized in writing by the Department, and further agrees that the applicant shall not use the information for purposes other than those set forth in the applicant's application.