

(5) To the extent a guide is used in conjunction with the automatic declassification provisions in section 3.3 of the Order, state precisely the elements of information to be exempted from declassification to include:

(i) The appropriate exemption category listed in section 3.3(b), and, if appropriate, section 3.3(h) of the Order; and

(ii) A date or event for declassification that is in accordance with section 3.3(b) or section 3.3(h).

(c) *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.

(d) *Dissemination of guides.* (1) Declassification guides shall be disseminated within the agency to be used by all personnel with declassification review responsibilities.

(2) Declassification guides or detailed declassification guidance shall be submitted to the Director of the NDC in accordance with section 3.7(b)(3) of the Order.

§ 2001.33 Mandatory review for declassification.

(a) *U.S. originated information—(1) Regulations.* Each agency shall publish, and update as needed or required, in the FEDERAL REGISTER regulations concerning the handling of mandatory declassification review requests, to include the identity of the person(s) or office(s) to which requests should be addressed.

(2) *Processing—(i) Requests for classified records in the custody of the originating agency.* A valid mandatory declassification review request must be of sufficient specificity to allow agency personnel to locate the records containing the information sought with a reasonable amount of effort. Requests for broad types of information, entire file series of records, or similar non-specific requests may be denied by agencies for processing under this section. In responding to mandatory declassification review requests, agencies shall make a final determination within one year from the date of receipt. When information cannot be declassified in its entirety, agencies shall

make reasonable efforts to release, consistent with other applicable laws, those declassified portions of the requested information that constitute a coherent segment. Upon denial, in whole or in part, of an initial request, the agency shall also notify the requestor of the right of an administrative appeal, which must be filed within 60 days of receipt of the denial. Agencies receiving mandatory review requests are expected to conduct a line-by-line review of the record(s) for public access and are expected to release the information to the requestor, unless that information is prohibited from release under the provisions of a statutory authority, such as, but not limited to, the Freedom of Information Act, (5 U.S.C. 552), as amended, the Presidential Records Act of 1978 (44 U.S.C. 2201–2207), or the National Security Act of 1947 (Pub. L. 235, 61 Stat. 496, 50 U.S.C. Chapter 15).

(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 promptly process the request for declassification and release in accordance with this section. The originating agency shall communicate its declassification determination to the referring agency. The referring agency is responsible for collecting all agency review results and informing the requestor of any final decision regarding the declassification of the requested information unless a prior arrangement has been made with the originating 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 requestor in writing of the final determination and of the reasons for any denial. The appellate authority must inform the requestor of his or her final appeal rights to the Panel.

(iv) *Appeals to the Interagency Security Classification Appeals Panel.* In accordance with section 5.3(c) of the Order, the Panel shall publish in the FEDERAL REGISTER the rules and procedures for bringing mandatory declassification appeals before it.

(v) *Records subject to mandatory declassification review.* Records containing information exempted from automatic declassification in accordance with section 3.3(c) of the Order or with § 2001.30(n)(1) are still subject to the mandatory declassification review provisions of section 3.5 of the Order.

(b) *Foreign government information.* Except as provided in this paragraph, agencies 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 does not permit automatic or unilateral declassification. The declassifying agency or the Department of State, as appropriate, may consult with the foreign government(s) prior to declassification.

(c) *Cryptologic information.* Mandatory declassification review requests for cryptologic information shall be processed in accordance with special procedures issued by the Secretary of Defense and, when cryptologic information pertains to intelligence activities, the Director of National Intelligence.

(d) *Intelligence information.* Mandatory declassification review requests for information pertaining to intelligence sources, methods, and activi-

ties shall be processed in accordance with special procedures issued by the Director of National Intelligence.

(e) *Fees.* In responding to mandatory declassification review requests for classified records, agency heads may charge fees in accordance with 31 U.S.C. 9701 or relevant fee provisions in other applicable statutes.

(f) *Requests filed under mandatory declassification review and the Freedom of Information Act.* When a requester submits a request both under mandatory declassification review and the Freedom of Information Act (FOIA), the agency shall require the requestor to select one process or the other. If the requestor fails to select one or the other, the request will be treated as a FOIA request unless the requested materials are subject only to mandatory declassification review.

(g) *FOIA and Privacy Act requests.* Agency heads shall process requests for declassification that are submitted under the provisions of the FOIA, as amended, or the Privacy Act of 1974 (5 U.S.C. 552a), as amended, in accordance with the provisions of those Acts.

(h) *Redaction standard.* Agencies shall redact documents that are the subject of an access demand unless the overall meaning or informational value of the document is clearly distorted by redaction. The specific reason for the redaction, as provided for in section 1.4 or 3.3(b) of the Order, as applicable, must be included for each redaction. Information that is redacted due to a statutory authority must be clearly marked with the specific authority that authorizes the redaction. Any such redactions shall be performed in accordance with policies and procedures established in accordance with § 2001.45(d).

(i) *Limitations on requests.* Requests for mandatory declassification review made to an element of the Intelligence Community by anyone other than a citizen of the United States or an alien lawfully admitted for permanent residence, may be denied by the receiving Intelligence Community element. Documents required to be submitted for pre-publication review or other administrative process pursuant to an approved nondisclosure agreement are

not subject to mandatory declassification review.

§ 2001.34 Referrals.

(a) *General.* Referrals are required under sections 3.3(d)(3) and 3.6(b) of the Order in order to ensure the timely, efficient, and effective processing of reviews and requests and in order to protect classified information from inadvertent disclosure.

(b) *Automatic declassification.* The referral process for records subject to automatic declassification entails identification of records containing classified information that originated with other agencies or the disclosure of which would affect the interests or activities of other agencies. Those records that could reasonably be expected to fall under one or more of the exemptions in section 3.3(b) of the Order are eligible for referral. The referral process also entails formal notification to those agencies, making the records available for review by those agencies, and recording final agency determinations.

(1) In accordance with section 3.3(d)(3) of the Order, the identification of records eligible for referral is the responsibility of the primary reviewing agency and shall be completed prior to the date of automatic declassification established by section 3.3(a) of the Order.

(2) Except as otherwise determined by the Director of the NDC, primary reviewing agencies shall utilize the Standard Form 715, *Government Declassification Review Tab*, to tab and identify any Federal record requiring referral and record the referral in a manner that provides the referral information in an NDC database system.

(3) Notification of referral of records accessioned into NARA or in the custody of the presidential libraries, and making the records available for review, is the responsibility of NARA and shall be accomplished through the NDC.

(4) Within 180 days of the effective date of this provision, the NDC shall develop and provide the affected agencies with a comprehensive and prioritized schedule for the resolution of referrals contained in accessioned Federal records and Presidential

records. The schedule shall be developed in consultation with the affected agencies, consider the public interest in the records, and be in accordance with the authorized delays to automatic declassification set forth in section 3.3(d) of the Order. The initial schedule shall cover the balance of the first effective fiscal year and four subsequent fiscal years. Thereafter, the schedule shall cover five fiscal years. The NDC shall consult with the affected agencies and update and provide such schedules annually.

(5) The NDC shall provide formal notification of the availability of a referral to the receiving agency and records will be subject to automatic declassification in accordance with the schedule promulgated by the NDC in paragraph (b)(4) of this section, unless the information has been properly exempted by an equity holding agency under section 3.3 of the Order.

(6) Records in the physical but not legal custody of NARA shall be subject to automatic declassification after accessioning and in accordance with paragraphs (b)(3) and (b)(5) of this section.

(7) Agencies that establish a centralized facility as described in section 3.7(e) may make direct referrals provided such activities fall within the priorities and schedule established by the NDC and the activity is otherwise coordinated with the NDC. In such cases, the centralized facility is responsible for providing formal notification of a referral to receiving agencies and for making the records available for review or direct formal referral to agencies by providing a copy of the records unless another mechanism is identified in coordination with the NDC. As established in section 3.3(d)(3)(B), referrals to agencies from a centralized agency records facility as described in section 3.7(e) of the Order will be automatically declassified up to three years after the formal notification has been made, if the receiving agency fails to provide a final determination.

(8) Records marked as containing Restricted Data or Formerly Restricted Data or identified as potentially containing unmarked Restricted Data or