(1) No individual will be subject to retribution for bringing such a challenge; and

(2) Each individual whose challenge is denied will be advised that he/she may appeal to the Interagency Security Classification Appeals Panel established by section 5.4 of Executive Order 12958.

(b) This classification challenge provision is not intended to prevent an authorized holder of information classified by the Department of Transportation from informally questioning the classification status of particular information. Such information inquiries should be encouraged as means to resolve classification concerns and reduce the administrative burden of formal challenges.

§ 8.19 Procedures for submitting and processing requests for classification reviews.

(a) The Director of Security and Administrative Management is hereby designated as the official to whom a member of the public or another department or agency should submit a request for a classification review of classified information produced by or under the primary cognizance of the Department. Elements of the Department that receive a request directly will immediately notify the Director.

(b) If the request for classification review involves material produced by or under the cognizance of the U.S. Coast Guard or the Federal Aviation Administration, the Director will forward the request to the headquarters security staff of the element concerned for action. If the request involves material produced by other Departmental elements, the Director will serve as the office acting on the request.

(c) The office acting on the request will:

(1) Immediately acknowledge receipt of the request and provide a copy of the correspondence to the Director. If a fee for search of records is involved pursuant to 49 CFR Part 7, the requester will be so notified;

(2) Conduct a security review, which will include consultation with the office that produced the material and with source authorities when the classification, or exemption of material

from automatic declassification, was based upon determinations by an original classifying authority; and

(3) Assure that the requester is notified of the determination within 30 calendar days or given an explanation as to why further time is necessary, and provide a copy of the notification to the Director.

(d) If the determination reached is that continued classification is required, the notification to the requester will include, whenever possible, a brief statement as to why the requested material cannot be declassified. The notification will also advise the requester of the right to appeal the determination to the Departmental Information Security Review Committee. A requester who wishes to appeal a classification review decision, or who has not been notified of a decision after 60 calendar days, may submit an appeal to the Departmental Information Security Review Committee.

(e) If the determination reached is that continued classification is not required, the information will be declassified and the material remarked accordingly. The office acting on the request will then refer the request to the office originating the material or higher authority to determine if it is otherwise withholdable from public release under the Freedom of Information Act (5 U.S.C. 552) and the Department's implementing regulations (49 CFR Part 7).

(1) If the material is available under the Freedom of Information Act, the requester will be advised that the material has been declassified and is available. If the request involves the furnishing of copies and a fee is to be collected, the requester will be so advised pursuant to 49 CFR Part 7, Departmental regulations implementing the Freedom of Information Act.

(2) If the material is not available under the Freedom of Information Act, the requester will be advised that the material has been declassified but that the record is unavailable pursuant to the Freedom of Information Act, and that the provisions concerning procedures for reconsidering decisions not to disclose records, contained in 49 CFR Part 7, apply.

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

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

(2) If it is determined that the material no longer requires classification, it will be declassified and remarked. The Committee will refer the request to the General Counsel, or to the head of the Departmental agency concerned, as the case may be, to determine if the material is otherwise withholdable from the public under the Freedom of Information Act (5 U.S.C. 552) and Departmental regulations, (49 CFR Part 7), and paragraphs (f)(1) and (2) of this section will be followed. A copy of the response to the requester will be provided to the Committee.

(g) Requests for a classification review of material more than 25 years old will be referred directly to the Archivist of the United States and the requester will be notified of the referral. In this event, the provisions of this section apply.

(h) Whenever a request is insufficient in the description of the record sought, the requester will be asked to limit his request to records that are reasonably obtainable. If, in spite of these steps, the requester does not describe the records with sufficient particularity, or

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.