SUBCHAPTER D—DECLASSIFICATION

PART 1260—DECLASSIFICATION OF NATIONAL SECURITY INFORMATION

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Subpart A—General Information

§ 1260.1 What is the purpose of this part?

(a) This subchapter defines the responsibilities of NARA and other Federal agencies for declassification of classified national security information in the holdings of NARA. This part also describes NARA’s procedures for:

(1) Operation of the National Declassification Center,

(2) Processing referrals to other agencies,

(3) Facilitating systematic reviews of NARA holdings, and

(4) Processing mandatory declassification review requests for NARA holdings.

(b) Regulations for researchers who wish to request access to materials containing classified national security information are found in 36 CFR part 1256.

(c) For the convenience of the user, the following table provides references between the sections contained in this part and the relevant sections of the Order and the Implementing Directive.
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Who is responsible for the declassification of classified national security Executive Branch information that has been accessioned by NARA?

Who is responsible for the declassification of classified national security White House originated information in NARA’s holdings?

Who is responsible for declassification of foreign government information in NARA’s holdings?

Who is responsible for declassifying Restricted Data (as defined by the Atomic Energy Act of 1954, as amended), Formerly Restricted Data (as defined in 10 CFR 1045.3, and Transclassified Foreign Nuclear Information (as defined in 32 CFR 2001.24(i)) in NARA’s holdings?

Who is responsible for declassification of Executive Branch information in NARA’s holdings?

What are the responsibilities of the NDC?

What are agency responsibilities with the NDC?

What types of referrals will the NDC process?

How does the NDC process referrals of Federal Records?

How does the Department of Defense process referrals?

What are the procedures when agency personnel review records in NARA’s legal and physical custody?

What are NARA considerations when implementing automatic declassification?

What procedures does NARA follow when it receives a request for Executive Branch records under MDR?

What are agency responsibilities after receiving an MDR request forwarded by NARA?

What are NARA’s procedures after it has received the agency’s declassification determinations?

What is the appeal process when an MDR request for Executive Branch information in NARA’s legal custody is denied in whole or in part?

What actions must NARA take when information in its physical and legal custody is reclassified after declassification under proper authority?

What actions must NARA take with information in its physical and legal custody that has been made available to the public after declassification without proper authority?
§ 1260.2 What definitions apply to the regulations in this part?

Classified national security information, or classified information, means information that has been determined under Executive Order 13526 or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

Declassification means the authorized change in the status of information from classified information to unclassified information.

Equity refers to information:
(1) Originally classified by or under the control of an agency;
(2) In the possession of the receiving agency in the event of transfer of function; or
(3) In the possession of a successor agency for an agency that has ceased to exist.

File series means file units or documents arranged according to a filing system or kept together because they relate to a particular subject or function, result from the same activity, document a specific kind of transaction, take a particular physical form, or have some other relationship arising out of their creation, receipt, or use, such as restrictions on access or use.

Integral file block means a distinct component of a file series, as defined in this section, that should be maintained as a separate unit in order to ensure the integrity of the records. An integral file block may consist of a set of records covering either a specific topic or a range of time such as presidential administration or a 5-year retirement schedule within a specific file series that is retired from active use as a group. For purposes of automatic declassification, integral file blocks shall contain only records dated within 10 years of the oldest record in the file block.

Mandatory declassification review means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.5 of Executive Order 13526.

Records means the records of an agency and Presidential materials or Presidential records, as those terms are defined in title 44, United States Code, including those created or maintained by a government contractor, licensee, certificate holder, or grantee that are subject to the sponsoring agency’s control under the terms of the contract, license, certificate, or grant.

Referral means that information in an agency’s records that was originated by or is of interest to another agency is sent to that agency for a determination of its classification status.

Systematic declassification review means the review for declassification of classified information, including previously exempted information, contained in records that have been determined by the Archivist of the United States to have permanent historical value in accordance with 44 U.S.C. 2107.

§ 1260.4 What NARA holdings are covered by this part?

The NARA holdings covered by this part are records legally transferred to NARA, including Federal records, 44 U.S.C. 2107; Presidential records, 44 U.S.C. 2201–2207; Nixon Presidential materials, 44 U.S.C. 2111 note; and donated historical materials, 44 U.S.C. 2111.

Subpart B—Responsibilities

§ 1260.20 Who is responsible for the declassification of classified national security Executive Branch information that has been accessioned by NARA?

(a) Consistent with the requirements of section 3.3 of the Order on automatic declassification, the originating agency is responsible for declassification of its information and identifying equity holders.

(b) An agency may delegate declassification authority to NARA.

(c) If an agency does not delegate declassification authority to NARA, the agency is responsible for reviewing the records to identify the equities of other agencies before the date that the records become eligible for automatic declassification.

(d) NARA is responsible for the declassification of records in its legal custody of defunct agencies that have no successor. NARA will consult with agencies having an equity in the records before making declassification
§ 1260.22 Who is responsible for the declassification of classified national security White House originated information in NARA’s holdings?

(a) NARA is responsible for declassification of information from a previous administration that was originated by:

(1) The President and Vice President;
(2) The White House staff;
(3) Committees, commissions, or boards appointed by the President; and,
(4) Others specifically providing advice and counsel to the President or acting on behalf of the President.

(b) NARA will consult with agencies having equity in the records before making declassification determinations in accordance with sections 3.3(d)(3) and 3.6 of Executive Order 13526.

§ 1260.24 Who is responsible for declassification of foreign government information in NARA’s holdings?

(a) The agency that received or classified the information is responsible for its declassification.

(b) In the case of a defunct agency, NARA is responsible for declassification of foreign government information, as defined in section 6.1(s) of the Order, in its holdings and will consult with the agencies having equity in the records before making declassification determinations.

§ 1260.26 Who is responsible for issuing special procedures for declassification of records pertaining to intelligence activities and intelligence sources or methods, or of classified cryptologic records in NARA’s holdings?

(a) The Director of National Intelligence is responsible for issuing special procedures for declassification of classified records pertaining to intelligence activities and intelligence sources and methods.

(b) The Secretary of Defense is responsible for issuing special procedures for declassification of classified cryptologic records.

§ 1260.28 Who is responsible for declassifying Restricted Data, Formerly Restricted Data, and Transclassified Foreign Nuclear Information?

(a) Only designated officials within the Department of Energy (DOE) may declassify Restricted Data (RD) (as defined by the Atomic Energy Act of 1954, as amended). The declassification of Formerly Restricted Data (FRD) (as defined in 10 CFR 1045.3) may only be performed after designated officials within DOE, in conjunction with designated officials within DOD, have determined that the FRD marking may be removed. Declassification of Transclassified Foreign Nuclear Information (TFNI) (as defined in 32 CFR 2001.24(i)) may be performed only by designated officials within DOE.

(b) Any record that contains RD, FRD, or TFNI shall be excluded from automatic declassification and referred by the primary reviewing agency to DOE using a completed SF 715 to communicate both the referral action and the actions taken on the equities of the primary reviewing agency. Any record identified by the primary reviewing agency as potentially containing RD, FRD, or TFNI shall be referred to DOE using a completed SF 715.

Subpart C—The National Declassification Center (NDC)

§ 1260.30 What is the NDC?

The National Declassification Center (NDC) is established within NARA to streamline declassification processes, facilitate quality-assurance measures, and implement standardized training for declassification of records determined to have permanent historical value.

§ 1260.32 How is the NDC administered?

(a) The NDC is administered by a Director, who shall be appointed by the Archivist of the United States, in consultation with the Secretaries of State, Defense, Energy, and Homeland Security, the Attorney General, and the Director of National Intelligence.

(b) The Archivist, in consultation with the representatives of the participants in the NDC and after receiving
§ 1260.40 What types of referrals will the NDC process?

The NDC processes referrals of both Federal records and Presidential records. Referrals identified in accessioned Federal records will be processed by the Interagency Referral Center (IRC); referrals identified in records maintained by the Presidential Libraries will be processed by the Remote Archives Capture (RAC) Project. (The RAC Project is a collaborative program to facilitate the declassification review of classified records in the Presidential Libraries in accordance with section 3.3 of the Order. In this project, classified Presidential records at the various Presidential Libraries...
are scanned and brought to the Washington, DC, metropolitan area in electronic form for review by equity-holding agencies.)

§ 1260.42 How does the NDC process referrals of Federal Records?

(a) All referrals are processed through the IRC.

(b) Agencies will have one year from the time they receive formal notification of referrals by the NDC to review their equity in the records. If an agency does not complete its review within one year of formal notification, its information will be automatically declassified in accordance with section 3.3(d)(3)(B) of the Order unless the information has been properly exempted by an equity holding agency under section 3.3 of the Order.

(c) Once notified, the agencies will coordinate their review with the NDC so the NDC can properly manage the workflow of the IRC.

§ 1260.44 How does the NDC process RAC Project referrals?

(a) The Presidential Libraries use the RAC Project to process referrals.

(b) Agencies will be notified of RAC Project referrals according to an annual prioritization schedule via the NDC.

(c) The RAC Project identifies the primary agency with equity in the record.

(d) The primary agency will have up to one year from the time it is notified of their referral to complete the review of its equity and identify all other agencies (“secondary agencies”) with an interest in the record. If an agency does not complete its review in one year, its equity will be automatically declassified.

(e) Secondary agencies receiving notification of their referrals through the RAC Project will have up to one year from the date of notification to complete their review.

§ 1260.46 How does the Department of Defense process referrals?

(a) The Department of Defense (DOD) established the Joint Referral Center (JRC) to review DOD agencies’ records and all DOD equities within those records for declassification in accordance with section 3.3 of the Order.

(b) The JRC shall include sufficient quality assurance review policies that are in accordance with policies at the NDC and will provide the NDC with sufficient information on the results of these reviews to facilitate non-DOD agency referral processing and final archival processing for public release.

(c) NARA may loan accessioned records to the JRC for this purpose.

Subpart D—Automatic Declassification

§ 1260.50 How are records at NARA reviewed as part of the automatic declassification process?

(a) Consistent with the requirements of section 3.3 of Executive Order 13526 on automatic declassification, NARA staff may review for declassification records for which the originating agencies have provided written authority to apply their approved declassification guides. The originating agency must review records for which this authority has not been provided.

(b) Agencies may choose to review their own records that have been transferred to NARA’s legal custody, by sending personnel to the NARA facility where the records are located to conduct the declassification review.

(c) Classified materials in the Presidential Libraries may be referred to agencies holding equity in the records through the RAC Project.

§ 1260.52 What are the procedures when agency personnel review records in NARA’s legal and physical custody?

(a) NARA will:

(1) Make the records available to properly cleared agency reviewers;

(2) Provide space for agency reviewers in the facility in which the records are located to the extent that space is available; and

(3) Provide training and guidance for agency reviewers on the proper handling of archival materials.

(b) Agency reviewers must:

(1) Follow NARA security regulations and abide by NARA procedures for handling archival materials;
§ 1260.56 What are NARA considerations when implementing automatic declassification?

(a) Integral File Blocks. Classified records within an integral file block that have not been reviewed and properly exempted from declassification, or referred to an equity holder, will be automatically declassified on December 31 of the year that is 25 years from the date of the most recent record within the file block, except as specified in paragraphs (b), (c), and (d) of this section. For the purposes of automatic declassification, integral file blocks shall contain only records dated within 10 years of the oldest record in the block. The records of each Presidential Administration will be treated as an integral file block and will be scanned for declassification review through the RAC Project.

(b) Special media records. After consultation with the Director of the National Declassification Center and before the records are subject to automatic declassification, an agency head or senior agency official may delay automatic declassification for up to five additional years for classified information contained in media that make a review for possible declassification exemptions more difficult or costly. NARA, through the NDC, will coordinate processing of referrals made in these special media records as part of its overall prioritization strategy.

(c) Referrals. The IRC at the NDC will provide official notification for Federal records, while the RAC Project will provide formal notification for Presidential records. For agencies which fail to act on their referrals after formal notification by the IRC or the RAC Project, NARA will automatically declassify their information in accordance with section 3.3(d)(3)(B) of the Order.

(d) Additional referrals. Agencies will identify referrals in accordance with section 3.3(d)(3) of the Order. NARA will delay automatic declassification for up to 1 year for classified records that have been identified by the originating agency or by NARA as having classified information that requires referral that were not identified by the primary reviewing agency.
§ 1260.60 How does the NDC facilitate systematic review of records exempted at the individual record or file series level?

(a) NARA, through the NDC, follows the procedures established in §1260.52 above regarding agency access for review of exempt file series.

(b) NARA, through the NDC, will establish a prioritization schedule for review of exempted individual Federal records. This schedule will take into account upcoming exemption expiration, researcher interest and likelihood of declassification. This schedule will be included as part of the NDC annual work plan.

(c) The Presidential Libraries will work directly with agencies to facilitate the review of records exempted at the file series level.

(d) The Presidential Libraries, through the NDC, will establish a prioritization schedule for review of previously exempted classified materials in the Presidential Library system. These materials will be referred to agencies holding equity in the records via the RAC Project.

§ 1260.70 How does a researcher submit an MDR request?

(a) For Federal records in NARA’s physical and legal custody, requests for MDR should be submitted to: National Archives at College Park, ANDC (Attn: MDR Staff), 8601 Adelphi Road, Room 2600, College Park MD 20740 or specialaccess_foia@nara.gov;

(b) For Presidential records, Nixon Presidential materials, or donated presidential materials in the custody of the Presidential Libraries, MDR requests should be submitted to: The Center for Legislative Archives, 700 Pennsylvania Ave. NW., Washington, DC 20408 or legislative.archives@nara.gov.

(d) For all records in NARA’s physical and legal custody, MDR requests must describe the record or material with sufficient specificity to enable NARA to locate it with a reasonable amount of effort. If NARA is unable to locate the record or material, or requires additional information, NARA will inform the requester.

§ 1260.72 What procedures does NARA follow when it receives a request for Executive Branch records under MDR?

(a) NARA will review the requested records and determine if they have already been released. If not, NARA will refer copies of the records to the originating agency and to agencies that may have an interest or activity with respect to the classified information for declassification review. Agencies may also send personnel to a NARA facility where the records are located to conduct a declassification review, or may delegate declassification authority to NARA.

(b) When the records were originated by a defunct agency that has no successor agency, NARA is responsible for making the declassification determinations, but will consult with agencies having interest in or activity with respect to the classified information.
§ 1260.78 What is the appeal process when an MDR request for Executive Branch information in NARA's legal custody is denied in whole or in part?

(a) NARA shall respond to the requester in writing that her/his mandatory declassification review request was denied in full or in part and the rationale for the denial by using the appropriate category in either section 1.4 of the Order for information that is less than 25 years old, or section 3.3 of the Order for information that is older than 25 years, or 32 CFR 2001.30(p) for information governed by the Atomic Energy Act of 1954, as amended, or the National Security Act of 1947, as amended. NARA will send the requester a notice of the right to appeal the determination within 60 calendar days to the Deputy Archivist of the United States, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Additional information on appeals is located in 36 CFR Part 1264 and in Appendix A to 32 CFR Part 2001 (Article VIII).

§ 1260.74 What are agency responsibilities after receiving an MDR request forwarded by NARA?

(a) The agency receiving the referral will promptly process and review the referral for declassification and public release on a line-by-line basis in accordance with section 3.5(c) of the Order and communicate its review decisions to NARA.

(b) The agency must notify NARA of any other agency to which it forwards the request in those cases requiring the declassification determination of another agency to which NARA has not already sent a referral for review.

(c) The agency must return to NARA a complete copy of each referred document with the agency determination clearly stated to leave no doubt about the status of the information and the authority for its continued classification or its declassification.

§ 1260.76 What are NARA’s procedures after it has received the agency’s declassifications determination?

(a) If a document cannot be declassified in its entirety, the agency must return to NARA a copy of the document with those portions that require continued classification clearly marked. If a document requires continued classification in its entirety, the agency must return to NARA a copy of the document clearly so marked.

(b) NARA will notify the requester of the results of its review and make available copies of documents declassified in full and in part. If the requested information cannot be declassified in its entirety, NARA will send the requester a notice of the right to appeal the determination within 60 calendar days to the Deputy Archivist of the United States, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Additional information on appeals is located in 36 CFR Part 1264 and in Appendix A to 32 CFR Part 2001 (Article VIII).
§ 1260.80 What actions must NARA take when information in its physical and legal custody is reclassified after declassification under proper authority?

(a) When information in the physical and legal custody of NARA that has been available for public use following declassification under proper authority is proposed for reclassification in accordance with 32 CFR 2001.13(b)(1), NARA shall take the following actions:

(1) The agency head making the determination to reclassify the information shall notify the Archivist of the potential reclassification in writing.

(2) The Archivist shall suspend public access pending approval or disapproval by the Director of the Information Security Oversight Office of the reclassification request, and

(3) The Director of the Information Security Oversight Office shall normally make a decision on the validity of the reclassification request within 30 days, and

(4) The decision of the Director of ISOO may be appealed by the Archivist or the agency head to the President through the National Security Advisor.

(5) Access shall remain suspended pending a prompt decision on the appeal.

(b) [Reserved]

§ 1260.82 What actions must NARA take with information in its physical and legal custody that has been made available to the public after declassification without proper authority?

(a) When information in the physical and legal custody of NARA has been made available for public use following declassification without proper authority and needs to have its original classification markings restored, the original classification authority shall notify the Archivist in writing in accordance with 32 CFR 2001.13(a)(1).

(b) If the Archivist does not agree with the reclassification decision and the information is more than 25 years old, the information will be temporarily withdrawn from public access and the Archivist will appeal the agency decision to the Director of ISOO, who will make a final decision in accordance with 32 CFR 2001.13(a)(1). The decision of the Director of ISOO may be appealed by the Archivist or the agency head to the President through the National Security Advisor.

(c) Information about records that have been reclassified or have had their classification restored as described in §§1260.80 and 1260.82 will be made available quarterly through the NARA Web site, http://www.archives.gov/about/plans-reports/withdrawn/. Information will include the responsible agency, NARA location, date withdrawn, number of records, and number of pages.