

### § 2001.30

source, the marking shall be “50X1-HUM.”

(2) When the information clearly and demonstrably could reveal key design concepts of weapons of mass destruction, the marking shall be “50X2-WMD.”

(3) In extraordinary cases in which the Panel has approved an exemption from declassification at 50 years under section 3.3(h) of the Order, the same procedures as those under §2001.26(a) will be followed with the exception that the number “50” will be used in place of the “25.”

(4) Requests for exemption from automatic declassification at 50 years from elements of the Intelligence Community (to include pertinent elements of the Department of Defense) should include a statement of support from the Director of National Intelligence or his or her designee. Requests for automatic declassification exemptions from elements of the Department of Defense (to include pertinent elements of the Intelligence community) should include a statement of support from the Secretary of Defense or his or her designee. Requests for automatic declassification exemptions from elements of the Department of Homeland Security should include a statement of support from the Secretary of the Department of Homeland Security or his or her designee.

(c) *Marking information exempted from automatic declassification at 75 years.* Records exempted from automatic declassification at 75 years shall be automatically declassified on December 31 of the year that has been formally approved by the Panel.

(1) Information approved by the Panel as exempt from automatic declassification at 75 years shall be marked “75X” with the appropriate automatic declassification exemption category number followed by the approved declassification date or event.

(2) Requests for exemption from automatic declassification at 75 years from elements of the Intelligence Community (to include pertinent elements of the Department of Defense) should include a statement of support from the Director of National Intelligence or his or her designee. Requests for automatic declassification exemptions from

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elements of the Department of Defense (to include pertinent elements of the Intelligence community) should include a statement of support from the Secretary of Defense or his or her designee.

#### Subpart D—Declassification

##### § 2001.30 Automatic declassification.

(a) *General.* All departments and agencies that have original classification authority or previously had original classification authority, or maintain records determined to be permanently valuable that contain classified national security information, shall comply with the automatic declassification provisions of the Order. All agencies with original classification authority shall cooperate with NARA in managing automatic declassification of accessioned Federal records, presidential papers and records, and donated historical materials under the control of the Archivist.

(b) *Presidential papers, materials, and records.* The Archivist shall establish procedures for the declassification of presidential, vice-presidential, or White House materials transferred to the legal custody of NARA or maintained in the presidential libraries.

(c) *Classified information in the custody of contractors, licensees, certificate holders, or grantees.* Pursuant to the provisions of the National Industrial Security Program, agencies must provide security classification/declassification guidance to such entities or individuals who possess classified information. Agencies must also determine if classified Federal records are held by such entities or individuals, and if so, whether they are permanent records of historical value and thus subject to section 3.3 of the Order. Until such a determination has been made by an appropriate agency official, such records shall not be subject to automatic declassification, or destroyed, and shall be safeguarded in accordance with the most recent security classification/declassification guidance provided by the agency.

(d) *Transferred information.* In the case of classified information transferred in conjunction with a transfer of functions, and not merely for storage,

the receiving agency shall be deemed to be the originating agency.

(e) *Unofficially transferred information.* In the case of classified information that is not officially transferred as described in paragraph (d) of this section but that originated in an agency that has ceased to exist and for which there is no successor agency, the agency in possession shall serve as the originating agency and shall be responsible for actions for those records in accordance with section 3.3 of the Order and in consultation with the Director of the National Declassification Center (NDC).

(f) *Processing records originated by another agency.* When an agency uncovers classified records originated by another agency that appear to meet the criteria for referral according to section 3.3(d) of the Order, the finding agency shall identify those records for referral to the originating agency as described in § 2001.34.

(g) *Unscheduled records.* Classified information in records that have not been scheduled for disposal or retention by NARA is not subject to section 3.3 of the Order. Classified information in records that become scheduled as permanently valuable when that information is already more than 20 years old shall be subject to the automatic declassification provisions of section 3.3 of the Order five years from the date the records are scheduled. Classified information in records that become scheduled as permanently valuable when that information is less than 20 years old shall be subject to the automatic declassification provisions of section 3.3 of the Order at 25 years.

(h) *Temporary records and non-record materials.* Classified information contained in records determined not to be permanently valuable or non-record materials shall be processed in accordance with section 3.6(c) of the Order.

(i) *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 does not permit automatic or unilateral de-

classification. The declassifying agency shall also determine if another exemption under section 3.3(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, may consult with the foreign government prior to declassification.

(j) *Assistance to the Archivist of the United States.* Agencies shall consult with the Director of the NDC established in section 3.7 of the Order concerning their automatic declassification programs. At the request of the Archivist, agencies shall cooperate with the Director of the NDC in developing priorities for the declassification of records to ensure that declassification is accomplished efficiently and in a timely manner. Agencies shall consult with NARA and the Director of the NDC 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 and sufficient information about agency declassification actions, including metadata and other processing information, when records are accessioned by NARA. This data shall include certification by the agency that the records have been reviewed in accordance with Public Law 105-261, section 3161 governing Restricted Data and Formerly Restricted Data.

(k) *Use of approved declassification guides.* Approved declassification guides are the sole basis for the exemption from automatic declassification of specific information as provided in section 3.3(b) of the Order and the sole basis for the continued classification of information under section 3.3(h) of the Order. These guides must be prepared in accordance with section 3.3(j) of the Order and include additional pertinent detail relating to the exemptions described in sections 3.3(b) and 3.3(h) of the Order, and follow the format required of declassification guides as described in § 2001.32. During a review

under section 3.3 of the Order, it is expected that agencies will use these guides to identify specific information for exemption from automatic declassification. It is further expected that the guides or detailed declassification guidance will be made available to the NDC under section 3.7(b) of the Order and to appropriately cleared individuals of other agencies to support equity recognition.

(l) *Automatic declassification date.* No later than December 31 of the year that is 25 years from the date of origin, classified records determined to be permanently valuable shall be automatically declassified unless automatic declassification has been delayed for any reason as provided in §2001.30(n) and sections 3.3(b) and (c) of the Order. If the date of origin of an individual record cannot be readily determined, the date of original classification shall be used instead.

(m) *Exemption from Automatic Declassification at 25, 50, or 75 years.* Agencies may propose to exempt from automatic declassification specific information, either by reference to information in specific records, in specific file series of records, or in the form of a declassification guide, in accordance with section 3.3(j) of the Order. Agencies may propose to exempt information within five years of, but not later than one year before the information is subject to automatic declassification. The agency head or senior agency official, within the specified timeframe, shall notify the Director of ISOO, serving as the Executive Secretary of the Panel, of the specific information being proposed for exemption from automatic declassification.

(n) *Delays in the onset of automatic declassification—(1) Media that make a review for possible declassification exemptions more difficult or costly.* An agency head or senior agency official shall consult with the Director of the NDC before delaying automatic declassification for up to five years for classified information contained in media that make a review for possible declassification more difficult or costly. When determined by NARA or jointly determined by NARA and another agency, the following may be delayed due to

the increased difficulty and cost of conducting declassification processing:

(i) Records requiring extraordinary preservation or conservation treatment, to include reformatting, to preclude damage to the records by declassification processing;

(ii) Records which pose a potential menace to health, life, or property due to contamination by a hazardous substance; and

(iii) Electronic media if the media is subject to issues of software or hardware obsolescence or degraded data.

(2) *Referred records.* Records containing classified information that originated with other agencies or the disclosure of which would affect the interests or activities of other agencies and could reasonably be expected to fall under one or more of the exemption categories of section 3.3(b) of the Order shall be identified prior to the onset of automatic declassification for later referral to those agencies. Declassification reviewers shall be trained periodically on other agency equities to aid in the proper identification of other agency equities eligible for referral.

(i) Information properly identified as a referral to another agency contained in records accessioned by NARA or in the custody of the presidential libraries shall be subject to automatic declassification only after the referral has been made available by NARA for agency review in accordance with §2001.34, provided the information has not otherwise been properly exempted by an equity holding agency under section 3.3 of the Order.

(ii) Information properly identified as a referral to another agency contained in records maintained in the physical, but not legal, custody of NARA shall be subject to automatic declassification after accessioning and in accordance with §2001.34, provided the information has not otherwise been properly exempted by an equity holding agency under section 3.3 of the Order.

(3) *Newly discovered records.* An agency head or senior agency official must consult with the Director of ISOO on any decision to delay automatic declassification of newly discovered records no later than 90 days, from the

discovery of the records. The notification shall identify the records, their volume, the anticipated date for declassification, and the circumstances of the discovery. An agency may be granted up to three years from the date of discovery to make a declassification, exemption, or referral determination. If referrals to other agencies are properly identified, they will be handled in accordance with subparagraphs 2(i) and 2(ii) above.

(4) *Integral file blocks.* Classified records within an integral file block that are otherwise subject to automatic declassification under section 3.3 of the Order shall not be automatically declassified until December 31 of the year that is 25 years from the date of the most recent record within the file block. For purposes of automatic declassification, integral file blocks shall contain only records dated within ten years of the oldest record in the file block. Integral file blocks applied prior to December 29, 2009, that cover more than ten years remain in effect until December 31, 2012, unless an agency requests an extension from the Director of ISOO on a case-by-case basis prior to December 31, 2011, which is subsequently approved.

(5) *File series exemptions.* Agencies seeking to delay the automatic declassification of a specific series of records as defined in section 6.1(r) of the Order because it almost invariably contains information that falls within one or more of the exemption categories under section 3.3(b) must submit their request in accordance with section 3.3(c) of the Order to the Director of ISOO, serving as Executive Secretary of the Panel, at least one year prior to the onset of automatic declassification. Once approved by the Panel, the records in the file series exemption remain subject to section 3.5 of the Order. This delay applies only to records within the specific file series. Copies of records within the specific file series or records of a similar topic to the specific file series located elsewhere may be exempted in accordance with exemptions approved by the Panel.

(o) *Redaction standard.* Agencies are encouraged but are not required to redact documents that contain informa-

tion that is exempt from automatic declassification under section 3.3 of the Order, especially if the information that must remain classified comprises a relatively small portion of the document. Any such redactions shall be performed in accordance with policies and procedures established in accordance with §2001.45(d).

(p) *Restricted Data and Formerly Restricted Data.* (1) Restricted Data and Formerly Restricted Data are excluded from the automatic declassification requirements in section 3.3 of the Order because they are classified under the Atomic Energy Act of 1954, as amended. Restricted Data concerns:

(i) The design, manufacture, or utilization of atomic weapons;

(ii) The production of special nuclear material, *e.g.*, enriched uranium or plutonium; or

(iii) The use of special nuclear material in the production of energy.

(2) Formerly Restricted Data is information that is still classified under the Atomic Energy Act of 1954, as amended, but which has been removed from the Restricted Data category because it is related primarily to the military utilization of atomic weapons.

(3) Any document marked as containing Restricted Data or Formerly Restricted Data or identified as potentially containing unmarked Restricted Data or Formerly Restricted Data shall be referred to the Department of Energy in accordance with §2001.34(b)(8).

(4) Automatic declassification of documents containing Restricted Data or Formerly Restricted Data is prohibited. Documents marked as containing Restricted Data or Formerly Restricted Data are excluded from the automatic declassification provisions of the Order until the Restricted Data or Formerly Restricted Data designation is properly removed by the Department of Energy. When the Department of Energy determines that a Restricted Data or Formerly Restricted Data designation may be removed, any remaining information classified under the Order must be referred to the appropriate agency in accordance with the declassification provisions of the Order and this Directive.

(5) Any document containing information concerning foreign nuclear programs that was removed from the Restricted Data category in order to carry out provisions of the National Security Act of 1947, as amended, shall be referred to the Department of Energy.

(6) The Secretary of Energy shall determine when information concerning foreign nuclear programs that was removed from the Restricted Data category in order to carry out the provisions of the National Security Act of 1947, as amended, may be declassified. Unless otherwise determined, information concerning foreign nuclear programs (e.g., intelligence assessments or reports, foreign nuclear program information provided to the U.S. Government) shall be declassified when comparable information concerning the United States nuclear program is declassified. When the Secretary of Energy determines that information concerning foreign nuclear programs may be declassified, any remaining information classified under the Order must be referred to the appropriate agency in accordance with the declassification provisions of the Order and this Directive.

**§ 2001.31 Systematic declassification review.**

(a) *General.* Agencies shall establish systematic review programs for those records containing information exempted from automatic declassification. This includes individual records as well as file series of records. Agencies shall prioritize their review of such records in accordance with priorities established by the NDC.

**§ 2001.32 Declassification guides.**

(a) *Preparation of declassification guides.* Beginning one year after the effective date of this directive, declassification guides must be submitted to the Director of ISOO, serving as the Executive Secretary of the Panel, at least one year prior to the onset of automatic declassification for approval by the Panel. Currently approved guides remain in effect until a new guide is approved, to the extent they are otherwise applied consistent with section 3.3(b) of the Order. The infor-

mation to be exempted must be narrowly defined, with sufficient specificity to allow the user to identify the information with precision. Exemptions must be based upon specific content and not type of document. Exemptions for general categories of information are not acceptable. Agencies must prepare guides that clearly delineate between the exemptions proposed under sections 3.3(b), 3.3(h)(1) and (2), and 3.3(h)(3).

(b) *General content of declassification guides.* Declassification guides must be specific and detailed as to the information requiring continued classification and clearly and demonstrably explain the reasons for continued classification. Declassification guides shall:

(1) Be submitted by the agency head or the designated senior agency official;

(2) Provide the date of issuance or last review;

(3) State precisely the information that the agency proposes to exempt from automatic declassification and to specifically declassify;

(4) Identify any related files series that have been exempted from automatic declassification pursuant to section 3.3(c) of the Order; and

(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