

OCA or IPS) shall provide an initial response in writing within 60 calendar days.

(b) *Appeal procedures and time limits.* A negative response may be appealed to the Department's Appeals Review Panel (ARP) and should be sent to: Chairman, Appeals Review Panel, c/o Director, Office of Information Programs and Services/Appeals Officer, at the IPS address given above. The appeal shall include a copy of the original challenge, the response, and any additional information the appellant believes would assist the ARP in reaching its decision. The ARP shall respond within 90 calendar days of receipt of the appeal. A negative decision by the ARP may be appealed to the Interagency Security Classification Appeals Panel (ISCAP) referenced in section 5.3 of Executive Order 13526. If the Department fails to respond to a formal challenge within 120 calendar days or if the ARP fails to respond to an appeal within 90 calendar days, the challenge may be sent directly to the ISCAP.

(c) *Pre-publication review materials.* The provisions for classification challenges do not apply to material required to be submitted for pre-publication review, or other administrative action, pursuant to a non-disclosure agreement.

§ 9.9 Declassification and downgrading.

(a) *Declassification processes.* Declassification of classified information may occur:

(1) After review of material in response to a Freedom of Information Act (FOIA) request, mandatory declassification review request, discovery request, subpoena, classification challenge, or other information access or declassification request;

(2) After review as part of the Department's systematic declassification review program;

(3) As a result of the elapse of the time or the occurrence of the event specified at the time of classification;

(4) By operation of the automatic declassification provisions of section 3.3 of the Executive Order with respect to material more than 25 years old.

(b) *Downgrading.* When material classified at the Top Secret level is re-

viewed for declassification and it is determined that classification continues to be warranted, a determination shall be made whether downgrading to a lower level of classification is appropriate. If downgrading is determined to be warranted, the classification level of the material shall be changed to the appropriate lower level.

(c) *Authority to downgrade and declassify.* (1) Classified information may be downgraded or declassified by:

(i) The official who originally classified the information if that official is still serving in the same position and has original classification authority;

(ii) A successor in that capacity if that individual has original classification authority;

(iii) A supervisory official of either if the supervisory official has original classification authority;

(iv) Other Department officials specifically delegated declassification authority in writing by the Secretary or the Senior Agency Official; or

(v) The Director of the Information Security Oversight Office pursuant to Sec. 3.1(a) of E.O. 13526.

(2) The Department shall maintain a record of Department officials specifically designated as declassification and downgrading authorities.

(d) *Declassification in the public interest.* Although information that continues to meet the classification criteria of the Executive Order or a predecessor order normally requires continued protection, in some exceptional cases the need to protect information may be outweighed by the public interest in disclosure of the information. When such a question arises, it shall be referred to the Secretary or the Senior Agency Official for decision on whether, as an exercise of discretion, the information should be declassified and disclosed. This provision does not amplify or modify the substantive criteria or procedures for classification or create any substantive or procedural right subject to judicial review.

(e) *Public disclosure of declassified information.* Declassification of information is not, by itself, authorization for its public disclosure. Previously classified information that is declassified may be exempt from public disclosure under the FOIA, the Privacy Act, or

various statutory confidentiality provisions. There also may be treaties or other international agreements that would preclude public disclosure of declassified information.

§9.10 Mandatory declassification review

(a) *Scope.* All information classified under E.O. 13526 or predecessor orders shall be subject to mandatory declassification review upon request by a member of the public or a U.S. government employee or agency with the following exceptions:

(1) Information originated by the incumbent President or the incumbent Vice President; the incumbent President's White House staff or the incumbent Vice President's staff; committees, commissions, or boards appointed by the incumbent President; other entities within the Executive Office of the President that solely advise and assist the incumbent President;

(2) Information that is the subject of pending litigation; and

(3) Information that has been reviewed for declassification within the past two years which need not be reviewed again, but the requester shall be given appeal rights.

(b) *Requests.* Requests for mandatory declassification review should be addressed to the Office of Information Programs and Services, U.S. Department of State, SA-2, 515 22nd St. NW., Washington, DC 20522-8100.

(c) *Description of information.* In order to be processed, a request for mandatory declassification review must describe the document or the material containing the information sought with sufficient specificity to enable the Department to locate the document or material with a reasonable amount of effort. Whenever a request does not sufficiently describe the material, the Department shall notify the requester that no further action will be taken unless additional description of the information sought is provided.

(d) *Refusal to confirm or deny existence of information.* The Department may refuse to confirm or deny the existence or nonexistence of requested information whenever the fact of existence or nonexistence is itself classified.

(e) *Processing.* In responding to mandatory declassification review requests, the Department shall make a review determination as promptly as possible, but in no case more than one year from the date of receipt of the request, and notify the requester accordingly. When the requested information cannot be declassified in its entirety, the Department shall release all meaningful portions that can be declassified and that are not exempt from disclosure on other grounds.

(f) *Other agency information.* When the Department receives a request for information in its possession that was originally classified by another agency, it shall refer the request and the pertinent information to the other agency unless that agency has agreed that the Department may review such information for declassification on behalf of that agency. In any case, the Department is responsible for responding to the requester with regard to any responsive information, including other-agency information, unless a prior arrangement has been made with the originating agency.

(g) *Foreign government information.* In the case of a request for material containing foreign government information, the Department shall determine whether the information may be declassified and may, if appropriate, consult with the relevant foreign government on that issue. If the Department is not the agency that initially received the foreign government information, it may consult with the original receiving agency.

(h) *Documents or material containing RD or Transclassified Foreign Nuclear Information (TFNI).* Documents or material containing RD or TFNI will be submitted to DOE for review. Documents containing FRD will be submitted to DOE or DoD for review.

(i) *Appeals.* Any denial of a mandatory declassification review request may be appealed to the ARP. A denial by the ARP of a mandatory declassification review appeal may be further appealed to the ISCAP. A failure of the Department to make a determination on a mandatory declassification review request within one year from the date of its receipt or to respond to an appeal