

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

Department of State

§9.13

of a denial by the ARP within 180 calendar days of its receipt may be appealed directly to the ISCAP.

§9.11 Systematic declassification review.

The Director of the Office of Information Programs and Services shall be responsible for conducting a program for systematic declassification review of historically valuable records that: were exempted from the automatic declassification provisions of section 3.3 of the Executive Order; or will soon become subject to the automatic declassification provisions of section 3.3 of the Order. The Director shall prioritize such review in accordance with priorities established by the National Declassification Center.

§9.12 Sharing other-agency classified information.

The long-standing third-agency rule has required prior originating agency approval before a receiving agency could further disseminate classified information. Under the Executive Order, unless the originating agency indicates on the material that prior approval is required and provided that the criteria for access under section 4.1(a) of the Order are met, a receiving agency may further disseminate classified information in documents created subsequent to the effective date of the Order to another agency or U.S. entity without consultation with the originating agency. "U.S. entity" includes cleared state, local, tribal, and private sector entities. Similarly, under certain circumstances, receiving agencies may pass such classified information to foreign governments.

§9.13 Access to classified information by historical researchers and certain former government personnel.

(a) The restriction in E.O. 13526 and predecessor orders on limiting access to classified information to individuals who have a need-to-know the information may be waived, under the conditions set forth below, for persons who: are engaged in historical research projects; have served as President or Vice President; have occupied senior policy-making positions in the Department of State or other U.S. govern-

ment agencies to which they were appointed or designated by the President or the Vice President. It does not include former Foreign Service Officers as a class or persons who merely received assignment commissions as Foreign Service Officers, Foreign Service Reserve Officers, Foreign Service Staff Officers, and employees.

(b) Requests by such persons must be submitted in writing to the Office of Information Programs and Services at the address set forth above and must include a general description of the records sought, the time period covered by the records that are the subject of the request, and an explanation why access is sought. Requests for access by such requesters may be granted if:

(1) The Secretary or the Senior Agency Official determines in writing that access is consistent with the interests of national security;

(2) The requester agrees in writing to safeguard the information from unauthorized disclosure or compromise;

(3) The requester submits a statement in writing authorizing the Department to review any notes and manuscripts created as a result of access;

(4) The requester submits a statement in writing that any information obtained from review of the records will not be disseminated without the express written permission of the Department;

(c) If a requester uses a research assistant, the requester and the research assistant must both submit a statement in writing acknowledging that the same access conditions set forth in paragraphs (b)(2) through (b)(4) of this section apply to the research assistant. Such a research assistant must be working for the applicant and not gathering information for publication on his or her own behalf.

(d) Access granted under this section shall be limited to items the official originated, reviewed, signed, or received while serving as a Presidential or Vice Presidential appointee or designee or as President or Vice President.

(e) Such requesters may seek declassification and release of material to which they have been granted access under this section through either the