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of the estimated cost. If the requester has a history of prompt payment of FOIA fees, the requester must furnish satisfactory assurance of full payment of the estimated charges. Otherwise, the requester may be required to make advance payment of any amount up to the full estimated charges.

(d) When paragraph (b)(2) of this section applies, DOT requires the requester to either demonstrate that the fee has been paid or pay the full amount owed, including any applicable interest, late handling charges, and penalty charges as discussed in § 7.46. DOT also requires such a requester to make an advance payment of the full amount of the estimated fee before DOT begins processing a new request or continues processing a pending request.

(e) In the event that a DOT component is required to refund a prepayment, the processing of the refund may necessitate collection of the requester's Taxpayer Identification Number or Social Security Number and direct deposit information (bank routing number and bank account number) under 31 U.S.C. 3325, 31 U.S.C. 3332, and 31 CFR Part 208.

§ 7.46 How are late payments handled?

(a) DOT assesses interest on an unpaid bill starting on the 31st day following the day on which the notice of the amount due is first mailed to the requester. Interest accrues from the date of the notice of amount due at the rate prescribed in 31 U.S.C. 3717. Receipt by DOT of a payment for the full amount of the fees owed within 30 calendar days after the date of the initial billing stops the accrual of interest, even if the payment has not been processed.

(b) If DOT does not receive payment of the fees charged within 30 calendar days after the date the initial notice of the amount due is first mailed to the requester, DOT assesses an administrative charge to cover the cost of processing and handling the delinquent claim. In addition, DOT applies a penalty charge with respect to any principal amount of a debt that is more than 90 days past due. Where appropriate, DOT uses other steps permitted by Federal debt collection statutes, including disclosure to consumer report-

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ing agencies and use of collection agencies, to encourage payment of amounts overdue.

PART 8—CLASSIFIED INFORMATION: CLASSIFICATION/DECLASSIFICATION/ACCESS

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AUTHORITY: E.O. 10450, 18 FR 2489, 3 CFR, 1949-1953 Comp., p. 936, amended by E.O. 10491, 18 FR 6583, 3 CFR, 1949-1953 Comp., p. 973, E.O. 10531, 19 FR 3069, 3 CFR, 1949-1953 Comp., p. 973, E.O. 10548, 19 FR 4871, 3 CFR, 1954-1958 Comp., p. 200, E.O. 10550, 19 FR 4981, 3 CFR, 1954-1958 Comp., p. 200, E.O. 11605, 20 FR 2747, 3 CFR, 1971-1975 Comp., p. 580, E.O. 11785, 39 FR 20053, 3 CFR, 1971-1975 Comp., p. 874, E.O. 12107, 44 FR 1055, 3 CFR, 1978 Comp., p. 266; E.O. 12829, 58 FR 3479, 3 CFR, 1993 Comp., p. 570, amended by E.O. 12885, 58 FR 65863, 3 CFR, 1993 Comp., p. 684; E.O. 13526, 75 FR 707, 3 CFR, 2010 Comp., p. 298; E.O. 12968, 3 CFR, 1995 Comp., p. 391, amended by E.O. 13467, 73 FR 38103, 3 CFR, 2009 Comp., p. 196.

SOURCE: 62 FR 23661, May 1, 1997, unless otherwise noted.

Subpart A—General

§ 8.1 Scope.

This part sets forth procedures for the classification, declassification, and availability of information that must

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be protected in the interest of national security, in implementation of Executive Order 13526 of December 29, 2010, “Classified National Security Information;” and for the review of decisions to revoke, or not to issue, national security information clearances, or to deny access to classified information, under Executive Order 12968 of August 2, 1995, “Access to National Security Information,” as amended by Executive Order 13467 of June 30, 2008, “Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information.”

[81 FR 45980, July 15, 2016]

§ 8.3 Applicability.

This part applies to all elements of the Department of Transportation.

§ 8.5 Definitions.

As used in this part:

Authorized holder is any individual who has been granted access to specific classified information in accordance with Executive Order 13526 or any successor order.

Classification means the act or process by which information is determined to be classified information.

Classification levels means the following three levels at which information may be classified:

(a) Top secret. Information that requires the highest degree of protection, and the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security that the original classification authority is able to identify or describe.

(b) Secret. Information that requires a substantial degree of protection, and the unauthorized disclosure of which could reasonably be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.

(c) Confidential. Information that requires protection and the unauthorized disclosure of which could reasonably be expected to cause damage to the national security that the original classification authority is able to identify or describe.

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

Clearance means that an individual is eligible, under the standards of Executive Orders 10450, 12968, 13467, and appropriate DOT regulations, for access to classified information.

Damage to the national security means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, taking into consideration such aspects of the information as the sensitivity, value, utility, and provenance of that information.

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

DOWNGRADING means a determination by a declassification authority that information classified and safeguarded at a specific level shall be classified and safeguarded at a lower level.

Information means any knowledge that can be communicated, or documentary material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government. “Control” means the authority of the agency that originates information, or its successor in function, to regulate access to the information.

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

Original classification means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure.

Original classification authority means an individual authorized in writing, either by the President, the Vice President, or by agency heads or other officials designated by the President, to

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classify information in the first instance.

[62 FR 23661, May 1, 1997, as amended at 81 FR 45980, July 15, 2016]

§ 8.7 Spheres of responsibility.

(a) Pursuant to section 5.4(d) of Executive Order 13526, and to section 6.1 of Executive Order 12968, the Assistant Secretary for Administration is hereby designated as the senior agency official of the Department of Transportation with assigned responsibilities to assure effective compliance with and implementation of Executive Order 13526, Executive Order 12968, Office of Management and Budget Directives, the regulations in this part, and related issuances.

(b) In the discharge of these responsibilities, the Assistant Secretary for Administration will be assisted by the Director of Security, who, in addition to other actions directed by this part, will evaluate the overall application of and adherence to the security policies and requirements prescribed in this part and who will report his/her findings and recommendations to the Assistant Secretary for Administration, heads of Departmental elements, and, as appropriate, to the Secretary.

(c) Secretarial Officers and heads of Departmental elements will assure that the provisions in this part are effectively administered, that adequate personnel and funding are provided for this purpose, and that corrective actions that may be warranted are taken promptly.

[62 FR 23661, May 1, 1997, as amended at 81 FR 45980, July 15, 2016]

Subpart B—Classification/ Declassification of Information

§ 8.9 Information Security Review Committee.

(a) The Department of Transportation Information Security Review Committee has the authority to:

(1) Act on all suggestions and complaints not otherwise resolved with respect to the Department's administration of Executive Order 13526 and implementing directives, including those regarding overclassification, failure to declassify, or delay in declassifying;

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(2) Act on appeals of requests for classification reviews, and appeals of requests for records under 5 U.S.C. 552 (Freedom of Information Act) when the initial, and proposed final, denials are based on continued classification of the record; and

(3) Recommend to the Secretary, when necessary, appropriate administrative action to correct abuse or violation of any provision of Executive Order 12598 and implementing directives.

(b) The Information Security Review Committee will be composed of the Assistant Secretary for Administration, who will serve as Chair; the General Counsel; and the Director of Security. When matters affecting a particular Departmental component are at issue, the Associate Administrator for Administration for that component (or for the Federal Aviation Administration, the Associate Administrator for Security and Hazardous Materials Safety) will participate as an ad hoc member, together with the Chief Counsel of that component. Any regular member may designate a representative with full power to serve in his/her place.

(c) In carrying out its responsibilities to review decisions to revoke or not to issue clearances, or to deny access to classified information, the Committee will establish whatever procedures it deems fit.

[62 FR 23661, May 1, 1997, as amended at 81 FR 45981, July 15, 2016]

§ 8.11 Authority to classify information.

(a) Presidential Order of December 29, 2009, “Original Classification Authority” confers upon the Secretary of Transportation the authority to originally classify information as SECRET or CONFIDENTIAL with further authorization to delegate this authority.

(b) The following delegations of authority originally to classify information as “Secret” or “Confidential”, which may not be redelegated, are hereby made:

(1) *Office of the Secretary of Transportation.* The Deputy Secretary; Assistant Secretary for Administration; Director of Intelligence, Security and

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Emergency Response; Director of Security.

(2) *Federal Aviation Administration*. Administrator; Associate Administrator for Security and Hazardous Materials Safety.

(3) *Maritime Administration*. Administrator.

(c) Although the delegations of authority set out in paragraph (b) of this section are expressed in terms of positions, the authority is personal and is invested only in the individual occupying the position. The authority may not be exercised "by direction of" a designated official. The formal appointment or assignment of an individual to one of the identified positions or a designation in writing to act in the absence of one of these officials, however, conveys the authority to originally classify information as SECRET or CONFIDENTIAL.

(d) Previous delegations and redelegations of authority within the Department of Transportation originally to classify information are hereby rescinded.

[62 FR 23661, May 1, 1997, as amended at 76 FR 19708, Apr. 8, 2011; 81 FR 45981, July 15, 2016]

§ 8.13 Authority to downgrade or declassify.

Information originally classified by the Department may be specifically downgraded or declassified by either the official authorizing the original classification, if that official is still serving in the same position, the originator's current successor in function, a supervisory official of either, officials delegated declassification authority in writing by the Secretary, or by the Departmental Information Security Review Committee.

§ 8.15 Mandatory review for classification.

(a) Mandatory declassification review requests will be processed in accordance with 32 CFR 2001.33.

(b) Except as provided in paragraph b of section 3.5 of Executive Order 13526, all information classified by the Department of Transportation under Executive Order 13526 or predecessor orders shall be subject to a review for declassification if:

(1) The request for review describes the information with sufficient specificity to enable its location with a reasonable amount of effort;

(2) The information has not been reviewed for declassification within the prior two years. If the information has been reviewed within the prior two years, or the information is the subject of pending litigation, the requestor will be informed of this fact, and of the Department's decision not to declassify the information and of his/her right to appeal the Department's decision not to declassify the information to the Interagency Security Classification Appeals Panel (ISCAP);

(3) The document or material containing the information responsive to the request is not contained within an operational file exempted from search and review, publication, and disclosure under 5 U.S.C. 552 in accordance with law; and

(4) The information is not the subject of pending litigation.

(c) All information reviewed for declassification because of a mandatory review will be declassified if it does not meet the standards for classification in Executive Order 13526. The information will then be released unless withholding is otherwise authorized and warranted under applicable law.

(d) Mandatory declassification review requests for information that has been classified by the Department of Transportation may be addressed to the Director of Security, U.S. Department of Transportation, 1200 New Jersey Avenue, Washington, DC 20590. The Director will forward the request to the appropriate Departmental Original Classification Authority for processing.

(e) Denied requests may be appealed to the DOT Information Security Review Committee (DISRC) through the Director of Security within 60 days of receipt of the denial. If the DISRC upholds the denial, it will inform the requestor of his or her final appeal rights to the ISCAP.

[81 FR 45981, July 15, 2016]

§ 8.17 Classification challenges.

(a) Authorized holders of information classified by the Department of Transportation who, in good faith, believe

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that its classification status is improper are encouraged and expected to challenge the classification status of the information before the Original Classification Authority (OCA) having jurisdiction over the information. A formal challenge must be in writing, but need not be any more specific than to question why information is or is not classified, or is classified at a certain level.

(b) Classification challenges to DOT information must be addressed to the DOT Original Classification Authority (OCA) who is responsible for the information. If unsure of the OCA, address the challenge to the DOT Director of Security.

(c) Classification challenges will be processed according to 32 CFR 2001.14.

[81 FR 45981, July 15, 2016]

§ 8.19 [Reserved]

§ 8.21 Burden of proof.

For the purpose of determinations to be made under §§ 8.15 and 8.17, the burden of proof is on the originating Departmental component to show that continued classification is warranted.

[62 FR 23661, May 1, 1997, as amended at 81 FR 45981, July 15, 2016]

§ 8.23 Classified information transferred to the Department of Transportation.

(a) Classified information officially transferred to the Department in conjunction with a transfer of functions, 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 another 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 at a lower level will be referred to the Departmental Information Secu-

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rity 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 13526, directives issued pursuant to Executive Order 13526, 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 into the National Archives.

(d) To the extent practicable, the Department will adopt a system of records management that will facilitate the public release of documents at the time such documents are declassified under the provisions for automatic declassification in section 3.3 of Executive Order 13526 and its implementing directives. To the maximum extent possible without destroying the integrity of the Department's files, all such material will be segregated or set aside for public release upon request. The Department will cooperate with the Archivist in efforts to establish a Government-wide database of information that has been declassified.

[62 FR 23661, May 1, 1997, as amended at 81 FR 45981, July 15, 2016]

Subpart C—Access to Information

§ 8.25 Personnel Security Review Board.

(a) The Department of Transportation Personnel Security Review Board will, on behalf of the Secretary of Transportation (except in any case in which the Secretary personally makes the decision), make the administratively final decision on an appeal arising in any part of the Department from:

- (1) A decision not to grant access to classified information;
- (2) A decision to revoke access to classified information; or
- (3) A decision under § 8.29 to deny access to classified information.

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(b) The Personnel Security Review Board will be composed of:

(1) Two persons appointed by the Assistant Secretary for Administration: One from the Office of Human Resource Management, and one, familiar with personnel security adjudication, from the Office of Security, who will serve as Chair;

(2) One person appointed by the General Counsel, who, in addition to serving as a member of the Board, will provide to the Board whatever legal services it may require;

(3) One person appointed by the Administrator of the Federal Aviation Administration; and

(4) One person appointed by the Administrator of the Federal Highway Administration.

(5) Any member may designate a representative, meeting the same criteria as the member, with full power to serve in his/her place.

(c) In carrying out its responsibilities to review final decisions to revoke or deny access to classified information, the Board will establish whatever procedures it deems fit.

[62 FR 23661, May 1, 1997, as amended at 81 FR 45981, July 15, 2016]

§ 8.27 Public availability of declassified information.

(a) It is a fundamental policy of the Department to make information available to the public to the maximum extent permitted by law. Information that is declassified for any reason loses its status as material protected in the interest of national security. Accordingly, declassified information will be handled in every respect on the same basis as all other unclassified information. Declassified information is subject to the Departmental public information policies and procedures, with particular reference to the Freedom of Information Act (5 U.S.C. 552) and implementing Departmental regulations (49 CFR Part 7).

(b) In furtherance of this policy, all classified material produced after June 1, 1972 that is of sufficient historical or other value to warrant preservation as permanent records in accordance with appropriate records administrative standards, and that becomes declassified, will be systematically reviewed

prior to the end of each calendar year for the purpose of making the material publicly available. To the maximum extent possible without destroying the integrity of the Department's files, all such material will be segregated or set aside for public release upon request.

§ 8.29 Access by historical researchers and former Presidential appointees.

Access to classified information may be granted to historical researchers and former Presidents and Vice-Presidents and their appointees as outlined in Executive Order 13526 or its successor order. The general guidelines for access to classified information are contained in Executive Order 12968.

[81 FR 45982, July 15, 2016]

§ 8.31 Industrial security.

(a) *Background.* The National Industrial Security Program was established by Executive Order 12829 of January 6, 1993 for the protection of information classified pursuant to Executive Order 12356 of April 2, 1982, National Security Information, or its predecessor or successor orders, and the Atomic Energy Act of 1954, as amended. The Secretary of Defense serves as the Executive Agent for inspecting and monitoring contractors, licensees, grantees, and certificate holders that require or will require access to, or that store or will store, classified information, and for determining the eligibility for access to classified information of contractors, licensees, certificate holders, and grantees, and their respective employees.

(b) *Implementing regulations.* The Secretary of Transportation has entered into an agreement for the Secretary of Defense to render industrial security services for the Department of Transportation. Regulations prescribed by the Secretary of Defense to fulfill the provisions of Executive Order 12829 have been extended to protect release of classified information for which the Secretary of Transportation is responsible. Specifically, this regulation is DOD 5220.22-M, National Industrial Security Program Operating Manual, and is effective within the Department of Transportation. Appropriate security

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staff, project personnel, and contracting officers must assure that actions required by the regulation are taken.

[62 FR 23661, May 1, 1997, as amended at 81 FR 45982, July 15, 2016]

PART 9—TESTIMONY OF EMPLOYEES OF THE DEPARTMENT AND PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS

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- 9.2 Applicability.
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- 9.5 General prohibition of production or disclosure in legal proceedings.
- 9.7 Testimony by employees before the Department or in other legal proceedings in which the United States is a party.
- 9.9 Legal proceedings between private litigants: General rules.
- 9.11 Legal proceedings between private litigants: Demands.
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- 9.15 Legal proceedings between private litigants: Procedures to request testimony.
- 9.17 Legal proceedings between private litigants: Procedures for taking testimony.
- 9.19 Acceptance of service on behalf of Secretary.

AUTHORITY: 5 U.S.C. 301; 45 U.S.C. 41–42; 49 U.S.C. 322; 49 U.S.C. 504(f); 23 U.S.C. 409.

SOURCE: 58 FR 6724, Feb. 2, 1993, unless otherwise noted.

§ 9.1 Purpose.

(a) This part sets forth procedures governing the testimony of an employee in legal proceedings in which the United States is a party. It also sets forth procedures to be followed when an employee is issued a subpoena, order or other demand (collectively referred to in this part as a “demand”) by a court or other competent authority, or is requested by a private litigant, to provide testimony or produce records concerning information acquired in the course of performing official duties or because of the employee’s official status. It also prescribes the policies and procedures of the Department with respect to the acceptance of service of legal process and pleadings in legal proceedings involving the Department.

(b) The purposes of this part are to:

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(1) Conserve the time of employees for conducting official business;

(2) Minimize the possibility of involving the Department in controversial issues not related to its mission;

(3) Maintain the impartiality of the Department among private litigants;

(4) Avoid spending the time and money of the United States for private purposes; and

(5) To protect confidential, sensitive information and the deliberative processes of the Department.

(c) Agency counsel, in his or her discretion, may permit an exception from any requirement in this part. The exception may be granted only when the deviation will not interfere with matters of operational or military necessity, and when agency counsel determines that:

(1) It is necessary to prevent a miscarriage of justice;

(2) The Department has an interest in the decision that may be rendered in the legal proceeding; or

(3) The exception is in the best interest of the Department or the United States.

For Office of Inspector General employees and documents, the Inspector General, in conjunction with the General Counsel of the Department, may permit an exception from any requirement of this part if the Inspector General determines, based on the Inspector General Act of 1978, as amended, that application of the requirement would be inappropriate.

§ 9.2 Applicability.

This part applies to the testimony of an employee in legal proceedings in which the United States is a party. It also applies in legal proceedings between private litigants to requests or demands for testimony or records concerning information acquired in the course of an employee performing official duties or because of the employee’s official status. This part does not apply to any legal proceeding in which an employee is to testify as to facts or events that are in no way related to the employee’s official duties or the functions of the Department. Nor does it apply to Congressional demands for testimony or documents.