



**U.S. DEPARTMENT OF COMMERCE
MANUAL OF SECURITY
POLICIES AND PROCEDURES**

Chapter 19 - Declassification and Downgrading

1901 Authority for Declassification

A. Information that continues to meet the classification requirements of Executive Order (E.O.) 12958, Classified National Security Information, requires continued protection; however, Department of Commerce information shall be declassified as soon as it no longer meets the standards for classification under this Executive Order. In some exceptional cases, the need to protect such information may be outweighed by the public interest to disclose the information, in which case the information should be declassified. When such questions arise, the classified information will be reviewed by the official who authorized the original classification if that official is still serving in the same position, by a successor, or by the Director for Security to determine, as an exercise in discretion, whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure. This provision does not:

1. Amplify or modify the substantive criteria or procedures for classification, or
2. Create any substantive or procedural rights subject to judicial review.

B. Information marked with a specific declassification date or event shall be declassified on that date or upon occurrence of that event. The overall classification markings shall be lined through and a statement placed on the cover or first page to indicate the declassification authority by name and title, and the date of declassification. The classification markings on each page also shall be lined through.

C. When declassification action is taken earlier than originally scheduled or the duration of classification is extended, the authority marking such changes shall promptly notify all holders to whom the information was originally transmitted. This notification shall include the marking action to be taken, the authority for the change (name and title), and the effective date of the change. Upon receipt of notification, recipients shall make the proper changes and notify holders to whom they have transmitted the classified information.

D. If the Director of the Information Security Oversight Office (ISOO) determines that information classified by any operating unit in the Department is classified in violation of E.O. 12958, the Director may require the information to be declassified. Any such decision by the Director may be appealed to the President through the Assistant to the President for National Security Affairs. The information will remain classified pending a decision



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on the appeal.

E. To the extent practicable, operating units of the Department shall adopt a system of records management that will facilitate the public release of documents at the time such documents are declassified in accordance with the provisions for automatic declassification sections of E.O. 12958.

F. Classified records that have not been scheduled for disposal or retention by the National Archives and Records Administration (NARA) are not subject to the automatic declassification provisions of E.O. 12958. All classified information in records more than 25 years old that have been determined to have permanently historical value under Title 44 of the U.S. Code shall be automatically declassified whether or not the records have been reviewed. To the extent practicable, operating units shall adopt a system of records management that will facilitate the public release of documents at the time such documents are declassified based on the automatic declassification provisions of E.O. 12958.

G. The Department's Records Management Officer shall cooperate with NARA in developing schedules for the declassification of records in the National Archives of the United States and the presidential libraries to ensure that declassification is accomplished in a timely manner. NARA will provide information about the records proposed for automatic declassification. Operating units shall consult with the Department's Records Management Officer 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 information about operating unit declassification actions when records are transferred to NARA. NARA will provide guidance to the Department's Records Management Officer concerning the requirements for notification of declassification actions on transferred records, box labeling, and identifying exempt information in the records.

1902 Downgrading

Information designated a particular level of classification may be assigned a lower classification level by the original classifier or by an official authorized to declassify the same information. Prompt notice of such downgrading must be provided to known holders of the information. Classified information marked for automatic downgrading under previous Executive Orders should be reviewed to determine that it no longer continues to meet classification requirements despite the passage of time.

1903 Transferred Information

A. When classified records are transferred from another agency or operating unit in conjunction with a transfer of functions, and not merely for storage purposes, the receiving operating unit shall be deemed to be the



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originating office for purposes of downgrading and declassification.

B. When classified records have not been officially transferred in conjunction with a transfer of functions, but originated in an agency or operating unit in the Department that has ceased to exist and for which there is no successor office, the operating unit in possession of the classified records shall be deemed to be the originating office for purposes of the Executive Order. Such records may be declassified or downgraded by the operating unit that has possession of the documents after consultation with any other agency or unit that has an interest in the subject matter of the records.

C. When an operating unit discovers classified records originated by another agency, operating unit, or office that appears to meet the criteria for the application of the automatic declassification provisions of the E.O. 12958, the finding unit should alert the originating agency and seek instructions regarding the handling and disposition of pertinent records.

D. Classified information accessioned into the National Archives and Records Administration shall be declassified or downgraded by the Archivist in accordance with E.O. 12958, the directives issued pursuant to this Executive Order, Department or operating unit declassification guides, and any existing procedural agreement between the Archivist and the Department of Commerce.

E. The originating operating unit or departmental office shall take all reasonable steps to declassify classified information contained in records determined to have permanent historical value before they are accessioned into the National Archives. However, the Archivist may require that classified records be accessioned into the National Archives when necessary to comply with the provisions of the Federal Records Act. This provision does not apply to records being transferred to the Archivist pursuant to 44 U.S.C. § 2203, or records for which NARA serves as the custodian of the records of an agency or organization that goes out of existence.

1904 Automatic Declassification

A. Classified information contained in records more than 25 years old that have been determined to have permanent historical value under Title 44 of the U.S. Code and does not meet the exemption standards noted below, shall be automatically declassified whether or not the records have been reviewed.

B. Classified information may be exempted from automatic declassification when it might be expected to:

1. Reveal the identity of a confidential human source, or a human intelligence source, or reveal information about the application of an intelligence source or method;



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2. Reveal information that would assist in the development or use of weapons of mass destruction;
3. Reveal information that would impair U.S. cryptologic systems or activities;
4. Reveal information that would impair the application of state-of-the-art technology within U.S. weapon systems;
5. Reveal current U.S. military war plans in effect;
6. Reveal information, including foreign government information, that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States;
7. Reveal information that would clearly and demonstrably impair the current ability of U.S. Government officials to protect the President, Vice President, and other officials for whom protection services, in the interest of national security, are authorized;
8. Reveal information that would impair current national security emergency preparedness plans or reveal current vulnerabilities of systems, installations, infrastructures, or projects relating to the national security; or,
9. Violate any statute, treaty, or international agreement.

C. If an operating unit proposes to exempt a specific file series of records from automatic declassification based on the exemptions listed in paragraph 1904 B. above, the head of the operating unit shall submit the information noted below to the Director for Security for an assessment. After an evaluation, the Director will forward the request to the Information Security Oversight Office for action.

1. A description of the file series;
2. An explanation of why the information within the file series is almost invariably exempt from automatic declassification and why the information must remain classified for a longer period of time; and
3. Except for the identity of a confidential human source or a human intelligence source, as provided in paragraph 1904 B. above, a specific date or event for declassification of the information.



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D. Classified records within an integral file block, as defined in E.O. 12958, that are otherwise subject to automatic declassification 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.

E. The Director for Security may delay from automatic declassification the records noted below by notifying the Director of the Information Security Oversight Office. To obtain a delay, the head of an operating unit must submit a request to the Director for Security at least 180 days before records in such a file series are subject to automatic declassification. The information noted in paragraph 1904 C. above must be provided.

1. For classified information contained in microforms, motion pictures, audiotapes, videotapes, or comparable media that make a review for possible declassification exemptions more difficult or costly, the Director may delay automatic declassification of records in a particular file series for up to 5 additional years.

2. For classified records subject to automatic declassification that have been referred or transferred to an operating unit by another agency less than three years before automatic declassification would otherwise be required, the Director for Security may delay automatic declassification for up to 3 years.

3. For classified records that were inadvertently not reviewed prior to the effective date of automatic declassification, the Director for Security may delay automatic declassification for up to three years from the date of discovery.

E. Classified information exempted from automatic declassification under this chapter shall remain subject to the mandatory and systematic review provisions of E.O. 12958.

F. The Secretary of State shall determine when the United States should commence negotiations with the appropriate officials of a foreign government or international organization of governments to modify any treaty or international agreement that requires the classification of information contained in records affected by this section for a period longer than 25 years from the date of its creation, unless the treaty or international agreement pertains to information that may otherwise remain classified beyond 25 years under this section.

G. Records containing information that originated with other agencies or the disclosure of which would affect the interests or activities of other agencies shall be referred for review to those agencies and the information of concern shall be subject to automatic declassification only by those agencies, consistent with the automatic declassification provisions of E.O. 12958.



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1905 Declassification Guides

A. Approved declassification guides may be used as a tool to assist in the exemption of classified records from automatic declassification provisions of E.O. 12958. These guides must include additional pertinent detail relating to the exemptions described in paragraph 1904 above, and follow the format required of declassification guides for systematic review as described in Section 2001.53 of the Implementing Directive for E.O. 12958 (32 CFR Part 2001). In order for such guides to be used in place of the identification of specific information within individual documents, the information to be exempted must be narrowly defined, with sufficient specificity to allow the user to identify the information with precision. Exemptions for general categories of information will not be acceptable. The actual items to be exempted are specific documents. All such declassification guides used in conjunction with automatic declassification provisions of E.O. 12958 must be submitted to the Director of ISOO, serving as Executive Secretary of the Interagency Security Classification Appeals Panel, for approval by the Panel.

B. Operating units shall prepare declassification guides to facilitate the declassification of information contained in records determined to be of permanent historical value. Declassification guides shall:

1. Identify the subject matter of the declassification guide;
2. Identify the original declassification authority by name or personal identifier and position;
3. Provide the date of issuance or last review;
4. State precisely the categories or elements of information to be declassified, downgraded, or not declassified; and
5. Identify any related file series that has been exempted from automatic declassification pursuant to Section 3.3(c) of E.O. 12958.

C. To the extent a guide is used in conjunction with the automatic declassification provisions of E.O. 12958, the guide shall state precisely the elements of information to be exempted from declassification to include:

1. The appropriate exemption noted in paragraph 1904, above (when citing exemption category 9, list the applicable statute, treaty, or international agreement); and



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2. A date or event for declassification.

D. Operating units shall submit declassification guides for review to the Office of Security. To the extent such guides are used in conjunction with the automatic declassification provisions of E.O. 12958, the Office of Security shall submit bureau-specific declassification guides to the Interagency Security Classification Appeals Panel for approval.

E. Declassification guides shall be reviewed and updated, as circumstances require, but at least once every five years. Servicing security officers shall maintain a list of declassification guides in use and provide a copy to the Office of Security.

1906 Systematic Declassification Review

A. Each operating unit that holds classified information shall establish and implement procedures for systematic declassification. This program shall apply to historically valuable records exempted from automatic declassification under E.O. 12958 and the Security Manual. Operating units shall prioritize the systematic review of records based upon the degree of researcher interest and the likelihood of declassification upon review.

B. Operating units or offices shall maintain a current listing of officials delegated declassification authority by name, position, or other identifier and shall provide the list to their servicing security officer. If possible, this listing shall be unclassified.

1. An executive who has been delegated original classification authority (OCA) may authorize an official in his or her operating unit to exercise declassification and downgrading authority over information classified during their tenure, by predecessors in that position, or for classified information transferred to that official's custody by virtue of a transfer of functions.

2. Unlike the original classification authority that cannot be re-delegated, the declassification authority may be re-delegated as necessary. Each OCA shall forward a list of the names and position titles of those individuals receiving additional delegations to the servicing security officer, who will forward those lists to the Office of Security.

1907 Mandatory Declassification Review

A. All information classified by an OCA in the Department of Commerce under E.O. 12958, or its predecessor orders, is subject to a review for declassification if:



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1. The request for a review describes the document or material containing the information with sufficient specificity to enable the operating unit or office to locate it with a reasonable amount of effort;
2. The information is not exempted from search and review under the Sections 105C, 105D, or 701 of the National Security Act of 1947 (50 U.S.C. § 403-5e, and 431); and
3. The information has not been reviewed for declassification within the past two years. If the operating unit has reviewed the information within the past two years, or the information is the subject of pending litigation, the requester shall be informed of this fact and of the appeal rights under E.O. 12958.

B. Operating units or offices conducting a mandatory review for declassification shall declassify information that no longer meets the standards for classification under E.O. 12958. The unit shall release this information unless withholding is otherwise authorized and warranted under applicable law.

1908 Processing Requests and Reviews

A. U.S. Originated Information.

1. Classified information under Department of Commerce jurisdiction must be reviewed for declassification upon receipt of a request by a United States citizen or permanent resident alien, another Federal agency, or a state or a local government. A request for mandatory review of classified information shall be submitted in writing and describe the information with sufficient specificity to locate it with a reasonable amount of effort. Requests shall be submitted to the Office of Security, U.S. Department of Commerce, Room H1067, 1401 Constitution Avenue, NW, Washington, D.C. 20230.
2. The Office of Security shall acknowledge receipt of the request directly to the requester. The request will be forwarded to the operating unit or office that originated the information or which has primary interest in the subject matter. The operating unit or office must ensure the information is reviewed within 30 calendar days.
3. A valid mandatory declassification review request need not identify the requested information by date or title of the responsive records, but must be of sufficient specificity to allow the operating unit or office with primary interest to locate the records containing the information sought with a reasonable amount of effort. In responding to mandatory declassification review requests, the designated official shall either make a prompt declassification determination (within 30 calendar days) and process the request accordingly, or



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inform the Office of Security of the additional time needed to process the request. The Department of Commerce shall ordinarily make a final determination within 180 days from the date of receipt. When information cannot be declassified in its entirety, operating units will make reasonable efforts to release, consistent with other applicable law, those declassified portions of the requested information that constitute a coherent segment. Upon denial of an initial request, the Office of Security shall notify the requester of the right of an administrative appeal, which must be filed within 60 calendar days of receipt of the denial.

B. Requests for Classified Records in the Custody of the Department other than the Originating Office. When the Department of Commerce receives a mandatory declassification review request for records in its possession that were originated by another agency, the designated official shall refer the request and the pertinent records to the originating agency. However, if the originating agency has previously agreed that the custodial operating unit may review its records, the custodial operating unit shall review the requested records in accordance with declassification guides or guidelines provided by the originating agency. Upon receipt of a request from the referring agency, the Office of Security shall process the request in accordance with this chapter. The originating agency shall communicate its declassification determination to the referring agency.

C. Appeals of Denials of Mandatory Declassification Review Requests. Following the receipt of an appeal, the Director for Security shall normally make a determination within 90 calendar days. If additional time is required to make a determination, the Director shall notify the requester of the additional time needed and provide the requester with the reason for the extension. The Director shall notify the requester in writing of the final determination and of the reasons for any denial.

D. Appeals to the Interagency Security Classification Appeals Panel. Requesters have the right to appeal the decision of the Director for Security to the Interagency Security Classification Appeals Panel in accordance with E.O. 12958.

E. Foreign Government Information.

1. When foreign government information is being considered for declassification or is subject to automatic declassification, the declassifying unit shall determine whether the information meets any exemptions that would prevent its declassification at that time. Depending upon the date of the information and whether it is contained in permanently historical records, the declassifying unit shall also determine if other exemptions that pertain to U.S. foreign relations may apply to the information. If the declassifying unit believes such an exemption may apply, it should consult with all other concerned agencies in making its declassification determination.



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2. The Secretary of State shall determine when the United States should commence negotiations with the appropriate officials of a foreign government or international organization of governments to modify any treaty or international agreement that requires the classification of information contained in records affected by the automatic declassification provisions of E.O. 12958 for a period longer than 25 years from the date of its creation, unless the treaty or international agreement pertains to information that may otherwise remain classified beyond 25 years.

F. Cryptologic and Intelligence Information. Mandatory declassification review requests for cryptologic information and information concerning intelligence activities (including special activities) or intelligence sources or methods shall be processed solely in accordance with special procedures issued by the Secretary of Defense and the Director of Central Intelligence, respectively.

G. Fees. In responding to mandatory declassification review requests for classified records, agency heads may charge fees in accordance with Section 483a of Title 31 of the U.S. Code. Operating units should contact the Department's Freedom of Information Act/Privacy Act Officer for the current schedule of fees.

H. Assistance to the Department of State. Operating units and the Department's Records Management Officer should assist the Department of State in its preparation of the Foreign Relations of the United States (FRUS) series by facilitating access to appropriate classified materials in their custody and by expediting declassification review of documents proposed for inclusion in the FRUS.

I. Requests Filed under Mandatory Declassification Review and the Freedom of Information Act. When a requester submits a request both under mandatory review and the Freedom of Information Act, the Office of Security shall require the requester to elect one process or the other. If the requester fails to elect one or the other, the request will be treated as a FOIA request unless the requested materials are subject only to mandatory review.

J. Freedom of Information Act and Privacy Act Requests. The Secretary of Commerce shall ensure that requests for declassification submitted under the provisions of the Freedom of Information Act, as amended, or the Privacy Act of 1974, are processed in accordance with the provisions of those acts.

1. The Freedom of Information Act and the Privacy Act authorize withholding from public availability records that are properly classified under criteria established by E.O. 12958 in the interest of national defense or foreign policy.

2. Under the Freedom of Information Act, a determination on an initial request must be made within 20



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working days after receipt of the request. A determination on an appeal to an initial denial must be made within 20 working days after receipt of a FOIA appeal, or for a PA appeal, within 30 working days. Time limits are mandatory for an FOIA request, but are permissive for a PA request. Except for unusual circumstances, failure to make a determination within the stated time limits means that a requester has exhausted the administrative remedies and may request judicial review immediately.

3. To assure that FOIA/PA requests involving classified records are subjected to a thorough classification review and that a response is made within the specified time limits, the procedures noted below shall apply.

4. Requests involving classified records will be processed as follows.

a. The office of primary interest shall conduct a declassification review of the information.

b. If the information is subsequently declassified, the action office must consult with the Office of the Assistant General Counsel for Administration to determine releasability with consideration only for the legality of release within the purview of the Freedom of Information Act and the Privacy Act.

c. If the record warrants continued classification, the action office must coordinate with the Office of the Assistant General Counsel for Administration and advise the requester of the decision and of the right of appeal.

d. If the classification review cannot be completed within the prescribed time limit, the action office must advise the requester. An extension of time must be arranged in accordance with the Freedom of Information Act (5 U.S.C. 552 (a)(6)(B)) and implementing Department of Commerce FOIA/PA rules.

5. Appeals for reconsideration of denial of a classified record under the Freedom of Information Act shall be processed as follows.

a. Appeals under this section must be addressed to the Assistant General Counsel for Administration who shall refer the record(s) to the Director for Security for a declassification review. The Director for Security may overrule previous determinations in whole or in part when, in his judgment, continued protection in the interest of national security is no longer required.

b. If the information under review no longer requires classification, it should be declassified. The Director for Security shall advise the Assistant General Counsel for Administration of the decision.



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c. Persons who request information under the provisions of the FOIA or the Privacy Act, and whose requests are denied on appeal, may petition the courts to direct the Department to release the information. Under judicial review, the Department must provide sufficient justification to continue withholding the information.

K. Redaction standard. Operating units or offices are encouraged but are not required to redact documents that contain information that is exempt from the automatic declassification provisions of E.O. 12958, especially if the information that must remain classified comprises a relatively small portion of the document. Operating units shall redact documents that are the subject of an access request unless the overall meaning or informational value of the document is clearly distorted by redaction.