

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 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 12958. If the Department fails to respond to a formal challenge within 120 days or if the ARP fails to respond to an appeal within 90 days, the challenge may be sent to the ISCAP.

§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 reviewed 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 the official who originally classified the information if that official is still serving in the same position, by a successor in that capacity, by a supervisory official of either, or by any other official specifically designated by the Secretary or the senior agency official.

(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 dissemination of declassified information.* Declassification of information is not authorization for its public disclosure. Previously classified information that is declassified may be subject to withholding from public disclosure under the FOIA, the Privacy Act, and various statutory confidentiality provisions.

§9.10 Mandatory declassification review.

All requests to the Department by a member of the public, a government employee, or an agency to declassify and release information shall result in a prompt declassification review of the information in accordance with procedures set forth in 22 CFR 171.20–25. Mandatory declassification review requests should be directed to the Information and Privacy Coordinator, U.S. Department of State, SA–2, 515 22nd St., NW., Washington, DC 20522–6001.

§9.11 Systematic declassification review.

The Information and Privacy Coordinator 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. The Information and Privacy Coordinator shall prioritize such

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review on the basis of researcher interest and the likelihood of declassification upon review.

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

For Department procedures regarding the access to classified information by historical researchers and certain former government personnel, see Sec. 171.24 of this Title.

§9.13 Safeguarding.

Specific controls on the use, processing, storage, reproduction, and transmittal of classified information within the Department to provide protection for such information and to prevent access by unauthorized persons are contained in Volume 12 of the Department's Foreign Affairs Manual.

PART 9a—SECURITY INFORMATION REGULATIONS APPLICABLE TO CERTAIN INTERNATIONAL ENERGY PROGRAMS; RELATED MATERIAL

Sec.

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AUTHORITY: E.O. 11932 (41 FR 32691), E.O. 11652 (37 FR 5209, National Security Council Directive of May 17, 1972 (37 FR 10053)).

SOURCE: 42 FR 46516, Sept. 16, 1977; 42 FR 57687, Nov. 4, 1977, unless otherwise noted.

§9a.1 Security of certain information and material related to the International Energy Program.

These regulations implement Executive Order 11932 dated August 4, 1976 (41 FR 32691, August 5, 1976) entitled "Classification of Certain Information and Material Obtained from Advisory Bodies Created to Implement the International Energy Program."

§9a.2 General policy.

(a) The United States has entered into the Agreement on an International Energy Program of November 18, 1974, which created the International Energy Agency (IEA). This program is a substantial factor in the conduct of our foreign relations and an important element of our national security. The effectiveness of the Agreement depends significantly upon the provision and exchange of information and material by participants in advisory bodies created by the IEA. Confidentiality is essential to assure the free and open discussion necessary to accomplish the tasks assigned to those bodies.

(b) These regulations establish procedures for the classification, declassification, storage, access, and dissemination of certain information related to the International Energy Program.

§9a.3 Scope.

These regulations apply to all information and material classified by the United States under the provisions of E.O. 11932, dated August 4, 1976 entitled "Classification of Certain Information and Material Obtained From Advisory Bodies Created To Implement The International Energy Program."

§9a.4 Classification.

(a) Section 1 of E.O. 11932, August 4, 1976 directs that information and material obtained pursuant to the International Energy Program and which requires protection against unauthorized disclosure in the interest of the national defense or foreign relations of the United States shall be classified pursuant to Executive Order 11652.

(b) Information and material, including transcripts, records, and communications, in the possession of the United States Government which has been obtained pursuant to (1) section 252(c)(3), (d)(2) or (e)(3) of the Energy Policy and Conservation Act (89 Stat. 871, 42 U.S.C. 6272(c)(3), (d)(2), (e)(3)), or (2) The Voluntary Agreement and Program Relating to the International Energy Program (40 FR 16041, April 8, 1975), or (3) the Voluntary Agreement and Plan of Action to Implement the International Energy Program (41 FR 13998, April 1, 1976), or (4) Any similar