

§7.22

with the written approval of the Secretary or Deputy Secretary of Homeland Security, based on the determination that the reclassification of the information is necessary in the interest of the national security;

(2) The reclassification of the information meets the standards and criteria for classification pursuant to Executive Order 12958, as amended;

(3) The information may be reasonably recovered; and

(4) The reclassification action is reported promptly to the Director of ISOO.

(e) Information that has not previously been disclosed to the public under proper authority may be classified or reclassified after DHS has received a request for it under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of Executive Order 12958, as amended, section 3.5. When it is necessary to classify or reclassify such information, it shall be forwarded to the Chief Security Officer and classified or reclassified only at the direction of the Secretary or Deputy Secretary of Homeland Security.

§7.22 Classification pending review.

(a) Whenever persons who do not have original classification authority originate or develop information that they believe requires immediate classification and safeguarding, and no authorized classifier is available, that person shall:

(1) Safeguard the information in a manner appropriate for the classification level they believe it to be;

(2) Apply the appropriate overall classification markings; and

(3) Within five working days, securely transmit the information to the organization that has appropriate subject matter interest and classification authority.

(b) When it is not clear which component would be the appropriate original classifier, the information shall be sent to the Chief Security Officer to determine the appropriate organization.

(c) The organization with classification authority shall decide within 30 days whether to classify the information.

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§7.23 Emergency release of classified information.

(a) The Secretary of Homeland Security has delegated to certain DHS employees the authority to disclose classified information to an individual or individuals not otherwise routinely eligible for access in emergency situations when there is an imminent threat to life or in defense of the homeland.

(b) In exercising this authority, the delegees shall adhere to the following conditions:

(1) Limit the amount of classified information disclosed to a minimum to achieve the intended purpose;

(2) Limit the number of individuals who receive it to only those persons with a specific need-to-know;

(3) Transmit the classified information through approved communication channels by the most secure and expeditious method possible, or by other means deemed necessary in exigent circumstances;

(4) Provide instructions about what specific information is classified and how it should be safeguarded. Physical custody of classified information must remain with an authorized Federal Government entity, in all but the most extraordinary circumstances as determined by the delegated official;

(5) Provide appropriate briefings to the recipients on their responsibilities not to disclose the information and obtain from the recipients a signed DHS Emergency Release of Classified Information Non-disclosure Form. In emergency situations requiring immediate verbal release of information, the signed nondisclosure agreement memorializing the briefing may be received after the emergency abates;

(6) Within 72 hours of the disclosure of classified information, or the earliest opportunity that the emergency permits, but no later than 7 days after the release, the disclosing authority must notify the DHS Chief Security Officer and the originating agency of the information disclosed. A copy of the signed nondisclosure agreements should be forwarded with the notification under this paragraph (b)(6), or as soon thereafter as practical.

(7) Release of information pursuant to this authority does not constitute declassification of the information.