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complaints must be filed within 180 days of the alleged act of discrimination. The NACIC may extend this time period for good cause.

(e) If the NACIC receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The NACIC shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Americans with Disabilities Act Accessibility Guidelines is not readily accessible to and usable by individuals with disabilities.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, The NACIC shall notify the complainant of the results of the investigation in a letter containing:

- (1) Findings of fact and conclusions of law;
- (2) A description of a remedy for each violation found; and
- (3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the NACIC of the letter required by paragraph (g) of this section. The NACIC may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Director.

(j) The NACIC shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the NACIC determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Director may delegate the authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

## CHAPTER XIX—CENTRAL INTELLIGENCE AGENCY

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**PART 1900—PUBLIC ACCESS TO  
CIA RECORDS UNDER THE FREE-  
DOM OF INFORMATION ACT  
(FOIA)**

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AUTHORITY: National Security Act of 1947, as amended; Central Intelligence Agency Act of 1949, as amended; Freedom of Information Act, as amended; CIA Information Act of 1984; and Executive Order 12958, 60 FR 19825, 3 CFR 1996 Comp., p. 333-356 (or successor Orders).

SOURCE: 62 FR 32481, June 16, 1997, unless otherwise noted.

GENERAL

**§ 1900.01 Authority and purpose.**

This part is issued under the authority of and in order to implement the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552); the CIA Infor-

mation Act of 1984 (50 U.S.C. 431); sec. 102 of the National Security Act of 1947, as amended (50 U.S.C. 403); and sec. 6 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403g). It prescribes procedures for:

(a) Requesting information on available CIA records, or the CIA administration of the FOIA, or estimates of fees that may become due as a result of a request;

(b) Requesting records pursuant to the FOIA; and

(c) Filing an administrative appeal of an initial adverse decision under the FOIA.

**§ 1900.02 Definitions.**

For purposes of this part, the following terms have the meanings indicated:

(a) *Agency* or *CIA* means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator;

(b) *Days* means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

(c) *Control* means ownership or the authority of the CIA pursuant to federal statute or privilege to regulate official or public access to records;

(d) *Coordinator* means the CIA Information and Privacy Coordinator who serves as the Agency manager of the information review and release program instituted under the Freedom of Information Act;

(e) *Direct costs* means those expenditures which an agency actually incurs in the processing of a FOIA request; it does not include overhead factors such as space; it does include:

(1) *Pages* means paper copies of standard office size or the dollar value equivalent in other media;

(2) *Reproduction* means generation of a copy of a requested record in a form appropriate for release;

(3) *Review* means all time expended in examining a record to determine whether any portion must be withheld pursuant to law and in effecting any

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required deletions but excludes personnel hours expended in resolving general legal or policy issues; it also means personnel hours of professional time;

(4) *Search* means all time expended in looking for and retrieving material that may be responsive to a request utilizing available paper and electronic indices and finding aids; it also means personnel hours of professional time or the dollar value equivalent in computer searches;

(f) *Expression of interest* means a written communication submitted by a member of the public requesting information on or concerning the FOIA program and/or the availability of documents from the CIA;

(g) *Federal agency* means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

(h) *Fees* means those direct costs which may be assessed a requester considering the categories established by the FOIA; requesters should submit information to assist the Agency in determining the proper fee category and the Agency may draw reasonable inferences from the identity and activities of the requester in making such determinations; the fee categories include:

(1) *Commercial* means a request in which the disclosure sought is primarily in the commercial interest of the requester and which furthers such commercial, trade, income or profit interests;

(2) *Non-commercial educational or scientific institution* means a request from an accredited United States educational institution at any academic level or institution engaged in research concerning the social, biological, or physical sciences or an instructor or researcher or member of such institutions; it also means that the information will be used in a specific scholarly or analytical work, will contribute to the advancement of public knowledge, and will be disseminated to the general public;

(3) *Representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news"

means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but agencies may also look to the past publication record of a requestor in making this determination:

(4) *All other* means a request from an individual not within paragraph (h)(1), (2), or (3) of this section;

(i) *Freedom of Information Act* or "FOIA" means the statutes as codified at 5 U.S.C. 552;

(j) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue;

(k) *Originator* means the U.S. Government official who originated the document at issue or successor in office or such official who has been delegated release or declassification authority pursuant to law;

(l) *Potential requester* means a person, organization, or other entity who submits an expression of interest;

(m) *Reasonably described records* means a description of a document (record) by unique identification number or descriptive terms which permit an Agency employee to locate documents with reasonable effort given existing indices and finding aids;

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(n) *Records or agency records* means all documents, irrespective of physical or electronic form, made or received by the CIA in pursuance of federal law or in connection with the transaction of public business and appropriate for preservation by the CIA as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the CIA or because of the informational value of the data contained therein; it does not include:

(1) *Books, newspapers, magazines, journals, magnetic or printed transcripts of electronic broadcasts, or similar public sector materials* acquired generally and/or maintained for library or reference purposes; to the extent that such materials are incorporated into any form of analysis or otherwise distributed or published by the Agency, they are fully subject to the disclosure provisions of the FOIA;

(2) *Index, filing, or museum documents* made or acquired and preserved solely for reference, indexing, filing, or exhibition purposes; and

(3) *Routing and transmittal sheets and notes and filing or destruction notes* which do not also include information, comment, or statements of substance;

(o) *Responsive records* means those documents (i.e., records) which the Agency has determined to be within the scope of a FOIA request.

62 FR 32481, June 16, 1997, as amended at 72 FR 39316, July 18, 2007]

### § 1900.03 Contact for general information and requests.

For general information on this part, to inquire about the FOIA program at CIA, or to file a FOIA request (or expression of interest), please direct your communication in writing to the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Such inquiries will also be accepted by facsimile at (703) 613-3007. For general information or status information on pending cases only, the telephone number is (703) 613-1287. Collect calls cannot be accepted.

### § 1900.04 Suggestions and complaints.

The Agency welcomes suggestions or complaints with regard to its administration of the Freedom of Information Act. Many requesters will receive pre-

paid, customer satisfaction survey cards. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. The Agency will respond to all substantive communications and take such actions as determined feasible and appropriate.

### FILING OF FOIA REQUESTS

#### § 1900.11 Preliminary Information.

Members of the public shall address all communications to the CIA Coordinator as specified at 32 CFR 1900.03 and clearly delineate the communication as a request under the Freedom of Information Act and this regulation. CIA employees receiving a communication in the nature of a FOIA request shall expeditiously forward same to the Coordinator. Requests and appeals on requests, referrals, or coordinations received from members of the public who owe outstanding fees for information services at this or other federal agencies will not be accepted and action on all pending requests shall be terminated in such circumstances.

#### § 1900.12 Requirements as to form and content.

(a) *Required information.* No particular form is required. A request need only reasonably describe the records of interest. This means that documents must be described sufficiently to enable a professional employee familiar with the subject to locate the documents with a reasonable effort. Commonly this equates to a requirement that the documents must be locatable through the indexing of our various systems. Extremely broad or vague requests or requests requiring research do not satisfy this requirement.

(b) *Additional information for fee determination.* In addition, a requester should provide sufficient personal identifying information to allow us to determine the appropriate fee category. A requester should also provide an agreement to pay all applicable fees or fees not to exceed a certain amount or request a fee waiver.

(c) *Otherwise.* Communications which do not meet these requirements will be considered an expression of interest and the Agency will work with, and

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offer suggestions to, the potential requester in order to define a request properly.

**§ 1900.13 Fees for record services.**

(a) *In general.* Search, review, and reproduction fees will be charged in accordance with the provisions below relating to schedule, limitations, and category of requester. Applicable fees will be due even if our search locates no responsive records or some or all of the responsive records must be denied under one or more of the exemptions of the Freedom of Information Act.

(b) *Fee waiver requests.* Records will be furnished without charge or at a reduced rate whenever the Agency determines:

(1) That, as a matter of administrative discretion, the interest of the United States Government would be served, or

(2) That it is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester; the Agency shall consider the following factors when making this determination:

(i) Whether the subject of the request concerns the operations or activities of the United States Government; and, if so,

(ii) Whether the disclosure of the requested documents is likely to contribute to an understanding of United States Government operations or activities; and, if so,

(iii) Whether the disclosure of the requested documents will contribute to public understanding of United States Government operations or activities; and, if so,

(iv) Whether the disclosure of the requested documents is likely to contribute significantly to public understanding of United States Government operations and activities; and

(v) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(vi) Whether the disclosure is primarily in the commercial interest of the requester.

(c) *Fee waiver appeals.* Denials of requests for fee waivers or reductions may be appealed to the Chair of the Agency Release Panel via the Coordinator. A requester is encouraged to provide any explanation or argument as to how his or her request satisfies the statutory requirement set forth above.

(d) *Time for fee waiver requests and appeals.* It is suggested that such requests and appeals be made and resolved prior to the initiation of processing and the incurring of costs. However, fee waiver requests will be accepted at any time prior to the release of documents or the completion of a case, and fee waiver appeals within forty-five (45) days of our initial decision subject to the following condition: If processing has been initiated, then the requester must agree to be responsible for costs in the event of an adverse administrative or judicial decision.

(e) *Agreement to pay fees.* In order to protect requesters from large and/or unanticipated charges, the Agency will request specific commitment when it estimates that fees will exceed \$100.00. The Agency will hold in abeyance for forty-five (45) days requests requiring such agreement and will thereafter deem the request closed. This action, of course, would not prevent an individual from refiling his or her FOIA request with a fee commitment at a subsequent date.

(f) *Deposits.* The Agency may require an advance deposit of up to 100 percent of the estimated fees when fees may exceed \$250.00 and the requester has no history of payment, or when, for fees of any amount, there is evidence that the requester may not pay the fees which would be accrued by processing the request. The Agency will hold in abeyance for forty-five (45) days those requests where deposits have been requested.

(g) *Schedule of fees—(1) In general.* The schedule of fees for services performed in responding to requests for records is established as follows:

Personnel Search and Review		
Clerical/Technical .....	Quarter hour	\$5.00
Professional/Supervisory .....	Quarter hour	10.00
Manager/Senior Professional .....	Quarter hour	18.00

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Computer Search and Production		
Search (on-line) .....	Flat rate .....	10.00
Search (off-line) .....	Flat rate .....	30.00
Other activity .....	Per minute ....	10.00
Tapes (mainframe cassette) .....	Each .....	9.00
Tapes (mainframe cartridge) .....	Each .....	9.00
Tapes (mainframe reel) .....	Each .....	20.00
Tapes (PC 9mm) .....	Each .....	25.00
Diskette (3.5") .....	Each .....	4.00
CD (bulk recorded) .....	Each .....	10.00
CD (recordable) .....	Each .....	20.00
Telecommunications .....	Per minute ....	.50
Paper (mainframe printer) .....	Per page .....	.10
Paper (PC b&w laser printer) .....	Per page .....	.10
Paper (PC color printer) .....	Per page .....	1.00
Paper Production		
Photocopy (standard or legal) .....	Per page .....	.10
Microfiche .....	Per frame .....	.20
Pre-printed (if available) .....	Per 100 .....	5.00
	pages.	
Published (if available) .....	Per item .....	NTIS

(2) *Application of schedule.* Personnel search time includes time expended in either manual paper records searches, indices searches, review of computer search results for relevance, personal computer system searches, and various reproduction services. In any event where the actual cost to the Agency of a particular item is less than the above schedule (e.g., a large production run of a document resulted in a cost less than \$5.00 per hundred pages), then the actual lesser cost will be charged. Items published and available at the National Technical Information Service (NTIS) are also available from CIA pursuant to this part at the NTIS price as authorized by statute.

(3) *Other services.* For all other types of output, production, or reproduction (e.g., photographs, maps, or published reports), actual cost or amounts authorized by statute. Determinations of actual cost shall include the commercial cost of the media, the personnel time expended in making the item to be released, and an allocated cost of the equipment used in making the item, or, if the production is effected by a commercial service, then that charge shall be deemed the actual cost for purposes of this part.

(h) *Limitations on collection of fees—(1) In general.* No fees will be charged if the cost of collecting the fee is equal to or greater than the fee itself. That cost includes the administrative costs to the Agency of billing, receiving, recording, and processing the fee for deposit to the Treasury Department and,

as of the date of these regulations, is deemed to be \$10.00.

(2) *Requests for personal information.* No fees will be charged for requesters seeking records about themselves under the FOIA; such requests are processed in accordance with both the FOIA and the Privacy Act in order to ensure the maximum disclosure without charge.

(i) *Fee categories.* There are four categories of FOIA requesters for fee purposes: *Commercial use* requesters, *educational and non-commercial scientific institution* requesters, *representatives of the news media* requesters, and *all other* requesters. The categories are defined in §1900.02, and applicable fees, which are the same in two of the categories, will be assessed as follows:

(1) *Commercial use* requesters: Charges which recover the full direct costs of searching for, reviewing, and duplicating responsive records (if any);

(2) *Educational and non-commercial scientific institution* requesters as well as “*representatives of the news media*” requesters: Only charges for reproduction beyond the first 100 pages;

(3) *All other* requesters: Charges which recover the full direct cost of searching for and reproducing responsive records (if any) beyond the first 100 pages of reproduction and the first two hours of search time which will be furnished without charge.

(j) *Associated requests.* A requester or associated requesters may not file a series of multiple requests, which are merely discrete subdivisions of the information actually sought for the purpose of avoiding or reducing applicable fees. In such instances, the Agency may aggregate the requests and charge the applicable fees.

**§ 1900.14 Fee estimates (pre-request option).**

In order to avoid unanticipated or potentially large fees, a requester may submit a request for a fee estimate. The Agency will endeavor within ten (10) days to provide an accurate estimate, and, if a request is thereafter submitted, the Agency will not accrue or charge fees in excess of our estimate without the specific permission of the requester. Effective October 2, 1997, the ten (10) day provision is modified to



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twenty (20) days pursuant to the Electronic Freedom of Information Act Amendments of 1996.

### CIA ACTION ON FOIA REQUESTS

#### § 1900.21 Processing of requests for records.

(a) *In general.* Requests meeting the requirements of §§1900.11 through 1900.13 shall be accepted as formal requests and processed under the Freedom of Information Act, 5 U.S.C. 552, and these regulations. Upon receipt, the Agency shall within ten (10) days record each request, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the CIA components reasonably believed to hold responsive records. Effective October 2, 1997, the ten (10) day provision is modified to twenty (20) days pursuant to the Electronic Freedom of Information Act Amendments of 1996.

(b) *Database of "officially released information."* As an alternative to extensive tasking and as an accommodation to many requesters, the Agency maintains a database of "officially released information" which contains copies of documents released by this Agency. Searches of this database, containing currently in excess of 500,000 pages, can be accomplished expeditiously. Moreover, requests that are specific and well-focused will often incur minimal, if any, costs. Requesters interested in this means of access should so indicate in their correspondence. Effective November 1, 1997 and consistent with the mandate of the Electronic Freedom of Information Act Amendments of 1996, on-the-public. Detailed information regarding such access will line electronic access to these records will be available to be available at that time from the point of contact specified in §1900.03.

(c) *Effect of certain exemptions.* In processing a request, the Agency shall decline to confirm or deny the existence or nonexistence of any responsive records whenever the fact of their existence or nonexistence is itself classified under Executive Order 12958 or revealing of intelligence sources and methods protected pursuant to section 103(c)(5) of the National Security Act of

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1947. In such circumstances, the Agency, in the form of a final written response, shall so inform the requester and advise of his or her right to an administrative appeal.

(d) *Time for response.* The Agency will utilize every effort to determine within the statutory guideline of ten (10) days after receipt of an initial request whether to comply with such a request. However, the current volume of requests require that the Agency seek additional time from a requester pursuant to 32 CFR 1900.33. In such event, the Agency will inform the requester in writing and further advise of his or her right to file an administrative appeal of any adverse determination. Effective October 2, 1997, the ten (10) day provision is modified to twenty (20) days pursuant to the Electronic Freedom of Information Act Amendments of 1996.

#### § 1900.22 Action and determination(s) by originator(s) or any interested party.

(a) *Initial action for access.* CIA components tasked pursuant to a FOIA request shall search all relevant record systems within their cognizance which have not been excepted from search by the provisions of the CIA Information Act of 1984. They shall:

(1) Determine whether a record exists;

(2) Determine whether and to what extent any FOIA exemptions apply;

(3) Approve the disclosure of all non-exempt records or portions of records for which they are the originator; and

(4) Forward to the Coordinator all records approved for release or necessary for coordination with or referral to another originator or interested party. In making these decisions, the CIA component officers shall be guided by the applicable law as well as the procedures specified at 32 CFR 1900.31 and 32 CFR 1900.32 regarding confidential commercial information and personal information (about persons other than the requester).

(b) *Referrals and coordinations.* As applicable and within ten (10) days of receipt by the Coordinator, any CIA records containing information originated by other CIA components shall be forwarded to those entities for action in accordance with paragraph (a)

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of this section and return. Records originated by other federal agencies or CIA records containing other federal agency information shall be forwarded to such agencies within ten (10) days of our completion of initial action in the case for action under their regulations and direct response to the requester (for other agency records) or return to the CIA (for CIA records). Effective October 2, 1997, the ten (10) day provision is modified to twenty (20) days pursuant to the Electronic Freedom of Information Act Amendments of 1996.

### § 1900.23 Payment of fees, notification of decision, and right of appeal.

(a) *Fees in general.* Fees collected under this part do not accrue to the Central Intelligence Agency and shall be deposited immediately to the general account of the United States Treasury.

(b) *Notification of decision.* Upon completion of all required review and the receipt of accrued fees (or promise to pay such fees), the Agency will promptly inform the requester in writing of those records or portions of records which may be released and which must be denied. With respect to the former, the Agency will provide copies; with respect to the latter, the Agency shall explain the reasons for the denial, identify the person(s) responsible for such decisions by name and title, and give notice of a right of administrative appeal.

(c) *Availability of reading room.* As an alternative to receiving records by mail, a requester may arrange to inspect the records deemed releasable at a CIA "reading room" in the metropolitan Washington, DC area. Access will be granted after applicable and accrued fees have been paid. Requests to review or browse documents in our database of "officially released records" will also be honored in this manner to the extent that paper copies or electronic copies in unclassified computer systems exist. All such requests shall be in writing and addressed pursuant to 32 CFR 1900.03. The records will be available at such times as mutually agreed but not less than three (3) days from our receipt of a request. The requester will be responsible for reproduction charges for any copies of records desired.

## ADDITIONAL ADMINISTRATIVE MATTERS

### § 1900.31 Procedures for business information.

(a) *In general.* Business information obtained by the Central Intelligence Agency by a submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) *Business information* means commercial or financial information in which a legal entity has a recognized property interest;

(2) *Confidential commercial information* means such business information provided to the United States Government by a submitter which is reasonably believed to contain information exempt from release under exemption (b)(4) of the Freedom of Information Act, 5 U.S.C. 552, because disclosure could reasonably be expected to cause substantial competitive harm;

(3) *Submitter* means any person or entity who provides confidential commercial information to the United States Government; it includes, but is not limited to, corporations, businesses (however organized), state governments, and foreign governments; and

(b) *Designation of confidential commercial information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be confidential commercial information and hence protected from required disclosure pursuant to exemption (b)(4). Such designations shall expire ten (10) years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) *Process in event of FOIA request—*  
(1) *Notice to submitters.* The Agency shall provide a submitter with prompt written notice of receipt of a Freedom of Information Act request encompassing business information whenever:

(i) The submitter has in good faith designated the information as confidential commercial information, or

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(ii) The Agency believes that disclosure of the information could reasonably be expected to cause substantial competitive harm, and

(iii) The information was submitted within the last ten (10) years unless the submitter requested and provided acceptable justification for a specific notice period of greater duration.

(2) *Form of notice.* This notice shall either describe the exact nature of the confidential commercial information at issue or provide copies of the responsive records containing such information.

(3) *Response by submitter.* (i) Within seven (7) days of the above notice, all claims of confidentiality by a submitter must be supported by a detailed statement of any objection to disclosure. Such statement shall:

(A) Specify that the information has not been disclosed to the public;

(B) Explain why the information is contended to be a trade secret or confidential commercial information;

(C) Explain how the information is capable of competitive damage if disclosed;

(D) State that the submitter will provide the Agency and the Department of Justice with such litigation defense as requested; and

(E) Be certified by an officer authorized to legally bind the corporation or similar entity.

(ii) It should be noted that information provided by a submitter pursuant to this provision may itself be subject to disclosure under the FOIA.

(4) *Decision and notice of intent to disclose.* (i) The Agency shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to its final determination. If the Agency decides to disclose a document over the objection of a submitter, the Agency shall provide the submitter a written notice which shall include:

(A) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(B) A description of the information to be disclosed; and

(C) A specified disclosure date which is seven (7) days after the date of the instant notice.

(ii) When notice is given to a submitter under this section, the Agency

shall also notify the requester and, if the Agency notifies a submitter that it intends to disclose information, then the requester shall be notified also and given the proposed date for disclosure.

(5) *Notice of FOIA lawsuit.* If a requester initiates a civil action seeking to compel disclosure of information asserted to be within the scope of this section, the Agency shall promptly notify the submitter. The submitter, as specified above, shall provide such litigation assistance as required by the Agency and the Department of Justice.

(6) *Exceptions to notice requirement.* The notice requirements of this section shall not apply if the Agency determines that:

(i) The information should not be disclosed in light of other FOIA exemptions;

(ii) The information has been published lawfully or has been officially made available to the public;

(iii) The disclosure of the information is otherwise required by law or federal regulation; or

(iv) The designation made by the submitter under this section appears frivolous, except that, in such a case, the Agency will, within a reasonable time prior to the specified disclosure date, give the submitter written notice of any final decision to disclose the information.

**§ 1900.32 Procedures for information concerning other persons.**

(a) *In general.* Personal information concerning individuals other than the requester shall not be disclosed under the Freedom of Information Act if the proposed release would constitute a clearly unwarranted invasion of personal privacy. See 5 U.S.C. 552(b)(6). For purposes of this section, the following definitions apply:

(1) *Personal information* means any information about an individual that is not a matter of public record, or easily discernible to the public, or protected from disclosure because of the implications that arise from Government possession of such information.

(2) *Public interest* means the public interest in understanding the operations and activities of the United States Government and not simply any matter which might be of general interest

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to the requester or members of the public.

(b) *Determination to be made.* In making the required determination under this section and pursuant to exemption (b)(6) of the FOIA, the Agency will balance the privacy interests that would be compromised by disclosure against the public interest in release of the requested information.

(c) *Otherwise.* A requester seeking information on a third person is encouraged to provide a signed affidavit or declaration from the third person waiving all or some of their privacy rights. However, all such waivers shall be narrowly construed and the Coordinator, in the exercise of his discretion and administrative authority, may seek clarification from the third party prior to any or all releases.

### § 1900.33 Allocation of resources; agreed extensions of time.

(a) *In general.* Agency components shall devote such personnel and other resources to the responsibilities imposed by the Freedom of Information Act as may be appropriate and reasonable considering:

(1) The totality of resources available to the component,

(2) The business demands imposed on the component by the Director of Central Intelligence or otherwise by law,

(3) The information review and release demands imposed by the Congress or other governmental authority, and

(4) The rights of all members of the public under the various information review and disclosure laws.

(b) *Discharge of FOIA responsibilities.* Components shall exercise due diligence in their responsibilities under the FOIA and must allocate a reasonable level of resources to requests under the Act in a strictly "first-in, first-out" basis and utilizing two or more processing queues to ensure that smaller as well as larger (i.e., project) cases receive equitable attention. The Information and Privacy Coordinator is responsible for management of the Agency-wide program defined by this part and for establishing priorities for cases consistent with established law. The Director, Information Management through the Agency Release Panel shall provide policy and resource

direction as necessary and render decisions on administrative appeals.

(c) *Requests for extension of time.* When the Agency is unable to meet the statutory time requirements of the FOIA, it will inform the requester that the request cannot be processed within the statutory time limits, provide an opportunity for the requester to limit the scope of the request so that it can be processed within the statutory time limits, or arrange with the requester an agreed upon time frame for processing the request, or determine that exceptional circumstances mandate additional time. In such instances the Agency will, however, inform a requester of his or her right to decline our request and proceed with an administrative appeal or judicial review as appropriate. Effective October 2 1997, the definition of exceptional circumstances is modified per section 552(a)(6)(C) of the Freedom of Information Act, as amended.

### § 1900.34 Requests for expedited processing.

(a) *In general.* All requests will be handled in the order received on a strictly "first-in, first-out" basis. Exceptions to this rule will only be made in accordance with the following procedures. In all circumstances, however, and consistent with established judicial precedent, requests more properly the scope of requests under the Federal Rules of Civil or Criminal Procedure (or other federal, state, or foreign judicial or quasi-judicial rules) will not be granted expedited processing under this or related (e.g., Privacy Act) provisions unless expressly ordered by a federal court of competent jurisdiction.

(b) *Procedure prior to October 2, 1997.* Requests for expedited processing shall be granted only in circumstances that the Agency deems to be exceptional. In making this determination, the Agency shall consider and must decide in the affirmative on all of the following factors:

(i) That there is a genuine need for the specific requested records; and

(ii) That the personal need is exceptional; and

(iii) That there are no alternative forums for the records or information sought; and

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(iv) That it is reasonably believed that substantive records relevant to the stated needs may exist and be deemed releasable.

(2) In sum, requests shall be considered for expedited processing only when health, humanitarian, or due process considerations involving possible deprivation of life or liberty create circumstances of exceptional urgency and extraordinary need.

(c) *Procedure on or after October 2, 1997.* Requests for expedited processing will be approved only when a compelling need is established to the satisfaction of the Agency. A requester may make such a request with a certification of “compelling need” and, within ten (10) days of receipt, the Agency will decide whether to grant expedited processing and will notify the requester of its decision. The certification shall set forth with specificity the relevant facts upon which the requester relies and it appears to the Agency that substantive records relevant to the stated needs may exist and be deemed releasable. A “compelling need” is deemed to exist:

(1) When the matter involves an imminent threat to the life or physical safety of an individual; or

(2) When the request is made by a person primarily engaged in disseminating information and the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity.

CIA ACTION ON FOIA ADMINISTRATIVE APPEALS

§ 1900.41 Establishment of appeals structure.

(a) *In general.* Two administrative entities have been established by the Director of Central Intelligence to facilitate the processing of administrative appeals under the Freedom of Information Act. Their membership, authority, and rules of procedure are as follows.

(b) *Historical Records Policy Board (“HRPB” or “Board”).* This Board, the successor to the CIA Information Review Committee, acts as the senior corporate board in the CIA on all matters of information review and release.

(1) *Membership.* The HRPB is composed of the Executive Director, who serves as its Chair, the Deputy Direc-

tor for Administration, the Deputy Director for Intelligence, the Deputy Director for Operations, the Deputy Director for Science and Technology, the General Counsel, the Director of Congressional Affairs, the Director of the Public Affairs Staff, the Director, Center for the Study of Intelligence, and the Associate Deputy Director for Administration/Information Services, or their designees.

(2) *Authorities and activities.* The HRPB, by majority vote, may delegate to one or more of its members the authority to act on any appeal or other matter or authorize the Chair to delegate such authority, as long as such delegation is not to the same individual or body who made the initial denial. The Executive Secretary of the HRPB is the Director, Information Management. The Chair may request interested parties to participate when special equities or expertise are involved.

(c) *Agency Release Panel (“ARP” or “Panel”).* The HRPB, pursuant to its delegation of authority, has established a subordinate Agency Release Panel.

(1) *Membership.* The ARP is composed of the Director, Information Management, who serves as its Chair; the Information Review Officers from the Directorates of Administration, Intelligence, Operations, Science and Technology, and the Director of Central Intelligence Area; the CIA Information and Privacy Coordinator; the Chief, Historical Review Group; the Chair, Publications Review Board; the Chief, Records Declassification Program; and representatives from the Office of General Counsel, the Office of Congressional Affairs, and the Public Affairs Staff.

(2) *Authorities and activities.* The Panel shall meet on a regular schedule and may take action when a simple majority of the total membership is present. The Panel shall advise and assist the HRPB on all information release issues, monitor the adequacy and timeliness of Agency releases, set component search and review priorities, review adequacy of resources available to and planning for all Agency release programs, and perform such other functions as deemed necessary by the

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Board. The Information and Privacy Coordinator also serves as Executive Secretary of the Panel. The Chair may request interested parties to participate when special equities or expertise are involved. The Panel, functioning as a committee of the whole or through individual members, will make final Agency decisions from appeals of initial adverse decisions under the Freedom of Information Act and such other information release decisions made under 32 CFR parts 1901, 1907, and 1908. Issues shall be decided by a majority of members present; in all cases of a divided vote, any member of the ARP then present may refer such matter to the HRPB by written memorandum to the Executive Secretary of the HRPB. Matters decided by the Panel or Board will be deemed a final decision by the Agency.

### § 1900.42 Right of appeal and appeal procedures.

(a) *Right of Appeal.* A right of administrative appeal exists whenever access to any requested record or any portion thereof is denied, no records are located in response to a request, or a request for a fee waiver is denied. The Agency will apprise all requesters in writing of their right to appeal such decisions to the CIA Agency Release Panel through the Coordinator.

(b) *Requirements as to time and form.* Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of the Agency's initial decision. The Agency may, for good cause and as a matter of administrative discretion, permit an additional thirty (30) days for the submission of an appeal. All appeals shall be in writing and addressed as specified in 32 CFR 1900.03. All appeals must identify the documents or portions of documents at issue with specificity and may present such information, data, and argument in support as the requester may desire.

(c) *Exceptions.* No appeal shall be accepted if the requester has outstanding fees for information services at this or another federal agency. In addition, no appeal shall be accepted if the information in question has been the subject of a review within the previous two (2)

years or is the subject of pending litigation in the federal courts.

(d) *Receipt, recording, and tasking.* The Agency shall promptly record each request received under this part, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the Deputy Director(s) in charge of the directorate(s) which originated or has an interest in the record(s) subject to the appeal. As used herein, the term Deputy Director includes an equivalent senior official in the DCI-area as well as a designee known as the Information Review Officer for a directorate or area.

(e) *Time for response.* The Agency shall attempt to complete action on an appeal within twenty (20) days of the date of receipt. The current volume of requests, however, often requires that the Agency request additional time from the requester pursuant to 32 CFR 1900.33. In such event, the Agency will inform the requester of the right to judicial review.

### § 1900.43 Determination(s) by Deputy Director(s).

Each Deputy Director in charge of a directorate which originated or has an interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested parties may become involved through the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond in writing to the Coordinator with a finding as to the exempt status of the information. This response shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the various information review and release laws.

### § 1900.44 Action by appeals authority.

(a) *Preparation of docket.* The Coordinator, acting in the capacity of Executive Secretary of the Agency Release

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Panel, shall place administrative appeals of FOIA requests ready for adjudication on the agenda at the next occurring meeting of that Panel. The Executive Secretary shall provide a summation memorandum for consideration of the members; the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of the concerned Deputy Director(s) or designee(s).

(b) *Decision by the Agency Release Panel.* The Agency Release Panel shall meet and decide requests sitting as a committee of the whole. Decisions are by majority vote of those present at a meeting and shall be based on the written record and their deliberations; no personal appearances shall be permitted without the express permission of the Panel.

(c) *Decision by the Historical Records Policy Board.* In any cases of divided vote by the ARP, any member of that body is authorized to refer the request to the CIA Historical Records Policy Board which acts as the senior corporate board for the Agency. The record compiled (the request, the memoranda filed by the originator and interested parties, and the previous decision(s)) as well as any memorandum of law or policy the referent desires to be considered, shall be certified by the Executive Secretary of the Agency Release Panel and shall constitute the official record of the proceedings and must be included in any subsequent filings.

### § 1900.45 Notification of decision and right of judicial review.

The Executive Secretary of the Agency Release Panel shall promptly prepare and communicate the decision of the Panel or Board to the requester. With respect to any decision to deny information, that correspondence shall state the reasons for the decision, identify the officer responsible, and include a notice of a right to judicial review.

## PART 1901—PUBLIC RIGHTS UNDER THE PRIVACY ACT OF 1974

### GENERAL

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1901.01 Authority and purpose.

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1901.51 Limitations on disclosure.  
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1901.61 Purpose and authority.  
1901.62 General exemptions.  
1901.63 Specific exemptions.

AUTHORITY: National Security Act of 1947, as amended; Central Intelligence Agency Act of 1949, as amended; Privacy Act, as amended; and Executive Order 12958 (or successor Orders).

SOURCE: 62 FR 32488, June 16, 1997, unless otherwise noted.

### GENERAL

#### § 1901.01 Authority and purpose.

(a) *Authority.* This part is issued under the authority of and in order to implement the Privacy Act of 1974 (5 U.S.C. 552a); sec. 102 of the National Security Act of 1947, as amended (50

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U.S.C. 403); and sec. 6 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403g).

(b) *Purpose in general.* This part prescribes procedures for a requester, as defined herein:

(1) To request notification of whether the Central Intelligence Agency maintains a record concerning them in any non-exempt portion of a system of records or any non-exempt system of records;

(2) To request a copy of all non-exempt records or portions of records;

(3) To request that any such record be amended or augmented; and

(4) To file an administrative appeal to any initial adverse determination to deny access to or amend a record.

(c) *Other purposes.* This part also sets forth detailed limitations on how and to whom the Agency may disclose personal information and gives notice that certain actions by officers or employees of the United States Government or members of the public could constitute criminal offenses.

### § 1901.02 Definitions.

For purposes of this part, the following terms have the meanings indicated:

(a) *Agency* or *CIA* means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator;

(b) *Days* means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

(c) *Control* means ownership or the authority of the CIA pursuant to federal statute or privilege to regulate official or public access to records;

(d) *Coordinator* means the CIA Information and Privacy Coordinator who serves as the Agency manager of the information review and release program instituted under the Privacy Act;

(e) *Federal agency* means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

(f) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue;

(g) *Maintain* means maintain, collect, use, or disseminate;

(h) *Originator* means the U.S. Government official who originated the document at issue or successor in office or such official who has been delegated release or declassification authority pursuant to law;

(i) *Privacy Act* or *PA* means the statute as codified at 5 U.S.C. 552a;

(j) *Record* means an item, collection, or grouping of information about an individual that is maintained by the Central Intelligence Agency in a system of records;

(k) *Requester* or *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence who is a living being and to whom a record might pertain;

(l) *Responsive record* means those documents (records) which the Agency has determined to be within the scope of a Privacy Act request;

(m) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which the record is maintained;

(n) *System of records* means a group of any records under the control of the Central Intelligence Agency from which records are retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to that individual.

### § 1901.03 Contact for general information and requests.

For general information on this part, to inquire about the Privacy Act program at CIA, or to file a Privacy Act request, please direct your communication in writing to the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC. 20505. Requests with the required identification statement pursuant to 32 CFR 1901.13 must be filed in original form by mail. Subsequent communications and



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any inquiries will be accepted by mail or facsimile at (703) 613-3007 or by telephone at (703) 613-1287. Collect calls cannot be accepted.

#### § 1901.04 Suggestions and complaints.

The Agency welcomes suggestions or complaints with regard to its administration of the Privacy Act. Many requesters will receive pre-paid, customer satisfaction survey cards. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. The Agency will respond to all substantive communications and take such actions as determined feasible and appropriate.

#### FILING OF PRIVACY ACT REQUESTS

#### § 1901.11 Preliminary information.

Members of the public shall address all communications to the contact specified at §1901.03 and clearly delineate the communication as a request under the Privacy Act and this regulation. Requests and administrative appeals on requests, referrals, and coordinations received from members of the public who owe outstanding fees for information services at this or other federal agencies will not be accepted and action on existing requests and appeals will be terminated in such circumstances.

#### § 1901.12 Requirements as to form.

(a) *In general.* No particular form is required. All requests must contain the identification information required at §1901.13.

(b) *For access.* For requests seeking access, a requester should, to the extent possible, describe the nature of the record sought and the record system(s) in which it is thought to be included. Requesters may find assistance from information described in the Privacy Act Issuances Compilation which is published biannually by the FEDERAL REGISTER. In lieu of this, a requester may simply describe why and under what circumstances it is believed that this Agency maintains responsive records; the Agency will undertake the appropriate searches.

(c) *For amendment.* For requests seeking amendment, a requester should identify the particular record or por-

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tion subject to the request, state a justification for such amendment, and provide the desired amending language.

#### § 1901.13 Requirements as to identification of requester.

(a) *In general.* Individuals seeking access to or amendment of records concerning themselves shall provide their full (legal) name, address, date and place of birth, and current citizenship status together with a statement that such information is true under penalty of perjury or a notarized statement swearing to or affirming identity. If the Agency determines that this information is not sufficient, the Agency may request additional or clarifying information.

(b) *Requirement for aliens.* Only aliens lawfully admitted for permanent residence (PRAs) may file a request pursuant to the Privacy Act and this part. Such individuals shall provide, in addition to the information required under paragraph (a) of this section, their Alien Registration Number and the date that status was acquired.

(c) *Requirement for representatives.* The parent or guardian of a minor individual, the guardian of an individual under judicial disability, or an attorney retained to represent an individual shall provide, in addition to establishing the identity of the minor or individual represented as required in paragraph (a) or (b) of this section, evidence of such representation by submission of a certified copy of the minor's birth certificate, court order, or representational agreement which establishes the relationship and the requester's identity.

(d) *Procedure otherwise.* If a requester or representative fails to provide the information in paragraph (a), (b), or (c) of this section within forty-five (45) days of the date of our request, the Agency will deem the request closed. This action, of course, would not prevent an individual from refileing his or her Privacy Act request at a subsequent date with the required information.

#### § 1901.14 Fees.

No fees will be charged for any action under the authority of the Privacy Act, 5 U.S.C. 552a, irrespective of the fact

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that a request is or may be processed under the authority of both the Privacy Act and the Freedom of Information Act.

### ACTION ON PRIVACY ACT REQUESTS

#### § 1901.21 Processing requests for access to or amendment of records.

(a) *In general.* Requests meeting the requirements of 32 CFR 1901.11 through 1901.13 shall be processed under both the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a, and the applicable regulations, unless the requester demands otherwise in writing. Such requests will be processed under both Acts regardless of whether the requester cites one Act in the request, both, or neither. This action is taken in order to ensure the maximum possible disclosure to the requester.

(b) *Receipt, recording and tasking.* Upon receipt of a request meeting the requirements of §§1901.11 through 1901.13, the Agency shall within ten (10) days record each request, acknowledge receipt to the requester, and thereafter effect the necessary taskings to the components reasonably believed to hold responsive records.

(c) *Effect of certain exemptions.* In processing a request, the Agency shall decline to confirm or deny the existence or nonexistence of any responsive records whenever the fact of their existence or nonexistence is itself classified under Executive Order 12958 or revealing of intelligence sources and methods protected pursuant to section 103(c)(5) of the National Security Act of 1947. In such circumstances, the Agency, in the form of a final written response, shall so inform the requester and advise of his or her right to an administrative appeal.

(d) *Time for response.* Although the Privacy Act does not mandate a time for response, our joint treatment of requests under both the Privacy Act and the FOIA means that the Agency should provide a response within the FOIA statutory guideline of ten (10) days on initial requests and twenty (20) days on administrative appeals. However, the current volume of requests require that the Agency often seek additional time from a requester pursuant

to 32 CFR 1901.33. In such event, the Agency will inform the requester in writing and further advise of his or her right to file an administrative appeal.

#### § 1901.22 Action and determination(s) by originator(s) or any interested party.

(a) *Initial action for access.* CIA components tasked pursuant to a Privacy Act access request shall search all relevant record systems within their cognizance. They shall:

(1) Determine whether responsive records exist;

(2) Determine whether access must be denied in whole or part and on what legal basis under both Acts in each such case;

(3) Approve the disclosure of records for which they are the originator; and

(4) Forward to the Coordinator all records approved for release or necessary for coordination with or referral to another originator or interested party as well as the specific determinations with respect to denials (if any).

(b) *Initial action for amendment.* CIA components tasked pursuant to a Privacy Act amendment request shall review the official records alleged to be inaccurate and the proposed amendment submitted by the requester. If they determine that the Agency's records are not accurate, relevant, timely or complete, they shall promptly:

(1) Make the amendment as requested;

(2) Write to all other identified persons or agencies to whom the record has been disclosed (if an accounting of the disclosure was made) and inform of the amendment; and

(3) Inform the Coordinator of such decisions.

(c) *Action otherwise on amendment request.* If the CIA component records manager declines to make the requested amendment or declines to make the requested amendment but agrees to augment the official records, that manager shall promptly:

(1) Set forth the reasons for refusal; and

(2) Inform the Coordinator of such decision and the reasons therefore.

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(d) *Referrals and coordinations.* As applicable and within ten (10) days of receipt by the Coordinator, any CIA records containing information originated by other CIA components shall be forwarded to those entities for action in accordance with paragraphs (a), (b), or (c) of this section and return. Records originated by other federal agencies or CIA records containing other federal agency information shall be forwarded to such agencies within ten (10) days of our completion of initial action in the case for action under their regulations and direct response to the requester (for other agency records) or return to the CIA (for CIA records).

(e) *Effect of certain exemptions.* This section shall not be construed to allow access to systems of records exempted by the Director of Central Intelligence pursuant to subsections (j) and (k) of the Privacy Act or where those exemptions require that the CIA can neither confirm nor deny the existence or non-existence of responsive records.

### **§ 1901.23 Notification of decision and right of appeal.**

Within ten (10) days of receipt of responses to all initial taskings and subsequent coordinations (if any), and dispatch of referrals (if any), the Agency will provide disclosable records to the requester. If a determination has been made not to provide access to requested records (in light of specific exemptions) or that no records are found, the Agency shall so inform the requester, identify the denying official, and advise of the right to administrative appeal.

#### ADDITIONAL ADMINISTRATIVE MATTERS

### **§ 1901.31 Special procedures for medical and psychological records.**

(a) *In general.* When a request for access or amendment involves medical or psychological records and when the originator determines that such records are not exempt from disclosure, the Agency will, after consultation with the Director of Medical Services, determine:

(1) Which records may be sent directly to the requester and

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(2) Which records should not be sent directly to the requester because of possible medical or psychological harm to the requester or another person.

(b) *Procedure for records to be sent to physician.* In the event that the Agency determines, in accordance with paragraph (a)(2) of this section, that records should not be sent directly to the requester, the Agency will notify the requester in writing and advise that the records at issue can be made available only to a physician of the requester's designation. Upon receipt of such designation, verification of the identity of the physician, and agreement by the physician:

(1) To review the documents with the requesting individual,

(2) To explain the meaning of the documents, and

(3) To offer counseling designed to temper any adverse reaction, the Agency will forward such records to the designated physician.

(c) *Procedure if physician option not available.* If within sixty (60) days of the paragraph (a)(2) of this section, the requester has failed to respond or designate a physician, or the physician fails to agree to the release conditions, the Agency will hold the documents in abeyance and advise the requester that this action may be construed as a technical denial. The Agency will also advise the requester of the responsible official and of his or her rights to administrative appeal and thereafter judicial review.

### **§ 1901.32 Requests for expedited processing.**

(a) All requests will be handled in the order received on a strictly "first-in, first-out" basis. Exceptions to this rule will only be made in circumstances that the Agency deems to be exceptional. In making this determination, the Agency shall consider and must decide in the affirmative on all of the following factors:

(1) That there is a genuine need for the records; and

(2) That the personal need is exceptional; and

(3) That there are no alternative forums for the records sought; and

(4) That it is reasonably believed that substantive records relevant to the

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stated needs may exist and be deemed releasable.

(b) In sum, requests shall be considered for expedited processing only when health, humanitarian, or due process considerations involving possible deprivation of life or liberty create circumstances of exceptional urgency and extraordinary need. In accordance with established judicial precedent, requests more properly the scope of requests under the Federal Rules of Civil or Criminal Procedure (or equivalent state rules) will not be granted expedited processing under this or related (e.g., Freedom of Information Act) provisions unless expressly ordered by a federal court of competent jurisdiction.

### § 1901.33 Allocation of resources; agreed extensions of time.

(a) *In general.* Agency components shall devote such personnel and other resources to the responsibilities imposed by the Privacy Act as may be appropriate and reasonable considering:

(1) The totality of resources available to the component,

(2) The business demands imposed on the component by the Director of Central Intelligence or otherwise by law,

(3) The information review and release demands imposed by the Congress or other governmental authority, and

(4) The rights of all members of the public under the various information review and disclosure laws.

(b) *Discharge of Privacy Act responsibilities.* Components shall exercise due diligence in their responsibilities under the Privacy Act and must allocate a reasonable level of resources to requests under the Act in a strictly "first-in, first-out" basis and utilizing two or more processing queues to ensure that smaller as well as larger (i.e., project) cases receive equitable attention. The Information and Privacy Coordinator is responsible for management of the Agency-wide program defined by this part and for establishing priorities for cases consistent with established law. The Director, Information Management through the Agency Release Panel shall provide policy and resource direction as necessary and shall make determinations on administrative appeals.

(c) *Requests for extension of time.* While the Privacy Act does not specify time requirements, our joint treatment of requests under the FOIA means that when the Agency is unable to meet the statutory time requirements of the FOIA, the Agency may request additional time from a requester. In such instances the Agency will inform a requester of his or her right to decline our request and proceed with an administrative appeal or judicial review as appropriate.

### ACTION ON PRIVACY ACT ADMINISTRATIVE APPEALS

### § 1901.41 Establishment of appeals structure.

(a) *In general.* Two administrative entities have been established by the Director of Central Intelligence to facilitate the processing of administrative appeals under the Freedom of Information Act. Their membership, authority, and rules of procedure are as follows.

(b) *Historical Records Policy Board ("HRPB" or "Board").* This Board, the successor to the CIA Information Review Committee, acts as the senior corporate board in the CIA on all matters of information review and release.

(1) *Membership.* The HRPB is composed of the Executive Director, who serves as its Chair, the Deputy Director for Administration, the Deputy Director for Intelligence, the Deputy Director for Operations, the Deputy Director for Science and Technology, the General Counsel, the Director of Congressional Affairs, the Director of the Public Affairs Staff, the Director, Center for the Study of Intelligence, and the Associate Deputy Director for Administration/Information Services, or their designees.

(2) *Authorities and activities.* The HRPB, by majority vote, may delegate to one or more of its members the authority to act on any appeal or other matter or authorize the Chair to delegate such authority, as long as such delegation is not to the same individual or body who made the initial denial. The Executive Secretary of the HRPB is the Director, Information Management. The Chair may request interested parties to participate when

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special equities or expertise are involved.

(c) *Agency Release Panel (“ARP” or “Panel”)*. The HRPB, pursuant to its delegation of authority, has established a subordinate Agency Release Panel.

(1) *Membership*. The ARP is composed of the Director, Information Management, who serves as its Chair; the Information Review Officers from the Directorates of Administration, Intelligence, Operations, Science and Technology, and the Director of Central Intelligence Area; the CIA Information and Privacy Coordinator; the Chief, Historical Review Group; the Chair, Publications Review Board; the Chief, Records Declassification Program; and representatives from the Office of General Counsel, the Office of Congressional Affairs, and the Public Affairs Staff.

(2) *Authorities and activities*. The Panel shall meet on a regular schedule and may take action when a simple majority of the total membership is present. The Panel shall advise and assist the HRPB on all information release issues, monitor the adequacy and timeliness of Agency releases, set component search and review priorities, review adequacy of resources available to and planning for all Agency release programs, and perform such other functions as deemed necessary by the Board. The Information and Privacy Coordinator also serves as Executive Secretary of the Panel. The Chair may request interested parties to participate when special equities or expertise are involved. The Panel, functioning as a committee of the whole or through individual members, will make final Agency decisions from appeals of initial adverse decisions under the Freedom of Information Act and such other information release decisions made under 32 CFR parts 1901, 1907, and 1908. Issues shall be decided by a majority of members present; in all cases of a divided vote, any member of the ARP then present may refer such matter to the HRPB by written memorandum to the Executive Secretary of the HRPB. Matters decided by the Panel or Board will be deemed a final decision by the Agency.

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### § 1901.42 Right of appeal and appeal procedures.

(a) *Right of Appeal*. A right of administrative appeal exists whenever access to any requested record or any portion thereof is denied, no records are located in response to a request, or a request for amendment is denied. The Agency will apprise all requesters in writing of their right to appeal such decisions to the CIA Agency Release Panel through the Coordinator.

(b) *Requirements as to time and form*. Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of the Agency’s initial decision. The Agency may, for good cause and as a matter of administrative discretion, permit an additional thirty (30) days for the submission of an appeal. All appeals to the Panel shall be in writing and addressed as specified in 32 CFR 1901.03. All appeals must identify the documents or portions of documents at issue with specificity, provide the desired amending language (if applicable), and may present such information, data, and argument in support as the requester may desire.

(c) *Exceptions*. No appeal shall be accepted if the requester has outstanding fees for information services at this or another federal agency. In addition, no appeal shall be accepted if the information in question has been the subject of an administrative review within the previous two (2) years or is the subject of pending litigation in the federal courts.

(d) *Receipt, recording, and tasking*. The Agency shall promptly record each administrative appeal, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the Deputy Director(s) in charge of the directorate(s) which originated or has an interest in the record(s) subject to the appeal. As used herein, the term Deputy Director includes an equivalent senior official within the DCI-area as well as a designee known as the Information Review Officer for a directorate or area.

### § 1901.43 Determination(s) by Deputy Director(s).

Each Deputy Director in charge of a directorate which originated or has an

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interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested parties may become involved through the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond in writing to the Coordinator with a finding as to the exempt or non-exempt status of the information including citations to the applicable exemption and/or their agreement or disagreement as to the requested amendment and the reasons therefore. Each response shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the various information review and release laws.

### § 1901.44 Action by appeals authority.

(a) *Preparation of docket.* The Coordinator, acting as the Executive Secretary of the Agency Release Panel, shall place administrative appeals of Privacy Act requests ready for adjudication on the agenda at the next occurring meeting of that Panel. The Executive Secretary shall provide a summation memorandum for consideration of the members; the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of the concerned Deputy Director(s) or designee(s).

(b) *Decision by the Agency Release Panel.* The Agency Release Panel shall meet and decide requests sitting as a committee of the whole. Decisions are by majority vote of those present at a meeting and shall be based on the written record and their deliberations; no personal appearances shall be permitted without the express permission of the Panel.

(c) *Decision by the Historical Records Policy Board.* In any cases of divided vote by the ARP, any member of that body is authorized to refer the request to the CIA Historical Records Policy Board which acts as the senior corporate board for the Agency. The record compiled (the request, the memoranda filed by the originator and interested parties, and the previous de-

cision(s)) as well as any memorandum of law or policy the referent desires to be considered, shall be certified by the Executive Secretary of the Agency Release Panel and shall constitute the official record of the proceedings and must be included in any subsequent filings.

### § 1901.45 Notification of decision and right of judicial review.

(a) *In general.* The Executive Secretary of the Agency Release Panel shall promptly prepare and communicate the decision of the Panel or Board to the requester. With respect to any decision to deny information or deny amendment, that correspondence shall state the reasons for the decision, identify the officer responsible, and include a notice of the right to judicial review.

(b) *For amendment requests.* With further respect to any decision to deny an amendment, that correspondence shall also inform the requester of the right to submit within forty-five (45) days a statement of his or her choice which shall be included in the official records of the CIA. In such cases, the applicable record system manager shall clearly note any portion of the official record which is disputed, append the requester's statement, and provide copies of the statement to previous recipients (if any are known) and to any future recipients when and if the disputed information is disseminated in accordance with a routine use.

## PROHIBITIONS

### § 1901.51 Limitations on disclosure.

No record which is within a system of records shall be disclosed by any means of communication to any individual or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be:

(a) To those officers and employees of this Agency which maintains the record who have a need for the record in the performance of their duties;

(b) Required under the Freedom of Information Act, 5 U.S.C. 552;

(c) For a routine use as defined in § 1901.02(m), as contained in the Privacy

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Act Issuances Compilation which is published biennially in the FEDERAL REGISTER, and as described in §§(a)(7) and (e)(4)(D) of the Act;

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of U.S.C. Title 13;

(e) To a recipient who has provided the Agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or designee to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of that agency or instrumentality has made a written request to the CIA specifying the particular information desired and the law enforcement activity for which the record is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office; or

(k) To any agency, government instrumentality, or other person or entity pursuant to the order of a court of competent jurisdiction of the United States or constituent states.

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**§ 1901.52 Criminal penalties.**

(a) *Unauthorized disclosure.* Criminal penalties may be imposed against any officer or employee of the CIA who, by virtue of employment, has possession of or access to Agency records which contain information identifiable with an individual, the disclosure of which is prohibited by the Privacy Act or by these rules, and who, knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive same.

(b) *Unauthorized maintenance.* Criminal penalties may be imposed against any officer or employee of the CIA who willfully maintains a system of records without meeting the requirements of section (e)(4) of the Privacy Act, 5 U.S.C.552a. The Coordinator and the Inspector General are authorized independently to conduct such surveys and inspect such records as necessary from time to time to ensure that these requirements are met.

(c) *Unauthorized requests.* Criminal penalties may be imposed upon any person who knowingly and willfully requests or obtains any record concerning an individual from the CIA under false pretenses.

**EXEMPTIONS**

**§ 1901.61 Purpose and authority.**

*Purpose of exemptions.* This part sets forth those systems of records or portions of systems of records which the Director of Central Intelligence has determined to exempt from the procedures established by this regulation and from certain provisions of the Privacy Act:

(a) The purpose of the following specified general exemption of polygraph records is to prevent access and review of records which intimately reveal CIA operational methods. The purpose of the general exemption from the provisions of sections (c)(3) and (e)(3) (A)-(D) of the Privacy Act is to avoid disclosures that may adversely affect ongoing operational relationships with other intelligence and related organizations and thus reveal or jeopardize intelligence sources and methods or risk exposure of intelligence sources

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and methods in the processing of covert employment applications.

(b) The purpose of the general exemption from sections (d), (e)(4)(G), (f)(1), and (g) of the Privacy Act is to protect only those portions of systems of records which if revealed would risk exposure of intelligence sources and methods or hamper the ability of the CIA to effectively use information received from other agencies or foreign governments.

(c) It should be noted that by subjecting information which would consist of, reveal, or pertain to intelligence sources and methods to separate determinations by the Director of Central Intelligence under the provision entitled "*General exemptions*," 32 CFR 1901.62 regarding access and notice, an intent is established to apply the exemption from access and notice only in those cases where notice in itself would constitute a revelation of intelligence sources and methods; in all cases where only access to information would reveal such source or method, notice will be given upon request.

(d) The purpose of the general exemption for records that consist of, pertain to, or would otherwise reveal the identities of employees who provide information to the Office of the Inspector General is to implement section 17 of the CIA Act of 1949, as amended, 50 U.S.C. 403q(e)(3), and to ensure that no action constituting a reprisal or threat of reprisal is taken because an employee has cooperated with the Office of Inspector General.

(e) The purpose of the specific exemptions provided for under section (k) of the Privacy Act is to exempt only those portions of systems of records which would consist of, reveal, or pertain to that information which is enumerated in that section of the Act.

(f) In each case, the Director of Central Intelligence currently or then in office has determined that the enumerated classes of information should be exempt in order to comply with dealing with the proper classification of national defense or foreign policy information; protect the identification of persons who provide information to the CIA Inspector General; protect the privacy of other persons who supplied information under an implied or express

grant of confidentiality in the case of law enforcement or employment and security suitability investigations (or promotion material in the case of the armed services); protect information used in connection with protective services under 18 U.S.C. 3056; protect the efficacy of testing materials; and protect information which is required by statute to be maintained and used solely as statistical records.

### § 1901.62 General exemptions.

(a) Pursuant to authority granted in section (j) of the Privacy Act, the Director of Central Intelligence has determined to exempt from all sections of the Act—except sections 552a(b); (c) (1) and (2); (e) (1), (4) (A)–(F), (5), (6), (7), (9), (10), and (11); and (i)—the following systems of records or portions of records in a system of record:

(1) Polygraph records.

(2) [Reserved]

(b) Pursuant to authority granted in section (j) of the Privacy Act, the Director of Central Intelligence has determined to exempt from sections (c)(3) and (e)(3) (A)–(D) of the Act all systems of records maintained by this Agency.

(c) Pursuant to authority granted in section (j) of the Privacy Act, the Director of Central Intelligence has determined to exempt from notification under sections (e)(4)(G) and (f)(1) those portions of each and all systems of records which have been exempted from individual access under section (j) in those cases where the Coordinator determines after advice by the responsible components that confirmation of the existence of a record may jeopardize intelligence sources and methods. In such cases the Agency must neither confirm nor deny the existence of the record and will advise a requester that there is no record which is available pursuant to the Privacy Act of 1974.

(d) Pursuant to authority granted in section (j) of the Privacy Act, the Director of Central Intelligence has determined to exempt from access by individuals under section (d) of the Act those portions and only those portions of all systems of records maintained by the CIA that:



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(1) Consist of, pertain to, or would otherwise reveal intelligence sources and methods;

(2) Consist of documents or information provided by any foreign government entity, international organization, or, any United States federal, state, or other public agency or authority; and

(3) Consist of information which would reveal the identification of persons who provide information to the CIA Inspector General.

(e) Pursuant to authority granted in section (j) of the Privacy Act, the Director of Central Intelligence has determined to exempt from judicial review under section (g) of the Act all determinations to deny access under section (d) of the Act and all decisions to deny notice under sections (e)(4)(G) and (f)(1) of the Act pursuant to determination made under paragraph (c) of this section when it has been determined by an appropriate official of the CIA that such access would disclose information which would:

(1) Consist of, pertain to, or otherwise reveal intelligence sources and methods;

(2) Consist of documents or information provided by any foreign government entity, international organization, or, any United States federal, state, or other public agency or authority; and

(3) Consist of information which would reveal the identification of persons who provide information to the CIA Inspector General.

**§ 1901.63 Specific exemptions.**

Pursuant to authority granted in section (k) of the Privacy Act, the Director of Central Intelligence has determined to exempt from section (d) of the Privacy Act those portions and only those portions of all systems of records maintained by the CIA that would consist of, pertain to, or otherwise reveal information that is:

(a) Classified pursuant to Executive Order 12958 (or successor or prior Order) and thus subject to the provisions of 5 U.S.C. 552(b)(1) and 5 U.S.C. 552a(k)(1);

(b) Investigatory in nature and compiled for law enforcement purposes, other than material within the scope of

section (j)(2) of the Act; provided however, that if an individual is denied any right, privilege, or benefit to which they are otherwise eligible, as a result of the maintenance of such material, then such material shall be provided to that individual except to the extent that the disclosure would reveal the identity of a source who furnished the information to the United States Government under an express promise of confidentiality, or, prior to the effective date of this section, under an implied promise of confidentiality;

(c) Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056;

(d) Required by statute to be maintained and used solely as statistical records;

(e) Investigatory in nature and compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the United States Government under an express promise of confidentiality, or, prior to the effective date of this section, under an implied promise of confidentiality;

(f) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(g) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the United States Government under an express promise of confidentiality, or, prior to the effective date of this section, under an implied promise of confidentiality.

**PART 1902—INFORMATION  
SECURITY REGULATIONS**

**Subparts A–E [Reserved]**

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### Subpart F—Declassification and Downgrading

AUTHORITY: Sec. 5-402 of Executive Order 12065.

#### § 1902.13 Declassification and downgrading policy.

(a)–(b) [Reserved]

(c) The Executive Order provides that in some cases the need to protect properly classified information “may be outweighed by the public interest in disclosure of the information,” and that “when such questions arise” the competing interests in protection and disclosure are to be balanced. The Order further provides that the information is to be declassified in such cases if the balance is struck in favor of disclosure. The drafters of the Order recognized that such cases would be rare and that declassification decisions in such cases would remain the responsibility of the Executive Branch. For purposes of these provisions, a question as to whether the public interest favoring the continued protection of properly classified information is outweighed by a public interest in the disclosure of that information will be deemed to exist only in circumstances where, in the judgment of the agency, nondisclosure could reasonably be expected to:

- (1) Place a person’s life in jeopardy.
- (2) Adversely affect the public health and safety.
- (3) Impede legitimate law enforcement functions.
- (4) Impede the investigative or oversight functions of the Congress.
- (5) Obstruct the fair administration of justice.
- (6) Deprive the public of information indispensable to public decisions on issues of critical national importance (effective for declassification reviews conducted on or after 1 February 1980).

(d) When a case arises that requires a balancing of interests under paragraph (c) above, the reviewing official shall refer the matter to an Agency official having Top Secret classification authority, who shall balance. If it appears that the public interest in disclosure of the information may outweigh any continuing need for its protection, the case shall be referred with a recommendation for decision to the appro-

priate Deputy Director or Head of Independent Office. If those officials believe disclosure may be warranted, they, in coordination with OGC, as appropriate, shall refer the matter and a recommendation to the DDCI. If the DDCI determines that the public interest in disclosure of the information outweighs any damage to national security that might reasonably be expected to result from disclosure, the information shall be declassified.

[45 FR 64175, Sept. 29, 1980]

### PART 1903—CONDUCT ON AGENCY INSTALLATIONS

Sec.

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- 1903.20 Penalties and effects on other laws.

AUTHORITY: 50 U.S.C. 403o.

SOURCE: 63 FR 44786, Aug. 21, 1998, unless otherwise noted.

#### § 1903.1 Definitions.

As used in this part:

*Agency installation.* For the purposes of this part, the term Agency installation means the property within the Agency Headquarters Compound and the property controlled and occupied by the Federal Highway Administration located immediately adjacent to such Compound, and property within any other Agency installation and protected property (i.e., property owned, leased, or otherwise controlled by the Central Intelligence Agency).

*Authorized person.* An officer of the Security Protective Service, or any other Central Intelligence Agency employee who has been authorized by the Director of Central Intelligence pursuant to section 15 of the Central Intelligence Agency Act of 1949 to enforce the provisions of this part.

*Blasting agents.* The term is defined for the purposes of this part as it is defined in Title 18 U.S.C. 841.

*Controlled Substance.* Any drug or other substance, or immediate precursor that has been defined as a controlled substance in the Controlled Substances Act (Title 21 U.S.C. 801 *et seq.*).

*Explosives/Explosive Materials.* The term is defined for the purposes of this part as it is defined in Title 18 U.S.C. 841.

*Operator.* A person who operates, drives, controls, or otherwise has charge of, or is in actual physical control of a mechanical mode of transportation or any other mechanical equipment.

*Permit.* A written authorization to engage in uses or activities that are otherwise prohibited, restricted, or regulated.

*Possession.* Exercising direct physical control or dominion, with or without ownership, over the property.

*State law.* The applicable and non-conflicting laws, statutes, regulations, ordinances, and codes of the State(s) and other political subdivision(s) within whose exterior boundaries an Agency installation or a portion thereof is located.

*Traffic.* Pedestrians, ridden or herded animals, vehicles, and other conveyances, either singly or together, while using any road, path, street, or other thoroughfare for the purpose of travel.

*Vehicles.* Any vehicle that is self-propelled or designed for self-propulsion, any motorized vehicle, and any vehicle drawn by or designed to be drawn by a motor vehicle, including any device in, upon, or by which any person or property is or can be transported or drawn upon a roadway, highway, hallway, or pathway; to include any device moved by human or animal power. Whether required to be licensed in any State or otherwise.

*Weapons.* Any firearms or any other loaded or unloaded pistol, rifle, shotgun, or other weapon which is designed to, or may be readily converted to expel a projectile by ignition of a propellant, by compressed gas, or which is spring-powered. Any bow and arrow, crossbow, blowgun, spear gun, hand-thrown spear, sling-shot, irritant gas device, explosive device, or any other implement designed to discharge missiles; or a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or is readily capable of, causing death or serious bodily injury, including any weapon the possession of which is prohibited under the laws of the State in which the Agency installation or portion thereof is located; except that such term does not include a closing pocket knife with a blade of less than 2½ inches in length.

#### § 1903.2 Applicability.

The provisions of this part apply to all Agency installations, and to all persons entering on to or when on an Agency installation. They supplement the provisions of Title 18, United States Code, relating to crimes and criminal procedures, and those provisions of State law that are federal criminal offenses by virtue of the Assimilative Crimes Act, 18 U.S.C. 13. The Director of Central Intelligence, at his discretion, may suspend the applicability of this part, or a portion thereof, on any Agency installation, or any portion of the installation, covered under this part. Where necessary and when consistent with national security requirements notices will be posted on the affected Agency installation to indicate that the applicability of this part or a portion thereof has been suspended.

#### § 1903.3 State law applicable.

(a) Unless specifically addressed by the regulations in this part, traffic safety and the permissible use and operation of vehicles within an Agency installation are governed by State law. State law that is now or may later be in effect is adopted and made a part of the regulations in this part.

(b) Violating a provision of State law is prohibited.

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### § 1903.4 Vehicles and traffic safety.

(a) *Open container of alcoholic beverage.* (1) Each person within the vehicle is responsible for complying with the provisions of this section that pertain to carrying an open container. The operator of the vehicle is the person responsible for complying with the provisions of this section that pertain to the storage of an open container.

(2) Carrying or storing a bottle, can, or other receptacle containing an alcoholic beverage that is open or has been opened, or whose seal is broken, or the contents of which have been partially removed, within a vehicle on an Agency installation is prohibited.

(3) This section does not apply to:

(i) An open container stored in the trunk of a vehicle or, if a vehicle is not equipped with a trunk, to an open container stored in some other portion of the vehicle designated for the storage of luggage and not normally occupied by or readily accessible to the operator or passenger; or

(ii) An open container stored in the living quarters of a motor home or camper.

(4) For the purpose of paragraph (a)(3)(i) of this section, a utility compartment or glove compartment is deemed to be readily accessible to the operator and passengers of a vehicle.

(b) *Operating under the influence of alcohol, drugs, or controlled substances.* (1) Operating or being in actual physical control of a vehicle is prohibited while.

(i) Under the influence of alcohol, drug or drugs, a controlled substance, or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(ii) The alcohol concentration in the operator's blood is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more alcohol per 210 liters of breath. Provided, however, that if the applicable State law that applies to operating a vehicle while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits supersede the limits specified in this section.

(2) The provisions of paragraph (b)(1) of this section shall also apply to an operator who is or has been legally entitled to use alcohol or another drug.

(3) *Test.* (i) At the request or direction of an authorized person who has probable cause to believe that an operator of a vehicle within an Agency installation has violated a provision of paragraph (b)(1) of this section, the operator shall submit to one or more tests of blood, breath, saliva, or urine for the purpose of determining blood alcohol, drug, and controlled substance content.

(ii) Refusal by an operator to submit to a test is prohibited and may result in detention and citation by an authorized person. Proof of refusal may be admissible in any related judicial proceeding.

(iii) Any test or tests for the presence of alcohol, drugs, and controlled substances shall be determined by and administered at the direction of an officer of the Security Protective Service.

(iv) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability and operated by personnel certified in its use.

(4) *Presumptive levels.* (i) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of this section. If the alcohol concentration in the operator's blood or breath at the time of the testing is less than the alcohol concentration specified in paragraph (b)(1)(ii) of this section this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(ii) The provisions of paragraph (b)(4)(i) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, a drug or drugs, or a controlled substance, or any combination thereof.

[63 FR 44786, Aug. 21, 1998; 64 FR 27041, May 18, 1999]

### § 1903.5 Enforcement of parking regulations.

(a) A vehicle parked in any location without authorization, pursuant to a

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fraudulent, fabricated, copied or altered parking permit, or parked contrary to the directions of posted signs or markings, shall be subject to any penalties imposed by this section and the vehicle may be removed from the Agency installation at the owner's risk and expense. The Central Intelligence Agency assumes no responsibility for the payment of any fees or costs related to the removal and/or storage of the vehicle which may be charged to the owner of the vehicle by the towing organization.

(b) The use, attempted use or possession of a fraudulent, fabricated, copied or altered parking permit is prohibited.

(c) The blocking of entrances, driveways, sidewalks, paths, loading platforms, or fire hydrants on an Agency installation is prohibited.

(d) This section may be supplemented or the applicability suspended from time to time by the Director of the Center for CIA Security, or by his or her designee, by the issuance and posting of such parking directives as may be required, and when so issued and posted, such directives shall have the same force and effects as if made a part thereof.

(e) Proof that a vehicle was parked in violation of the regulations of this section or directives may be taken as *prima facie* evidence that the registered owner was responsible for the violation.

### § 1903.6 Admission on to an Agency installation.

(a) Access on to any Agency installation shall be controlled and restricted to ensure the orderly and secure conduct of Agency business. Admission on to an Agency installation or into a restricted area on an Agency installation shall be limited to Agency employees and other persons with proper authorization.

(b) All persons entering on to or when on an Agency installation shall, when required and/or requested, produce and display proper identification to authorized persons.

(c) All personal property, including but not limited to any packages, briefcases, other containers or vehicles brought on to, on, or being removed from an Agency installation are sub-

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ject to inspection and search by authorized persons.

(d) A full search of a person may accompany an investigative stop or an arrest.

(e) Persons entering on to an Agency installation or into a restricted area who refuse to permit an inspection and search will be denied further entry and will be ordered to leave the Agency installation or restricted area pursuant to § 1903.7(a) of this part.

(f) All persons entering on to or when on any Agency installation shall comply with all official signs of a prohibitory, regulatory, or directory nature at all times while on the Agency installation.

(g) All persons entering on to or when on any Agency installation shall comply with the instructions or directions of authorized persons.

### § 1903.7 Trespassing.

(a) Entering, or remaining on any Agency installation without proper authorization is prohibited. Failure to obey an order to leave given under this section by an authorized person, or reentry or attempted reentry onto the Agency installation after being ordered to leave or after being instructed not to reenter by an authorized person under this section is also prohibited.

(b) Any person who violates the provisions of this part may be ordered to leave the Agency installation by an authorized person. A violator's reentry may also be prohibited.

### § 1903.8 Interfering with Agency functions.

The following are prohibited:

(a) *Interference.* Threatening, resisting, intimidating, or intentionally interfering with a government employee or agent engaged in an official duty, or on account of the performance of an official duty.

(b) *Violation of a lawful order.* Violating the lawful order of an authorized person to maintain order and control, public access and movement during fire fighting operations, law enforcement actions, and emergency operations that involve a threat to public safety or government resources, or other activities where the control of public movement and activities is necessary to

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maintain order and public health or safety.

(c) *False information.* Knowingly giving false information:

(1) To an authorized person investigating an accident or violation of law or regulation; or

(2) On an application for a permit.

(d) *False report.* Knowingly giving a false report for the purpose of misleading an authorized person in the conduct of official duties, or making a false report that causes a response by the government to a fictitious event.

### § 1903.9 Explosives.

(a) Using, possessing, storing, or transporting explosives, blasting agents, ammunition or explosive materials is prohibited on any Agency installation, except as authorized by the Director of the Center for CIA Security. When permitted, the use, possession, storage, and transportation shall be in accordance with applicable Federal and State laws, and shall also be in accordance with applicable Central Intelligence Agency rules and/or regulations.

(b) Using, possessing, storing, or transporting items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes is prohibited.

### § 1903.10 Weapons.

(a) Except as provided in paragraph (c) of this section, knowingly possessing or causing to be present a weapon on an Agency installation, or attempting to do so is prohibited.

(b) Knowingly possessing or causing to be present a weapon on an Agency installation, incident to hunting or other lawful purposes is prohibited.

(c) This section does not apply—

(1) Where Title 18 U.S.C. 930 applies;

(2) To any person who has received authorization from the Director of the Center for CIA Security, or from his or her designee to possess, carry, transport, or use a weapon in support of the Agency's mission or for other lawful purposes as determined by the Director of the Center for CIA Security;

(3) To the lawful performance of official duties by an officer, agent, or employee of the United States, a State, or a political subdivision thereof, who is

authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law; or

(4) To the possession of a weapon by a Federal official or a member of the Armed Forces if such possession is authorized by law.

### § 1903.11 Restrictions on photographic, transmitting, and recording equipment.

(a) Except as otherwise authorized under this section, the following are prohibited on Agency installations:

(1) Possessing a camera, other visual or audio recording devices, or electronic transmitting equipment of any kind.

(2) Carrying a camera, other visual or audio recording devices, or electronic transmitting equipment of any kind.

(3) Using a camera, other visual or audio recording devices, or electronic transmitting equipment of any kind.

(b) This section does not apply to any person using, possessing or storing a government or privately owned cellular telephone or pager while on any Agency installation. The Central Intelligence Agency may regulate or otherwise administratively control cellular telephones and pagers outside the provisions of this part.

(c) This section does not apply to any officer, agent, or employee of the United States, a State, or a political subdivision thereof, who may enter on to an Agency installation to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law.

(d) This section does not apply to any person who has received approval from the Director of the Center for CIA Security, or from his or her designee to carry, transport, or use a camera, other visual or audio recording devices, or electronic transmitting equipment while on an Agency installation.

### § 1903.12 Alcoholic beverages and controlled substance.

(a) *Alcoholic beverages.* The possession, transportation of alcoholic beverages in closed containers and their consumption on an Agency installation will be administratively controlled by

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the Agency outside the provisions of this part.

(b) *Controlled substances.* The following are prohibited on an Agency installation:

(1) The delivery of a controlled substance, except when distribution is made by a licensed physician or pharmacist in accordance with applicable Federal or State law, or as otherwise permitted by Federal or State law. For the purpose of this paragraph, delivery means the actual, attempt, or constructive transfer of a controlled substance.

(2) The possession of a controlled substance, unless such substance was obtained by the possessor directly from, or pursuant to a valid prescription or ordered by, a licensed physician or pharmacist, or as otherwise allowed by Federal or State law.

### § 1903.13 Intoxicated on an Agency installation.

Presence on an Agency installation when under the influence of alcohol, a drug, or a controlled substance or a combination thereof to a degree that interferes with, impedes or hinders the performance of the official duties of any government employee, or damages government or personal property is prohibited.

### § 1903.14 Disorderly conduct.

A person commits disorderly conduct when, with intent to cause public alarm, nuisance, jeopardy, or violence, or knowingly or recklessly creating a risk thereof, such person commits any of the following prohibited acts:

(a) Engages in fighting or threatening, or in violent behavior.

(b) Acts in a manner that is physically threatening or menacing, or acts in a manner that is likely to inflict injury or incite an immediate breach of peace.

(c) Makes noises that are unreasonable considering the nature and purpose of the actor's conduct, location, time of day or night, and other factors that would govern the conduct of a reasonable prudent person under the circumstances.

(d) Uses obscene language, an utterance, or gesture, or engages in a display or act that is obscene.

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(e) Impedes or threatens the security of persons or property, or disrupts the performance of official duties by employees, officers, contractors or visitors on an Agency installation or obstructs the use of areas on an Agency installation such as entrances, foyers, lobbies, corridors, concourses, offices, elevators, stairways, roadways, driveways, walkways, or parking lots.

### § 1903.15 Preservation of property.

The following are prohibited:

(a) *Property Damage.* Destroying or damaging private property.

(b) *Theft.* The theft of private property, except where Title 18 U.S.C. 661 applies.

(c) *Creation of hazard.* The creation of hazard to persons or things, the throwing of articles of any kind from or at buildings, vehicles, or persons while on an Agency installation.

(d) *Improper disposal.* The improper disposal of trash or rubbish while on an Agency installation.

### § 1903.16 Restriction on animals.

Animals, except for those animals used for the assistance of persons with disabilities, or animals under the charge and control of the Central Intelligence Agency, shall not be brought onto an Agency installation for other than official purposes.

### § 1903.17 Soliciting, vending, and debt collection.

Commercial or political soliciting, vending of all kinds, displaying or distributing commercial advertising, collecting private debts or soliciting alms on any Agency installation is prohibited. This does not apply to:

(a) National or local drives for funds for welfare, health, or other purposes as authorized by Title 5 CFR parts 110 and 950 as amended and sponsored or approved by the Director of Central Intelligence, or by his or her designee.

(b) Personal notices posted on authorized bulletin boards and in compliance with Central Intelligence Agency rules governing the use of such authorized bulletin boards advertising to sell or rent property of Central Intelligence Agency employees or their immediate families.

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### § 1903.18 Distribution of materials.

Distributing, posting, or affixing materials, such as pamphlets, handbills, or flyers, on any Agency installation is prohibited except as authorized by § 1903.17(b), or by other authorization from the Director of the Center for CIA Security, or from his or her designee.

### § 1903.19 Gambling.

Gambling in any form, or the operation of gambling devices, is prohibited. This prohibition shall not apply to the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by the provisions of the Randolph-Sheppard Act (Title 20 U.S.C. 107 *et seq.*).

### § 1903.20 Penalties and effects on other laws.

(a) Whoever shall be found guilty of violating any rule or regulation enumerated in this part is subject to the penalties imposed by Federal law for the commission of a Class B misdemeanor offense.

(b) Nothing in this part shall be construed to abrogate or supersede any other Federal law or any non-conflicting State or local law, ordinance or regulation applicable to any location where the Agency installation is situated.

## PART 1904—PROCEDURES GOVERNING ACCEPTANCE OF SERVICE OF PROCESS

Sec.

1904.1 Scope and purpose.

1904.2 Definitions.

1904.3 Procedures governing acceptance of service of process.

1904.4 Notification to CIA Office of General Counsel.

1904.5 Authority of General Counsel.

AUTHORITY: 50 U.S.C. 403g; 50 U.S.C. 403(d)(3); E.O. 12333 sections 1.8(h), 1.8(i), 3.2.

SOURCE: 56 FR 41458, Aug. 21, 1991, unless otherwise noted.

### § 1904.1 Scope and purpose.

(a) This part sets forth the limits of authority of CIA personnel to accept service of process on behalf of the CIA or any CIA employee.

(b) This part is intended to ensure the orderly execution of the Agency's affairs and not to impede any legal proceeding.

(c) CIA regulations concerning employee responses to demands for production of official information in proceedings before federal, state, or local government entities are set out in part 1905 of this chapter.

### § 1904.2 Definitions.

(a) *Agency* or *CIA* means the Central Intelligence Agency and include all staff elements of the Director of Central Intelligence.

(b) *Process* means a summons, complaint, subpoena, or other official paper (except garnishment orders) issued in conjunction with a proceeding or hearing being conducted by a federal, state, or local governmental entity of competent jurisdiction.

(c) *Employee* means any CIA officer, any staff, contract, or other employee of CIA, any person including independent contractors associated with or acting for or on behalf of CIA, and any person formerly having such a relationship with CIA.

(d) *General Counsel* includes the Deputy General Counsel or Acting General Counsel.

### § 1904.3 Procedures governing acceptance of service of process.

(a) *Service of Process Upon the CIA or a CIA Employee in An Official Capacity—*

(1) *Personal service.* Unless otherwise expressly authorized by the General Counsel, or designee, personal service of process may be accepted only by attorneys of the Office of General Counsel at CIA Headquarters in Langley, Virginia.

(2) *Mail service.* Where service of process by registered or certified mail is authorized by law, unless expressly directed otherwise by the General Counsel or designee, such process may only be accepted by attorneys of the Office of General Counsel. Process by mail should be addressed as follows: Litigation Division, Office of General Counsel, Central Intelligence Agency, Washington, DC 20505.

(b) *Service of Process Upon a CIA Employee Solely in An Individual Capacity—*  
(1) *General.* Consistent with section 6 of



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the CIA Act of 1949, as amended, 50 U.S.C. 403g, CIA will not provide the name or address of any current or former employee of CIA to individuals or entities seeking to serve process upon such employee solely in his or her individual capacity, even where the matter is related to CIA activities.

(2) *Personal Service.* Subject to the sole discretion of appropriate officials of the CIA, process servers generally will not be allowed to enter CIA facilities or premises for the purpose of serving process upon any CIA employee solely in his or her individual capacity. The Office of General Counsel is not authorized to accept service of process on behalf of a CIA employee—except the Director and Deputy Director of Central Intelligence—in his or her individual capacity.

(3) *Mail Service.* Unless otherwise expressly authorized by the General Counsel, or designee, CIA personnel are not authorized to accept or forward mailed service of process directed to any CIA employee in his or her individual capacity. Any such process will be returned to the sender via appropriate postal channels.

(c) *Service of Process Upon a CIA Employee in A Combined Official and Individual Capacity.* Unless expressly directed otherwise by the General Counsel, or designee, any process to be served upon a CIA employee in his or her combined official and individual capacity, in person or by mail, can be accepted only by attorneys of the Office of General Counsel at CIA Headquarters in Langley, Virginia.

(d) The documents for which service is accepted in official capacity only shall be stamped "Service Accepted in Official Capacity Only." Acceptance of service of process shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under the laws or rules applicable to the service of process.

### § 1904.4 Notification to CIA Office of General Counsel.

A CIA employee who receives or has reason to expect service of process in an individual, official, or combined individual and official capacity, in a

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matter that may involve testimony or the furnishing of documents and that could reasonably be expected to involve Agency interests, shall promptly notify the Litigation Division, Office of General Counsel (703-874-3118). Such notification should be given prior to providing the requestor, counsel or other representative any Agency information, and prior to accepting service of process.

### § 1904.5 Authority of General Counsel.

Any questions concerning interpretation of this regulation shall be referred to the Office of General Counsel for resolution.

## PART 1905—PRODUCTION OF OFFICIAL RECORDS OR DISCLOSURE OF OFFICIAL INFORMATION IN PROCEEDINGS BEFORE FEDERAL, STATE OR LOCAL GOVERNMENTAL ENTITIES OF COMPETENT JURISDICTION

Sec.

1905.1 Scope and purpose.

1905.2 Definitions.

1905.3 General.

1905.4 Procedure for production.

AUTHORITY: 5 U.S.C. 403(d)(3); 50 U.S.C. 403g; United States ex rel. *Touhy* v. *Ragen*, 340 U.S. 462 (1951); E.O. 12333 §§1.8(i), 1.5(h), 3.2; E.O. 12356; U.S. v. *Snepp*, 444 U.S. 507 (1980).

SOURCE: 56 FR 41459, Aug. 21, 1991, unless otherwise noted.

### § 1905.1 Scope and purpose.

This part sets forth the policy and procedures with respect to the production or disclosure of (a) material contained in the files of CIA, (b) information relating to or based upon material contained in the files of CIA, and (c) information acquired by any person while such person was an employee of CIA as part of the performance of that person's official duties or because of that person's association with CIA.

### § 1905.2 Definitions.

For the purpose of this part:

(a) *CIA* or *Agency* means the Central Intelligence Agency and includes all staff elements of the Director of Central Intelligence.

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(b) *Demand* means any subpoena, order, or other legal summons (except garnishment orders) that is issued by a federal, state, or local governmental entity of competent jurisdiction with the authority to require a response on a particular matter, or a request for appearance of an individual where a demand could issue.

(c) *Employee* means any officer, any staff, contract, or other employee of CIA; any person including independent contractors associated with or acting on behalf of CIA; and any person formerly having such a relationship with CIA.

(d) *Production* or *produce* means the disclosure of:

(1) Any material contained in the files of CIA; or

(2) Any information relating to material contained in the files of CIA, including but not limited to summaries of such information or material, or opinions based on such information or material; or

(3) Any information acquired by persons while such persons were employees of CIA as a part of the performance of their official duties or because of their official status or association with CIA;

in response to a demand upon an employee of CIA.

(e) *General Counsel* includes the Deputy General Counsel or Acting General Counsel.

### § 1905.3 General.

(a) No employee shall produce any materials or information in response to a demand without prior authorization as set forth in this part. This part applies to former employees to the extent consistent with applicable nondisclosure agreements.

(b) This part is intended only to provide procedures for responding to demands for production of documents or information, and is not intended to, does not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable by any party against the United States.

### § 1905.4 Procedure for production.

(a) Whenever a demand for production is made upon an employee, the employee shall immediately notify the

Litigation Division, Office of General Counsel, Central Intelligence Agency, Washington, DC 20505 (703/874-3118), which shall follow the procedures set forth in this section.

(b) The General Counsel of CIA and Deputy Directors or Heads of Independent Offices with responsibility for the information sought in the demand, or their designees, shall determine whether any information or materials may properly be produced in response to the demand, except that the Office of General Counsel may assert any and all legal defenses and objections to the demand available to CIA prior to the start of any search for information responsive to the demand. CIA may, in its sole discretion, decline to begin any search for information responsive to the demand until a final and non-appealable disposition of any such defenses and objections raised by CIA has been made by the entity or person that issued the demand.

(c) CIA officials shall consider the following factors, among others, in reaching a decision:

(1) Whether production is appropriate in light of any relevant privilege;

(2) Whether production is appropriate under the applicable rules of discovery or the procedures governing the case or matter in which the demand arose; and

(3) Whether any of the following circumstances apply:

(i) Disclosure would violate a statute, including but not limited to the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

(ii) Disclosure would be inconsistent with the statutory responsibility of the Director of Central Intelligence to protect intelligence sources and methods;

(iii) Disclosure would violate a specific CIA regulation or directive;

(iv) Disclosure would reveal classified information;

(v) Disclosure would improperly reveal trade secrets or proprietary confidential information without the owner's consent; or

(vi) Disclosure would unduly interfere with the orderly conduct of CIA's functions.

(d) If oral or written testimony is sought by a demand in a case or matter

in which the CIA is not a party, a reasonably detailed description of the testimony sought, in the form of an affidavit or, if that is not feasible, a written statement, by the party seeking the testimony or by the party's attorney must be furnished to the CIA Office of General Counsel.

(e) The Office of General Counsel shall be responsible for notifying the appropriate employees and other persons of all decisions regarding responses to demands and providing advice and counsel as to the implementation of such decisions.

(f) If response to a demand is required before a decision is made whether to provide the documents or information sought by the demand, an attorney from the Office of General Counsel, after consultation with the Department of Justice, shall appear before and furnish the court or other competent authority with a copy of this Regulation and state that the demand has been or is being, as the case may be, referred for the prompt consideration of the appropriate CIA officials, and shall respectfully request the court or other authority to stay the demand pending receipt of the requested instructions.

(g) If the court or other authority declines to stay the demand pending receipt of instructions in response to a request made in accordance with §1905.4(g), or rules that the demand must be complied with irrespective of instructions rendered in accordance with this part not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall, if so directed by the General Counsel of CIA, or designee, respectfully decline to comply with the demand under the authority of *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), and this Regulation.

(h) With respect to any function granted to CIA officials in this part, such officials are authorized to delegate in writing their authority in any case or matter or category thereof to subordinate officials.

(i) Any nonemployee who receives a demand for the production or disclosure of CIA information acquired because of that person's association or contacts with CIA should notify CIA's

Office of General Counsel, Litigation Division (703/874-3118) for guidance and assistance. In such cases the provisions of this regulation shall be applicable.

## **PART 1906—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE CENTRAL INTELLIGENCE AGENCY**

### Sec.

- 1906.101 Purpose.
- 1906.102 Application.
- 1906.103 Definitions.
- 1906.104–1906.109 [Reserved]
- 1906.110 Self-evaluation.
- 1906.111 Notice.
- 1906.112–1906.129 [Reserved]
- 1906.130 General prohibitions against discrimination.
- 1906.131–1906.139 [Reserved]
- 1906.140 Employment.
- 1906.141–1906.148 [Reserved]
- 1906.149 Program accessibility: Discrimination prohibited.
- 1906.150 Program accessibility: Existing facilities.
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- 1906.152–1906.159 [Reserved]
- 1906.160 Communications.
- 1906.161–1906.169 [Reserved]
- 1906.170 Compliance procedures.

AUTHORITY: 19 U.S.C. 794.

SOURCE: 57 FR 39610, Sept. 1, 1992, unless otherwise noted.

### **§ 1906.101 Purpose.**

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

### **§ 1906.102 Application.**

This part applies to all programs or activities conducted by the Agency except for programs or activities conducted outside the United States that do not involve handicapped persons in the United States. This regulation will apply to the Agency only to the extent consistent with the National Security

Act of 1947 (50 U.S.C. 402 *et seq.*), as amended; the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a *et seq.*), as amended; and other applicable law.

#### § 1906.103 Definitions.

For purposes of this part, the following terms means—

*Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

*Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Agency. For example, auxiliary aids useful for persons with impaired vision include readers, materials in braille, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices. The Central Intelligence Agency may prohibit from any of its facilities any auxiliary aid, or category of auxiliary aid, that the Office of Security (OS) determines creates a security risk or potential security risk. OS reserves the right to examine any auxiliary aid brought into an Agency facility.

*Complete complaint* means a written statement that contains the complainant's name and address and describes the Agency's alleged discriminatory action in sufficient detail to inform the Agency of the nature and date of the alleged violation of section 504. It must be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties must describe or identify (by name, if possible) the alleged victims of discrimination.

*Director* means the Director of Central Intelligence or an official or employee of the Agency acting for the Director under a delegation of authority.

*Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling

stock or other conveyances or other real or personal property.

*Individual with handicaps* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase—

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Cardiovascular; Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition

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but is treated by the Agency as having such an impairment.

*Qualified individual with handicaps* means—

(1) With respect to any Agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Agency can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other Agency program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by §1906.140.

*Section 504* means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–002, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by the Agency and not to federally assisted programs.

**§§ 1906.104–1906.109 [Reserved]**

**§ 1906.110 Self-evaluation.**

(a) The Agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effect thereof, that do not or may not meet the requirements of this part, and to the extent modification of any of those policies and practices is required, the Agency shall proceed to make the necessary modifications.

(b) The Agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with

handicaps to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Agency shall, for at least 3 years following completion of the self-evaluation, maintain on file, and make available for public inspection—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

**§ 1906.111 Notice.**

The Agency shall make available, to employees, applicants, participants, beneficiaries, and other interested persons, such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Agency, and make that information available to them in such manner as the Director finds necessary to apprise those persons of the protections against discrimination assured them by section 504 and the regulations in this part.

**§§ 1906.112–1906.129 [Reserved]**

**§ 1906.130 General prohibitions against discrimination.**

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under, any program or activity conducted by the Agency.

(b)(1) The Agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified individual with handicap the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Deny a qualified individual with handicaps an opportunity to obtain the same result, to gain the same benefit, to reach the same level of achievement as that provided to others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

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(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless that action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The Agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity conducted by the Agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The Agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The Agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination

on the basis of handicap, nor may the Agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the Agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits or a program limited by Federal statute or Executive Order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive Order to a different class of individuals with handicaps is not prohibited by this part.

(d) The Agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

### §§ 1906.131–1906.139 [Reserved]

### § 1906.140 Employment.

No qualified individual with handicaps shall, solely on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1979 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

### §§ 1906.141–1906.148 [Reserved]

### § 1906.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1906.150, no qualified individual with handicaps shall, because the Agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Agency.

**§ 1906.150 Program accessibility: Existing facilities.**

(a) *General.* The Agency shall operate each program or activity so that the program or activity, viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This program does not—

(1) Necessarily require the Agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2)(i) Require the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(ii) The Agency has the burden of proving that compliance with § 1906.150(a) would result in that alteration or those burdens.

(iii) The decision that compliance would result in that alteration or those burdens must be made by the Director after considering all of the Agency's resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.

(iv) If an action would result in that alteration or those burdens, the Agency shall take any other action that would not result in the alteration or burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* (1) The Agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps.

(2) The Agency is not required to make structural changes in existing facilities if other methods are effective in achieving compliance with this section.

(3) The Agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing that Act.

(4) In choosing among available methods for meeting the requirements of this section, the Agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The Agency shall comply with the obligations established under this section within 60 days of the effective date of this part except that if structural changes in facilities are undertaken, the changes shall be made within 3 years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* (1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Agency shall develop, within 6 months of the effective date of this part, a transition plan setting forth the steps necessary to complete those changes.

(2) The Agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan must be made available for public inspection.

(3) The plan must, at a minimum—

(i) Identify physical obstacles in the Agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official responsible for implementation of the plan.

**§ 1906.151 Program accessibility: New construction and alterations.**

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of, the Agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4175), as established in 41 CFR 101-19.600 to 101-19-607, apply to buildings covered by this section.

**§§ 1906.152-1906.159 [Reserved]****§ 1906.160 Communications.**

(a) The Agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public as follows:

(1)(i) The Agency shall furnish appropriate auxiliary aids if necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Agency.

(ii) In determining what type of auxiliary aid is necessary, the Agency shall give primary consideration to the requests of the individual with handicaps.

(2) Where the Agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The Agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a

program or activity or in undue financial and administrative burdens. In those circumstances where Agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Agency has the burden of proving that compliance with §1906.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Agency head or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

**§§ 1906.161-1906.169 [Reserved]****§ 1906.170 Compliance procedures.**

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the Agency.

(b) The Agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Office of Equal Employment Opportunity, is responsible for coordinating implementation of this section. Complaints may be sent to Central Intelligence Agency, Director, Office of Equal Employment Opportunity, Washington, DC 20505.

(d) The Agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180



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days of the alleged act of discrimination. The Agency may extend this time period for good cause.

(e) If the Agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157) is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, The Agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the Agency of the letter required by §1906.170(g). The Agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Director.

(j) The Agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Director may delegate the authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

**PART 1907—CHALLENGES TO CLASSIFICATION OF DOCUMENTS BY AUTHORIZED HOLDERS PURSUANT TO §1.9 OF EXECUTIVE ORDER 12958**

**GENERAL**

**Sec.**

- 1907.01 Authority and purpose.
- 1907.02 Definitions.
- 1907.03 Contact for general information and requests.
- 1907.04 Suggestions and complaints.

**FILING OF CHALLENGES**

- 1907.11 Prerequisites.
- 1907.12 Requirements as to form.
- 1907.13 Identification of material at issue.
- 1907.14 Transmission.

**ACTION ON CHALLENGES**

- 1907.21 Receipt, recording, and tasking.
- 1907.22 Challenges barred by res judicata.
- 1907.23 Response by originator(s) and/or any interested party.
- 1907.24 Designation of authority to hear challenges.
- 1907.25 Action on challenge.
- 1907.26 Notification of decision and prohibition on adverse action.

**RIGHT OF APPEAL**

- 1907.31 Right of appeal.

**AUTHORITY:** Executive Order 12958, 60 FR 19825, 3 CFR 1996 Comp., P. 333-356 (or successor orders).

**SOURCE:** 62 FR 32494, June 16, 1997, unless otherwise noted.

**GENERAL**

**§ 1907.01 Authority and purpose.**

(a) *Authority.* This part is issued under the authority of and in order to implement §1.9 of Executive Order (E.O.) 12958, sec. 102 of the National Security Act of 1947, and sec. 6 of the CIA Act of 1949.

(b) *Purpose.* This part prescribes procedures for authorized holders of information classified under the various provisions of E.O. 12958, or predecessor Orders, to seek a review or otherwise challenge the classified status of information to further the interests of the United States Government. This part and §1.9 of E.O. 12958 confer no rights upon members of the general public, or

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authorized holders acting in their personal capacity, both of whom shall continue to request reviews of classification under the mandatory declassification review provisions set forth at § 3.6 of E.O. 12958.

### § 1907.02 Definitions.

For purposes of this part, the following terms have the meanings as indicated:

(a) *Agency* or *CIA* means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator;

(b) *Authorized holders* means any member of any United States executive department, military department, the Congress, or the judiciary (Article III) who holds a security clearance from or has been specifically authorized by the Central Intelligence Agency to possess and use on official business classified information, or otherwise has Constitutional authority pursuant to their office;

(c) *Ddays* means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this CFR part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

(d) *Challenge* means a request in the individual's official, not personal, capacity and in furtherance of the interests of the United States;

(e) *Control* means ownership or the authority of the CIA pursuant to federal statute or privilege to regulate official or public access to records;

(f) *Coordinator* means the CIA Information and Privacy Coordinator acting in the capacity of Executive Secretary of the Agency Release Panel;

(g) *Information* means any knowledge that can be communicated or documentary material, regardless of its physical form, that is:

(1) Owned by, produced by or for, or under the control of the United States Government, and

(2) Lawfully and actually in the possession of an authorized holder and for which ownership and control has not been relinquished by the CIA;

(h) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue;

(i) *Originator* means the CIA officer who originated the information at issue, or successor in office, or a CIA officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

(j) *This Order* means Executive Order 12958 of April 17, 1995 and published at 60 FR 19825-19843 (or successor Orders).

### § 1907.03 Contact for general information and requests.

For information on this part or to file a challenge under this part, please direct your inquiry to the Executive Secretary, Agency Release Panel, Central Intelligence Agency, Washington, DC 20505. The commercial (non-secure) telephone is (703) 613-1287; the classified (secure) telephone for voice and facsimile is (703) 613-3007.

### § 1907.04 Suggestions and complaints.

The Agency welcomes suggestions or complaints with regard to its administration of the Executive Order. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. The Agency will respond to all substantive communications and take such actions as determined feasible and appropriate.

#### FILING OF CHALLENGES

### § 1907.11 Prerequisites.

The Central Intelligence Agency has established liaison and procedures with many agencies for declassification issues. Prior to reliance on this Part, authorized holders are required to first exhaust such established administrative procedures for the review of classified information. Further information on these procedures is available from the point of contact, see 32 CFR 1907.03.

### § 1907.12 Requirements as to form.

The challenge shall include identification of the challenger by full name

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and title of position, verification of security clearance or other basis of authority, and an identification of the documents or portions of documents or information at issue. The challenge shall also, in detailed and factual terms, identify and describe the reasons why it is believed that the information is not protected by one or more of the §1.5 provisions, that the release of the information would not cause damage to the national security, or that the information should be declassified due to the passage of time. The challenge must be properly classified; in this regard, until the challenge is decided, the authorized holder must treat the challenge, the information being challenged, and any related or explanatory information as classified at the same level as the current classification of the information in dispute.

### § 1907.13 Identification of material at issue.

Authorized holders shall append the documents at issue and clearly mark those portions subject to the challenge. If information not in documentary form is in issue, the challenge shall state so clearly and present or otherwise refer with specificity to that information in the body of the challenge.

### § 1907.14 Transmission.

Authorized holders must direct challenge requests to the CIA as specified in §1907.03. The classified nature of the challenge, as well as the appended documents, require that the holder transmit same in full accordance with established security procedures. In general, registered U.S. mail is approved for SECRET, non-compartmented material; higher classifications require use of approved Top Secret facsimile machines or CIA-approved couriers. Further information is available from the CIA as well as corporate or other federal agency security departments.

#### ACTION ON CHALLENGES

### § 1907.21 Receipt, recording, and tasking.

The Executive Secretary of the Agency Release Panel shall within ten (10) days record each challenge received under this Part, acknowledge receipt

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to the authorized holder, and task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within five (5) days of notification.

### § 1907.22 Challenges barred by res judicata.

The Executive Secretary of the Agency Release Panel shall respond on behalf of the Panel and deny any challenge where the information in question has been the subject of a classification review within the previous two (2) years or is the subject of pending litigation in the federal courts.

### § 1907.23 Response by originator(s) and/or any interested party.

(a) *In general.* The originator of the classified information (document) is a required party to any challenge; other interested parties may become involved through the request of the Executive Secretary or the originator when it is determined that some or all of the information is also within their official cognizance.

(b) *Determination.* These parties shall respond in writing to the Executive Secretary of the Agency Release Panel with a mandatory unclassified finding, to the greatest extent possible, and an optional classified addendum. This finding shall agree to a declassification or, in specific and factual terms, explain the basis for continued classification including identification of the category of information, the harm to national security which could be expected to result from disclosure, and, if older than ten (10) years, the basis for the extension of classification time under §§1.6 and 3.4 of this Order. These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by §6.1(c) of this Order.

(c) *Time.* The determination(s) shall be provided on a "first-in, first-out" basis with respect to all challenges pending under this section and shall be accomplished expeditiously taking into account the requirements of the authorized holder as well as the business requirements of the originator including their responsibilities under the

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Freedom of Information Act, the Privacy Act, or the mandatory declassification review provisions of this Order.

### **§ 1907.24 Designation of authority to hear challenges.**

The Deputy Director for Administration has designated the Agency Release Panel and the Historical Records Policy Board, established pursuant to 32 CFR 1900.41, as the Agency authority to hear and decide challenges under these regulations.

### **§ 1907.25 Action on challenge.**

(a) *Action by Agency Release Panel.* The Executive Secretary shall place challenges ready for adjudication on the agenda at the next occurring meeting of the Agency Release Panel. The Executive Secretary shall provide a summation memorandum for consideration of the members; the complete package consisting of the challenge, the information at issue, and the findings of the originator and interested parties shall also be provided. The Agency Release Panel shall meet and decide challenges sitting as a committee of the whole. Decisions are by majority vote of those present at a meeting and shall be based on the written record and their deliberations; no personal appearances shall be permitted without the express permission of the Panel.

(b) *Action by Historical Records Policy Board.* In any cases of divided vote by the ARP, any member of that body is authorized to refer the request to the CIA Historical Records Policy Board which acts as the senior corporate board for the Agency. The record compiled (the request, the memoranda filed by the originator and interested parties, and the previous decision(s)) as well as any memorandum of law or policy the referent desires to be considered, shall be certified by the Executive Secretary of the Agency Release Panel and shall constitute the official record of the proceedings and must be included in any subsequent filings.

### **§ 1907.26 Notification of decision and prohibition on adverse action.**

The Executive Secretary of the Agency Release Panel shall communicate

the decision of the Agency to the authorized holder, the originator, and other interested parties within ten (10) days of the decision by the Panel or Board. That correspondence shall include a notice that no adverse action or retribution can be taken in regard to the challenge and that an appeal of the decision may be made to the Interagency Security Classification Appeals Panel (ISCAP) established pursuant to § 5.4 of this Order.

#### RIGHT OF APPEAL

### **§ 1907.31 Right of appeal.**

A right of appeal is available to the ISCAP established pursuant to § 5.4 of this Order. Action by that body will be the subject of rules to be promulgated by the Information Security Oversight Office (ISOO).

## **PART 1908—PUBLIC REQUESTS FOR MANDATORY DECLASSIFICATION REVIEW OF CLASSIFIED INFORMATION PURSUANT TO § 3.6 OF EXECUTIVE ORDER 12958**

#### GENERAL

- Sec.
- 1908.01 Authority and purpose.
  - 1908.02 Definitions.
  - 1908.03 Contact for general information and requests.
  - 1908.04 Suggestions and complaints.

#### FILING OF MANDATORY DECLASSIFICATION REVIEW (MDR) REQUESTS

- 1908.11 Preliminary information.
- 1908.12 Requirements as to form.
- 1908.13 Fees.

#### AGENCY ACTION ON MDR REQUESTS

- 1908.21 Receipt, recording, and tasking.
- 1908.22 Requests barred by res judicata.
- 1908.23 Determination by originator or interested party.
- 1908.24 Notification of decision and right of appeal.

#### AGENCY ACTION ON MDR APPEALS

- 1908.31 Requirements as to time and form.
- 1908.32 Receipt, recording, and tasking.
- 1908.33 Determination by Deputy Director(s).
- 1908.34 Establishment of appeals structure.
- 1908.35 Action by appeals authority.
- 1908.36 Notification of decision and right of further appeal.

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### FURTHER APPEALS

1908.41 Right of further appeal.

**AUTHORITY:** Executive Orders 12958, 60 FR 19825, 3 CFR 1996 Comp., p. 333-356 (or successor Orders).

**SOURCE:** 62 FR 32495, June 16, 1997, unless otherwise noted.

### GENERAL

#### § 1908.01 Authority and purpose.

(a) *Authority.* This part is issued under the authority of and in order to implement §3.6 of Executive Order (E.O.) 12958 (or successor Orders); the CIA Information Act of 1984 (50 U.S.C. 431); sec. 102 of the National Security Act of 1947, as amended (50 U.S.C. 403); and sec. 6 of the CIA Act of 1949, as amended (5 U.S.C. 403g).

(b) *Purpose.* This part prescribes procedures, subject to limitations set forth below, for members of the public to request a declassification review of information classified under the various provisions of this or predecessor Orders. Section 3.6 of E.O. 12958 and these regulations do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees.

#### § 1908.02 Definitions.

For purposes of this part, the following terms have the meanings as indicated:

(a) *Agency* or *CIA* means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator;

(b) *Days* means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

(c) *Control* means ownership or the authority of the CIA pursuant to Federal statute or privilege to regulate official or public access to records;

(d) *Coordinator* means the CIA Information and Privacy Coordinator who serves as the Agency manager of the information review and release program instituted under the mandatory

declassification review provisions of Executive Order 12958;

(e) *Federal agency* means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

(f) *Information* means any knowledge that can be communicated or documentary material, regardless of its physical form that is owned by, produced by or for, or under the control of the United States Government; it does not include:

(1) Information within the scope of the CIA Information Act, or

(2) Information originated by the incumbent President, White House Staff, appointed committees, commissions or boards, or any entities within the Executive Office that solely advise and assist the incumbent President;

(g) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue;

(h) *NARA* means the National Archives and Records Administration;

(i) *Originator* means the CIA officer who originated the information at issue, or successor in office, or a CIA officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

(j) *Presidential libraries* means the libraries or collection authorities established by statute to house the papers of former Presidents Hoover, Roosevelt, Truman, Eisenhower, Kennedy, Nixon, Ford, Carter, Reagan, Bush and similar institutions or authorities as may be established in the future;

(k) *Referral* means coordination with or transfer of action to an interested party;

(l) *This Order* means Executive Order 12958 of April 17, 1995 and published at 60 FR 19825-19843 (or successor Orders);

#### § 1908.03 Contact for general information and requests.

For general information on this part or to request a declassification review, please direct your communication to

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the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Such inquiries will also be accepted by facsimile at (703) 613-3007. For general or status information only, the telephone number is (703) 613-1287. Collect calls cannot be accepted.

### § 1908.04 Suggestions and complaints.

The Agency welcomes suggestions or complaints with regard to its administration of the mandatory declassification review program established under Executive Order 12958. Many requesters will receive pre-paid, customer satisfaction survey cards. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. The Agency will respond to all substantive communications and take such actions as determined feasible and appropriate.

### FILING OF MANDATORY DECLASSIFICATION REVIEW (MDR) REQUESTS

#### § 1908.11 Preliminary information.

Members of the public shall address all communications to the point of contact specified above and clearly delineate the communication as a request under this regulation. Requests and appeals on requests received from members of the public who owe outstanding fees for information services under this Order or the Freedom of Information Act at this or another federal agency will not be accepted until such debts are resolved.

#### § 1908.12 Requirements as to form.

The request shall identify the document(s) or material(s) with sufficient specificity (e.g., National Archives and Records Administration (NARA) Document Accession Number or other applicable, unique document identifying number) to enable the Agency to locate it with reasonable effort. Broad or topical requests for records on a particular subject may not be accepted under this provision. A request for documents contained in the various Presidential libraries shall be effected through the staff of such institutions who shall forward the document(s) in question for Agency review. The requester shall also provide sufficient personal identi-

fying information when required by the Agency to satisfy requirements of this part.

#### § 1908.13 Fees.

Requests submitted via NARA or the various Presidential libraries shall be responsible for reproduction costs required by statute or regulation. Requests made directly to this Agency will be liable for costs in the same amount and under the same conditions as specified in 32 CFR part 1900.

### AGENCY ACTION ON MDR REQUESTS

#### § 1908.21 Receipt, recording, and tasking.

The Information and Privacy Coordinator shall within ten (10) days record each mandatory declassification review request received under this part, acknowledge receipt to the requester in writing (if received directly from a requester), and shall thereafter task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

#### § 1908.22 Requests barred by res judicata.

The Coordinator shall respond to the requester and deny any request where the information in question has been the subject of a classification review within the previous two (2) years or is the subject of pending litigation in the federal courts.

#### § 1908.23 Determination by originator or interested party.

(a) *In general.* The originator of the classified information (document) is a required party to any mandatory declassification review request; other interested parties may become involved through a referral by the Coordinator when it is determined that some or all of the information is also within their official cognizance.

(b) *Required determinations.* These parties shall respond in writing to the Coordinator with a finding as to the classified status of the information including the category of protected information as set forth in §1.5 of this Order, and, if older than ten (10) years, the

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basis for the extension of classification time under §§1.6 and 3.4 of this Order. These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by §6.1(c) of this Order.

(c) *Time.* This response shall be provided expeditiously on a “first-in, first-out” basis taking into account the business requirements of the originator or interested parties and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act.

### § 1908.24 Notification of decision and right of appeal.

The Coordinator shall communicate the decision of the Agency to the requester within ten (10) days of completion of all review action. That correspondence shall include a notice of a right of administrative appeal to the Agency Release Panel pursuant to §3.6(d) of this Order.

#### AGENCY ACTION ON MDR APPEALS

### § 1908.31 Requirements as to time and form.

Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of mailing of the Agency’s initial decision. It shall identify with specificity the documents or information to be considered on appeal and it may, but need not, provide a factual or legal basis for the appeal.

### § 1908.32 Receipt, recording, and tasking.

The Coordinator shall promptly record each appeal received under this part, acknowledge receipt to the requester, and task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

### § 1908.33 Determination by Deputy Director(s).

Each Deputy Director in charge of a directorate which originated or has an interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested

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parties may become involved through the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond in writing to the Coordinator with a finding as to the classified status of the information including the category of protected information as set forth in §1.5 of this Order, and, if older than ten (10) years, the basis for continued classification under §§1.6 and 3.4 of this Order. These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by §6.1(c) of this Order. This response shall be provided expeditiously on a “first-in, first-out” basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act.

### § 1908.34 Establishment of appeals structure.

(a) *In general.* Two administrative entities have been established by the Director of Central Intelligence to facilitate the processing of administrative appeals under the mandatory declassification review provisions of this Order. Their membership, authority, and rules of procedure are as follows.

(b) *Historical Records Policy Board (“HRPB” or “Board”).* This Board, the successor to the CIA Information Review Committee, acts as the senior corporate board in the CIA on all matters of information review and release. It is composed of the Executive Director, who serves as its Chair, the Deputy Director for Administration, the Deputy Director for Intelligence, the Deputy Director for Operations, the Deputy Director for Science and Technology, the General Counsel, the Director of Congressional Affairs, the Director of the Public Affairs Staff, the Director, Center for the Study of Intelligence, and the Associate Deputy Director for Administration/Information Services, or their designees. The Board, by majority vote, may delegate to one or more of its members the authority to act on

any appeal or other matter or authorize the Chair to delegate such authority, as long as such delegation is not to the same individual or body who made the initial denial. The Executive Secretary of the HRPB is the Director, Information Management. The Chair may request interested parties to participate when special equities or expertise are involved.

(c) *Agency Release Panel ("ARP" or "Panel")*. The HRPB, pursuant to its delegation of authority, has established a subordinate Agency Release Panel. This Panel is composed of the Director, Information Management, who serves as its Chair; the Information Review Officers from the Directorates of Administration, Intelligence, Operations, Science and Technology, and the Director of Central Intelligence Area; the CIA Information and Privacy Coordinator; the Chief, Historical Review Group; the Chair, Publications Review Board; the Chief, Records Declassification Program; and representatives from the Offices of General Counsel and Congressional Affairs, and the Public Affairs Staff. The Information and Privacy Coordinator also serves as the Executive Secretary of the Panel. The Panel advises and assists the HRPB on all information release issues, monitors the adequacy and timeliness of Agency releases, sets component search and review priorities, reviews adequacy of resources available to and planning for all Agency release programs, and performs such other functions as deemed necessary by the Board. The Chair may request interested parties to participate when special equities or expertise are involved. The Panel, functioning as a committee of the whole or through individual members, will make final Agency decisions from appeals of initial denial decisions under E.O. 12958. Issues not resolved by the Panel will be referred by the Panel to the HRPB. Matters decided by the Panel or Board will be deemed a final decision by the Agency.

**§ 1908.35 Action by appeals authority.**

(a) *Action by Agency Release Panel*. The Coordinator, in his or her capacity as Executive Secretary of the Agency Release Panel, shall place appeals of

mandatory declassification review requests ready for adjudication on the agenda at the next occurring meeting of the Agency Release Panel. The Executive Secretary shall provide a summation memorandum for consideration of the members, the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of the originator and interested parties. The Panel shall meet and decide requests sitting as a committee of the whole. Decisions are by majority vote of those present at a meeting and shall be based on the written record and their deliberations; no personal appearances shall be permitted without the express permission of the Panel.

(b) *Action by Historical Records Policy Board*. In any cases of divided vote by the ARP, any member of that body is authorized to refer the request to the CIA Historical Records Policy Board which acts as the senior corporate board for the Agency. The record compiled (the request, the memoranda filed by the originator and interested parties, and the previous decision(s)) as well as any memorandum of law or policy the referent desires to be considered, shall be certified by the Executive Secretary of the Agency Release Panel and shall constitute the official record of the proceedings and must be included in any subsequent filings.

**§ 1908.36 Notification of decision and right of further appeal.**

The Coordinator shall communicate the decision of the Panel or Board to the requester, NARA, or the particular Presidential Library within ten (10) days of such decision. That correspondence shall include a notice that an appeal of the decision may be made to the Interagency Security Classification Appeals Panel (ISCAP) established pursuant to § 5.4 of this Order.

FURTHER APPEALS

**§ 1908.41 Right of further appeal.**

A right of further appeal is available to the ISCAP established pursuant to § 5.4 of this Order. Action by that Panel will be the subject of rules to be promulgated by the Information Security Oversight Office (ISOO).



**PART 1909—ACCESS BY HISTORICAL RESEARCHERS AND FORMER PRESIDENTIAL APPOINTEES PURSUANT TO § 4.5 OF EXECUTIVE ORDER 12958**

GENERAL

- Sec.  
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 1909.02 Definitions.  
 1909.03 Contact for general information and requests.  
 1909.04 Suggestions and complaints.

REQUESTS FOR HISTORICAL ACCESS

- 1909.11 Requirements as to who may apply.  
 1909.12 Designations of authority to hear requests.  
 1909.13 Receipt, recording, and tasking.  
 1909.14 Determinations by tasked officials.  
 1909.15 Action by hearing authority.  
 1909.16 Action by appeal authority.  
 1909.17 Notification of decision.  
 1909.18 Termination of access.

AUTHORITY: Executive Order 12958, 60 FR 19825, 3 CFR 1996 Comp., p. 333-356 (or successor Orders).

SOURCE: 62 FR 32498, June 16, 1997, unless otherwise noted.

GENERAL

**§ 1909.01 Authority and purpose.**

(a) **AUTHORITY.** This part is issued under the authority of and in order to implement § 4.5 of Executive Order 12958 (or successor Orders); the CIA Information Act of 1984 (50 U.S.C. 431); sec. 102 of the National Security Act of 1947, as amended (50 U.S.C. 403); and sec. 6 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403g).

(b) **Purpose.** (1) This part prescribes procedures for:

- (i) Requesting access to CIA records for purposes of historical research, or  
 (ii) Requesting access to CIA records as a former Presidential appointee.

(2) Section 4.5 of Executive Order 12958 and these regulations do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees.

**§ 1909.02 Definitions.**

For purposes of this part, the following terms have the meanings indicated:

(a) *Agency* or *CIA* means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator;

(b) *Agency Release Panel* or *Panel* or *ARP* means the CIA Agency Release Panel established pursuant to 32 CFR 1900.41;

(c) *Days* means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

(d) *Control* means ownership or the authority of the CIA pursuant to federal statute or privilege to regulate official or public access to records;

(e) *Coordinator* means the CIA Information and Privacy Coordinator who serves as the Agency manager of the historical access program established pursuant to § 4.5 of this Order;

(f) *Director, Center for the Study of Intelligence* or "D/CSI" means the Agency official responsible for the management of the CIA's various historical programs including the management of access granted under this section;

(g) *Director of Personnel Security* means the Agency official responsible for making all security and access approvals and for effecting the necessary non-disclosure and/or pre-publication agreements as may be required;

(h) *Federal agency* means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

(i) *Former Presidential appointee* means any person who has previously occupied a policy-making position in the executive branch of the United States Government to which they were appointed by the current or former President and confirmed by the United States Senate;

(j) *Historian* or *historical researcher* means any individual with professional training in the academic field of history (or related fields such as journalism) engaged in a research project leading to publication (or any similar

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activity such as academic course development) reasonably intended to increase the understanding of the American public into the operations and activities of the United States government;

(k) *Information* means any knowledge that can be communicated or documentary material, regardless of its physical form that is owned by, produced by or for, or is under the control of the United States Government;

(l) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue;

(m) *Originator* means the CIA officer who originated the information at issue, or successor in office, or a CIA officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

(n) *This Order* means Executive Order 12958 of April 17 1995 and published at 60 FR 19825-19843 (or successor Orders).

### § 1909.03 Contact for general information and requests.

For general information on this Part, to inquire about historical access to CIA records, or to make a formal request for such access, please direct your communication in writing to the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC. 20505. Inquiries will also be accepted by facsimile at (703) 613-3007. For general information only, the telephone number is (703) 613-1287. Collect calls cannot be accepted.

### § 1909.04 Suggestions and complaints.

The Agency welcomes suggestions or complaints with regard to its administration of the historical access program established pursuant to Executive Order 12958. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. The Agency will respond to all substantive communications and take such actions as determined feasible and appropriate.

## REQUESTS FOR HISTORICAL ACCESS

### § 1909.11 Requirements as to who may apply.

(a) *Historical researchers*—(1) *In general*. Any historian engaged in a historical research project as defined above may submit a request in writing to the Coordinator to be given access to classified information for purposes of that research. Any such request shall indicate the nature, purpose, and scope of the research project.

(2) *Additional considerations*. In light of the very limited resources for the Agency's various historical programs, it is the policy of the Agency to consider applications for historical research privileges only in those instances where the researcher's needs cannot be satisfied through requests for access to reasonably described records under the Freedom of Information Act or the mandatory declassification review provisions of Executive Order 12958 and where issues of internal resource availability and fairness to all members of the historical research community militate in favor of a particular grant.

(b) *Former Presidential appointees*. Any former Presidential appointee as defined herein may also submit a request to be given access to any classified records which they originated, reviewed, signed, or received while serving in that capacity. Such appointees may also request approval for a research associate but there is no entitlement to such enlargement of access and the decision in this regard shall be in the sole discretion of the Agency. Requests from appointees shall be in writing to the Coordinator and shall identify the records of interest.

### § 1909.12 Designations of authority to hear requests.

The Deputy Director for Administration has designated the Coordinator, the Agency Release Panel, and the Historical Records Policy Board, established pursuant to 32 CFR 1900.41, as the Agency authorities to decide requests for historical and former Presidential appointee access under Executive Order 12958 (or successor Orders) and these regulations.

**§ 1909.13**

**32 CFR Ch. XIX (7-1-11 Edition)**

**§ 1909.13 Receipt, recording, and tasking.**

The Information and Privacy Coordinator shall within ten (10) days record each request for historical access received under this Part, acknowledge receipt to the requester in writing and take the following action:

(a) *Compliance with general requirements.* The Coordinator shall review each request under this part and determine whether it meets the general requirements as set forth in 32 CFR 1909.11; if it does not, the Coordinator shall so notify the requester and explain the legal basis for this decision.

(b) *Action on requests meeting general requirements.* For requests which meet the requirements of 32 CFR 1909.11, the Coordinator shall thereafter task the D/CSI, the originator(s) of the materials for which access is sought, and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

**§ 1909.14 Determinations by tasked officials.**

(a) *Required determinations.* The tasked parties as specified below shall respond in writing to the Coordinator with recommended findings to the following issues:

(1) That a serious professional or scholarly research project by the requester is contemplated (by D/CSI);

(2) That such access is clearly consistent with the interests of national security (by originator and interested party, if any);

(3) That a non-disclosure agreement has been or will be executed by the requester (or research associate, if any) and other appropriate steps have been taken to assure that classified information will not be disclosed or otherwise compromised (by Director of Personnel Security and representative of the Office of General Counsel);

(4) That a pre-publication agreement has been or will be executed by the requester (or research associate, if any) which provides for a review of notes and any resulting manuscript (by Director of Personnel Security and representative of the Office of General Counsel);

(5) That the information requested is reasonably accessible and can be located and compiled with a reasonable effort (by D/CSI and originator);

(6) That it is reasonably expected that substantial and substantive government documents and/or information will be amenable to declassification and release and/or publication (by D/CSI and originator);

(7) That sufficient resources are available for the administrative support of the researcher given current mission requirements (by D/CSI and originator); and,

(8) That the request cannot be satisfied to the same extent through requests for access to reasonably described records under the Freedom of Information Act or the mandatory declassification review provisions of Executive Order 12958 (by Coordinator, D/CSI and originator).

(b) *Time.* These responses shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the tasked offices and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act. The Agency will utilize its best efforts to complete action on requests under this part within thirty (30) days of date of receipt.

**§ 1909.15 Action by hearing authority.**

*Action by Agency Release Panel.* The Coordinator, in his or her capacity as Executive Secretary of the Agency Release Panel, shall place historical access requests ready for adjudication on the agenda at the next occurring meeting of the Agency Release Panel. The Executive Secretary shall provide a summation memorandum for consideration of the members, the complete record of the request consisting of the request and the findings of the tasked parties. The Panel shall meet and decide requests sitting as a committee of the whole on the basis of the eight factors enumerated at 32 CFR 1909.14(a). Decisions are by majority vote of those present at a meeting and shall be based on the written record and their deliberations; no personal appearances shall be permitted without the express permission of the Panel.

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### § 1909.16 Action by appeal authority.

In any cases of divided vote by the ARP, any member of that body is authorized to refer the request to the CIA Historical Records Policy Board which acts as the senior corporate board for the Agency. The record compiled (the request, the memoranda filed by the originator and interested parties, and the previous decision(s)) as well as any memorandum of law or policy the referent desires to be considered, shall be certified by the Executive Secretary of the Agency Release Panel and shall constitute the official record of the proceedings and must be included in any subsequent filings. In such cases, the factors to be determined as specified in 32 CFR 1909.14(a) will be considered by the Board de novo and that decision shall be final.

### § 1909.17 Notification of decision.

The Coordinator shall inform the requester of the decision of the Agency Release Panel or the Historical Records Policy Board within ten (10) days of the decision and, if favorable, shall manage the access for such period as deemed required but in no event for more than two (2) years unless renewed by the Panel or Board in accordance with the requirements of 32 CFR 1909.14(a).

### § 1909.18 Termination of access.

The Coordinator shall cancel any authorization whenever the Director of

Personnel Security cancels the security clearance of a requester (or research associate, if any) or whenever the Agency Release Panel determines that continued access would not be in compliance with one or more of the requirements of 32 CFR 1909.14(a).

## PART 1910—DEBARMENT AND SUSPENSION PROCEDURES

Sec.  
1910.1 General.

AUTHORITY: 50 U.S.C. 401-442; 50 U.S.C. 403a-403u; 48 CFR ch. 1, subpart 9.4.

### § 1910.1 General.

The Central Intelligence Agency (CIA), in accordance with its authorities under the Central Intelligence Agency Act of 1949, as amended, and the National Security Act of 1947, as amended, has an established debarment and suspension process in accordance with subpart 9.402(d) of the Federal Acquisition Regulation (FAR). This process and the causes for debarment and suspension are consistent with those found in FAR 9.406 and 9.407. The rights of CIA contractors in all matters involving debarment and suspension are hereby governed by the provisions of subpart 9.4 of the FAR.

[69 FR 63064, Oct. 29, 2004]