(c) If the document or information has been reviewed for declassification within the past 2 years, NARA may opt not to conduct a second review and may instead inform the requester of this fact and of the prior review decision and advise the requester of appeal rights in accordance with 32 CFR 2001.33.

(d) If NARA determines that a requester has submitted a request for the same information under both MDR and the Freedom of Information Act (FOIA), as amended, NARA will notify the requester that he/she is required to elect one process or the other. If the requester fails to elect one or the other, the request will be treated under the FOIA, unless the requested information or materials are subject only to mandatory review.

(e) In every case, NARA will acknowledge receipt of the request and inform the requester of the action taken. If additional time is necessary to make a declassification determination on material for which NARA has delegated authority, NARA will tell the requester how long it will take to process the request and advise the requester of available appeal rights. NARA may also inform the requester if part or all of the requested information is referred to other agencies for declassification review in accordance with section 3.6(a) and (b) of the Executive Order.

(f) If NARA fails to provide the requester with a final decision on the mandatory review request within one year of the original date of the request, the requester may appeal to the Inter-agency Security Classification Appeals Panel (ISCAP).

§ 1260.74 What are agency responsibilities after receiving an MDR request forwarded by NARA?

(a) The agency receiving the referral will promptly process and review the referral for declassification and public release on a line-by-line basis in accordance with section 3.5(c) of the Order and communicate its review decisions to NARA.

(b) The agency must notify NARA of any other agency to which it forwards the request in those cases requiring the declassification determination of another agency to which NARA has not already sent a referral for review.

(c) The agency must return to NARA a complete copy of each referred document with the agency determination clearly stated to leave no doubt about the status of the information and the authority for its continued classification or its declassification.

§ 1260.76 What are NARA’s procedures after it has received the agency’s declassifications determination?

(a) If a document cannot be declassified in its entirety, the agency must return to NARA a copy of the document with those portions that require continued classification clearly marked. If a document requires continued classification in its entirety, the agency must return to NARA a copy of the document clearly so marked.

(b) NARA will notify the requester of the results of its review and make available copies of documents declassified in full and in part. If the requested information cannot be declassified in its entirety, NARA will send the requester a notice of the right to appeal the determination within 60 calendar days to the Deputy Archivist of the United States, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Additional information on appeals is located in 36 CFR Part 1264 and in Appendix A to 32 CFR Part 2001 (Article VIII).

§ 1260.78 What is the appeal process when an MDR request for Executive Branch information in NARA’s legal custody is denied in whole or in part?

(a) NARA shall respond to the requester in writing that her/his mandatory declassification review request was denied in full or in part and the rationale for the denial by using the appropriate category in either section 1.4 of the Order for information that is less than 25 years old, or section 3.3 of the Order for information that is older than 25 years, or 32 CFR 2001.30(p) for information governed by the Atomic Energy Act of 1954, as amended, or the National Security Act of 1947, as amended. NARA will send the requester a notice of the right to appeal the determination within 60 calendar
§ 1260.80 What actions must NARA take when information in its physical and legal custody is reclassified after declassification under proper authority?

(a) When information in the physical and legal custody of NARA that has been available for public use following declassification under proper authority is proposed for reclassification in accordance with 32 CFR 2001.13(b)(1), NARA shall take the following actions:

(1) The agency head making the determination to reclassify the information shall notify the Archivist of the potential reclassification in writing.

(2) The Archivist shall suspend public access pending approval or disapproval by the Director of the Information Security Oversight Office of the reclassification request, and

(3) The Director of the Information Security Oversight Office shall normally make a decision on the validity of the reclassification request within 30 days, and

(4) The decision of the Director of ISOO may be appealed by the Archivist or the agency head to the President through the National Security Advisor.

(5) Access shall remain suspended pending a prompt decision on the appeal.

(b) [Reserved]

§ 1260.82 What actions must NARA take with information in its physical and legal custody that has been made available to the public after declassification without proper authority?

(a) When information in the physical and legal custody of NARA has been made available for public use following declassification without proper authority and needs to have its original classification markings restored, the original classification authority shall notify the Archivist in writing in accordance with 32 CFR 2001.13(a)(1).

(b) If the Archivist does not agree with the reclassification decision and the information is more than 25 years old, the information will be temporarily withdrawn from public access and the Archivist will appeal the agency decision to the Director of ISOO, who will make a final decision in accordance with 32 CFR 2001.13(a)(1). The decision of the Director of ISOO may be appealed by the Archivist or the agency head to the President through the National Security Advisor.

(c) Information about records that have been reclassified or have had their classification restored as described in §§ 1260.80 and 1260.82 will be made available quarterly through the NARA Web site, http://www.archives.gov/about/plans-reports/withdrawn/. Information will include the responsible agency, NARA location, date withdrawn, number of records, and number of pages.