

(b) *Foreign government information.* Except as provided in this paragraph, agencies shall process mandatory declassification review requests for classified records containing foreign government information in accordance with this section. The declassifying agency is the agency that initially received or classified the information. When foreign government information is being considered for declassification, the declassifying agency shall determine whether the information is subject to a treaty or international agreement that does not permit automatic or unilateral declassification. The declassifying agency or the Department of State, as appropriate, may consult with the foreign government(s) prior to declassification.

(c) *Cryptologic information.* Mandatory declassification review requests for cryptologic information shall be processed in accordance with special procedures issued by the Secretary of Defense and, when cryptologic information pertains to intelligence activities, the Director of National Intelligence.

(d) *Intelligence information.* Mandatory declassification review requests for information pertaining to intelligence sources, methods, and activities shall be processed in accordance with special procedures issued by the Director of National Intelligence.

(e) *Fees.* In responding to mandatory declassification review requests for classified records, agency heads may charge fees in accordance with 31 U.S.C. 9701 or relevant fee provisions in other applicable statutes.

(f) *Requests filed under mandatory declassification review and the Freedom of Information Act.* When a requester submits a request both under mandatory declassification review and the Freedom of Information Act (FOIA), the agency shall require the requestor to select one process or the other. If the requestor fails to select one or the other, the request will be treated as a FOIA request unless the requested materials are subject only to mandatory declassification review.

(g) *FOIA and Privacy Act requests.* Agency heads shall process requests for declassification that are submitted under the provisions of the FOIA, as amended, or the Privacy Act of 1974 (5

U.S.C. 552a), as amended, in accordance with the provisions of those Acts.

(h) *Redaction standard.* Agencies shall redact documents that are the subject of an access demand unless the overall meaning or informational value of the document is clearly distorted by redaction. The specific reason for the redaction, as provided for in section 1.4 or 3.3(b) of the Order, as applicable, must be included for each redaction. Information that is redacted due to a statutory authority must be clearly marked with the specific authority that authorizes the redaction. Any such redactions shall be performed in accordance with policies and procedures established in accordance with § 2001.45(d).

(i) *Limitations on requests.* Requests for mandatory declassification review made to an element of the Intelligence Community by anyone other than a citizen of the United States or an alien lawfully admitted for permanent residence, may be denied by the receiving Intelligence Community element. Documents required to be submitted for pre-publication review or other administrative process pursuant to an approved nondisclosure agreement are not subject to mandatory declassification review.

#### § 2001.34 Referrals.

(a) *General.* Referrals are required under sections 3.3(d)(3) and 3.6(b) of the Order in order to ensure the timely, efficient, and effective processing of reviews and requests and in order to protect classified information from inadvertent disclosure.

(b) *Automatic declassification.* The referral process for records subject to automatic declassification entails identification of records containing classified information that originated with other agencies or the disclosure of which would affect the interests or activities of other agencies. Those records that could reasonably be expected to fall under one or more of the exemptions in section 3.3(b) of the Order are eligible for referral. The referral process also entails formal notification to those agencies, making the records available for review by those agencies, and recording final agency determinations.

(1) In accordance with section 3.3(d)(3) of the Order, the identification of records eligible for referral is the responsibility of the primary reviewing agency and shall be completed prior to the date of automatic declassification established by section 3.3(a) of the Order.

(2) Except as otherwise determined by the Director of the NDC, primary reviewing agencies shall utilize the Standard Form 715, *Government Declassification Review Tab*, to tab and identify any Federal record requiring referral and record the referral in a manner that provides the referral information in an NDC database system.

(3) Notification of referral of records accessioned into NARA or in the custody of the presidential libraries, and making the records available for review, is the responsibility of NARA and shall be accomplished through the NDC.

(4) Within 180 days of the effective date of this provision, the NDC shall develop and provide the affected agencies with a comprehensive and prioritized schedule for the resolution of referrals contained in accessioned Federal records and Presidential records. The schedule shall be developed in consultation with the affected agencies, consider the public interest in the records, and be in accordance with the authorized delays to automatic declassification set forth in section 3.3(d) of the Order. The initial schedule shall cover the balance of the first effective fiscal year and four subsequent fiscal years. Thereafter, the schedule shall cover five fiscal years. The NDC shall consult with the affected agencies and update and provide such schedules annually.

(5) The NDC shall provide formal notification of the availability of a referral to the receiving agency and records will be subject to automatic declassification in accordance with the schedule promulgated by the NDC in paragraph (b)(4) of this section, unless the information has been properly exempted by an equity holding agency under section 3.3 of the Order.

(6) Records in the physical but not legal custody of NARA shall be subject to automatic declassification after accessioning and in accordance with

paragraphs (b)(3) and (b)(5) of this section.

(7) Agencies that establish a centralized facility as described in section 3.7(e) may make direct referrals provided such activities fall within the priorities and schedule established by the NDC and the activity is otherwise coordinated with the NDC. In such cases, the centralized facility is responsible for providing formal notification of a referral to receiving agencies and for making the records available for review or direct formal referral to agencies by providing a copy of the records unless another mechanism is identified in coordination with the NDC. As established in section 3.3(d)(3)(B), referrals to agencies from a centralized agency records facility as described in section 3.7(e) of the Order will be automatically declassified up to three years after the formal notification has been made, if the receiving agency fails to provide a final determination.

(8) Records marked as containing Restricted Data or Formerly Restricted Data or identified as potentially containing unmarked Restricted Data or Formerly Restricted Data shall be referred to the Department of Energy through the NDC. If the Department of Energy confirms that the document contains Restricted Data or Formerly Restricted Data, it shall then be excluded from the automatic declassification provisions of the Order until the Restricted Data or Formerly Restricted Data designation is properly removed.

(i) When the Department of Energy provides notification that a Restricted Data or Formerly Restricted Data designation is not appropriate or when it is properly removed, the record shall be processed for automatic declassification through the NDC.

(ii) In all cases, should the record be the subject of an access demand made pursuant to the Order or provision of law, the information classified pursuant to Executive order (rather than the Atomic Energy Act, as amended) must stand on its own merits.

(9) The NDC, as well as any centralized agency facility established under section 3.7(e) of the Order, shall track

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and document referral actions and decisions in a manner that facilitates archival processing for public access. Central agency facilities must work with the NDC to ensure documentation meets NDC requirements, and transfer all documentation on pending referral actions and referral decisions to the NDC when transferring the records to NARA.

(10) In all cases, receiving agencies shall acknowledge receipt of formal referral notifications in a timely manner. If a disagreement arises concerning referral notifications, the Director of ISOO will determine the automatic declassification date and notify the senior agency official, as well as the NDC or the primary reviewing agency.

(11) *Remote Archives Capture (RAC)*. Presidential records or materials scanned in the RAC process shall be prioritized and scheduled for review by the NDC. The initial notification shall be made to the agency with primary equity, which shall have up to one year to act on its information and to identify all other equities eligible for referral. All such additional referrals in an individual record shall be made at the same time, and once notified by the NDC of an eligible referral, such receiving agencies shall have up to one year to review the records before the onset of automatic declassification.

(c) *Agencies eligible to receive referrals*. The Director of ISOO will publish annually a list of those agencies eligible to receive referrals for each calendar year.

(d) *Systematic declassification review*. The identification of equities shall be accomplished in accordance with paragraph (b) of this section. Priorities for review will be established by the NDC.

(e) *Identification of interests other than national security*. Referrals under sections 3.3(d)(3) and 3.6(b) of the Order shall be assumed to be intended for later public release unless withholding is otherwise authorized and warranted under applicable law. If a receiving agency proposes to withhold any such information, it must notify the referring agency at the time they otherwise respond to the referral. Such notification shall identify the specific information at issue and the pertinent law.

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### § 2001.35 Discretionary declassification.

(a) In accordance with section 3.1(d) of the Order, agencies may declassify information when the public interest in disclosure outweighs the need for continued classification.

(b) Agencies may also establish a discretionary declassification program that is separate from their automatic, systematic, and mandatory review programs.

### § 2001.36 Classified information in the custody of private organizations or individuals.

(a) *Authorized holders*. Agencies may allow for the holding of classified information by a private organization or individual provided that all access and safeguarding requirements of the Order have been met. Agencies must provide declassification assistance to such organizations or individuals.

(b) *Others*. Anyone who becomes aware of organizations or individuals who possess potentially classified national security information outside of government control must contact the Director of ISOO for guidance and assistance. The Director of ISOO, in consultation with other agencies, as appropriate, will ensure that the safeguarding and declassification requirements of the Order are met.

### § 2001.37 Assistance to the Department of State.

Heads of agencies shall assist the Department of State in its preparation of the Foreign Relations of the United States (FRUS) series by facilitating access to appropriate classified materials in their custody and by expediting declassification review of documents proposed for inclusion in the FRUS. If an agency fails to provide a final declassification review determination regarding a Department of State referral within 120 days of the date of the referral, or if applicable, within 120 days of the date of a High Level Panel decision, the Department of State, consistent with 22 U.S.C. 4353 and any implementing agency procedures, may seek the assistance of the Panel.