

§ 4a.5

provided in E.O. 13526 and its implementing directives at least once a calendar year.

[85 FR 35375, June 10, 2020]

§ 4a.5 Duration of classification.

(a) Information shall remain classified no longer than ten years from the date of its original classification, unless, in accordance with section 1.5(b) of E.O. 13526, the original classification authority otherwise determines that the sensitivity of the information requires that it be marked for declassification for up to 25 years from the date of the original decision.

(b) For Department of Commerce originally classified information marked for an indefinite duration which contains incomplete declassification instructions, or lacks them entirely:

(1) The information shall be declassified in accordance with E.O. 13526 as soon as it no longer meets the standards for classification under E.O. 13526, or

(2) if the standards for classification under E.O. 13526 are met, the information shall be declassified after 10 years from the date of the original classification, unless the original classification authority determines that the sensitivity of the information requires that it remain classified for up to 25 years from the date of the original classification, as provided in section 1.5.(b) of E.O. 13526.

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§ 4a.6 General.

National security information over which the Department exercises final classification jurisdiction shall be declassified or downgraded as soon as national security considerations permit. If information is declassified, it may continue to be exempt from public disclosure by the Freedom of Information Act (5 U.S.C. 552) or other applicable law.

§ 4a.7 Mandatory review for declassification.

(a) *Requests.* Classified information under the jurisdiction of the Department is subject to review for declassification in accordance with 32 CFR

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2001.33, upon receipt of a written request that describes the information with sufficient specificity to locate it with a reasonable amount of effort. Requests must be submitted to the Director for Security, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

(b) *Exemptions.* The following are exempt from mandatory review for declassification:

(1) Information that has been reviewed for declassification within the past two years;

(2) Information that is the subject of pending litigation;

(3) Information originated by the incumbent President, the incumbent President's White House Staff, committees, commissions, or boards appointed by the incumbent President, or other entities within the Executive Office of the President that solely advise and assist the incumbent President; and

(4) Information specifically exempt from such review by law.

(c) *Processing requirements.* (1) For requests for review of classified information not received from the National Archives and Records Administration, the Director for Security, or their designate, shall acknowledge receipt of the request directly to the requester. If a request does not adequately describe the information sought in accordance with paragraph (a) of this section, the requester shall be notified that unless additional information is provided, no further action will be taken. The request shall be forwarded to the component that originated the information or that has primary interest in the subject matter. The component assigned action shall review the information in accordance with § 4a.7(c)(2) through (4) within twenty working days.

(2) The component assigned action shall determine whether, under the declassification provisions of the U.S. Department of Commerce's Manual of Security, the entire document or portions thereof may be declassified. Declassification of the information shall be

accomplished by a designated declassification authority. Upon declassification, the information shall be re-marked. If the information is not partially or entirely declassified, the reviewing official shall provide the reasons for denial by citing the applicable provisions of E.O. 13526. If the classification is a derivative decision based on classified source material of another Federal agency, the component shall provide the information to the originator for review.

(3) If information is declassified, the component shall also determine whether it is releasable under the Freedom of Information Act (FOIA) as amended (5 U.S.C. 552). If the information is not releasable, the component shall advise the Director for Security that the information has been declassified but that it is exempt from disclosure, citing the appropriate exemption of the FOIA as amended.

(4) If the request for declassification is denied in whole or in part, the requester shall be notified of the right to appeal the determination within sixty calendar days and of the procedures for such an appeal. If declassified information remains exempt from disclosure under the FOIA as amended, the requester shall be advised of the appellate procedures under that law.

(d) *Fees.* If the request requires services for which fees are chargeable, the component assigned action shall calculate the anticipated fees to be charged, and may be required to ascertain the requester's willingness to pay the allowable charges as a precondition to taking further action on the request, in accordance with Department of Commerce rules promulgated under 5 U.S.C. 552(a)(4)(A) of the Freedom of Information Act as amended and Department of Commerce rules promulgated under 5 U.S.C. 552a(f)(5) of the Privacy Act of 1974 (5 U.S.C. 552a).

(e) *Right of appeal.* (1) A requester may appeal to the Director for Security when information requested under this section is not completely declassified and released after expiration of the applicable time limits. Within thirty working days (*i.e.*, excluding Saturdays, Sundays, and legal public holidays) of receipt of a written appeal:

(i) The Director for Security shall determine whether continued classification of the requested information is required in whole or in part;

(ii) If information is declassified, determine whether it is releasable under the Freedom of Information Act as amended; and

(iii) Notify the requester of his or her determination, making available any information determined to be releasable. If continued classification is required under the provisions of the Department of Commerce Manual for Security, the Director for Security shall notify the requester of his or her determination, including the reasons for denial based on applicable provisions of E.O. 13526, and of the right of final appeal to the Interagency Security Classification Appeals Panel.

(2) During the declassification review of information under appeal the Director for Security may overrule previous determinations in whole or in part if continued protection in the interest of national security is no longer required. If the Director for Security determines that the information no longer requires classification, it shall be declassified and, unless it is otherwise exempt from disclosure under the Freedom of Information Act as amended, released to the requester. The Director for Security shall advise the original reviewing component of his or her decision.

[66 FR 65650, Dec. 20, 2001, as amended at 85 FR 35376, June 10, 2020]

§ 4a.8 Access to classified information by individuals outside the Government.

(a) *Industrial, Educational, and Commercial Entities.* Certain bidders, contractors, grantees, educational, scientific, or industrial organizations may receive classified information under the procedures prescribed by the National Industrial Security Program Operating Manual.

(b) *Access by historical researchers and former Presidential appointees.* An individual engaged in historical research projects or who has previously occupied a policy-making position to which he or she was appointed by the President may be authorized access to classified information for a limited period,