

PART 2700—SECURITY INFORMATION REGULATIONS

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AUTHORITY: E.O. 12065, National Security Regulation of June 28, 1978 (43 FR 28949, July 31, 1978); Information Security Oversight Office Directive No. 1 (43 FR 46280, October 5, 1978).

SOURCE: 44 FR 51574, Sept. 4, 1979, unless otherwise noted. Correctly designated at 44 FR 51990, Sept. 6, 1979.

Subpart A—Introduction

§ 2700.1 References.

(a) Executive Order 12065, “National Security Information,” June 28, 1978, (hereinafter E.O. 12065).

(b) Information Security Oversight Office, Directive No. 1, “National Security Information,” October 2, 1978, (hereinafter ISOO Directive No. 1).

§ 2700.2 Purpose.

The purpose of this Regulation is to ensure, consistent with the authorities listed in § 2700.1, that national security information originated and/or held by the Office for Micronesian Status Negotiations (OMSN), which includes the Status Liaison Office, Saipan, Northern Mariana Islands (SLNO), is protected. To ensure that such information is protected, but only to the extent and for such period as is necessary, this regulation identifies the information to be protected and prescribes certain classification, declassification and safeguarding procedures to be followed.

§ 2700.3 Applicability.

This Regulation supplements E.O. 12065 within OMSN with regard to National Security Information. In consonance with the authorities listed in § 2700.1, it establishes general policies and certain procedures for the classification, declassification and safeguarding of information which is owned by, is produced for or by, or is under the control of OMSN.

Subpart B—Original Classification

§ 2700.11 Basic policy.

(a) *General.* It is the policy of OMSN to make available to the public as much information concerning its activities as is possible, consistent with its responsibility to protect the national security.

(b) *Safeguarding national security information.* Within the Federal Government there is some information which because it bears directly on the effectiveness of our national defense and the conduct of our foreign relations, must be subject to some constraints for the security of our nation.

(c) *Balancing test.* To balance the public's interest in access to government information with the need to protect certain national security information from disclosure, these regulations identify the information to be protected, prescribe classification, downgrading, declassification, and safeguarding procedures to be followed, and establish education, monitoring and

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sanctioning systems to insure their effectiveness. When questions arise as to whether the need to protect information may be outweighed by the public interest in disclosure of the information, they shall be referred to OMSN pursuant to § 2700.32(b) for a determination whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure.

§ 2700.12 Criteria for and level of original classification.

(a) *General Policy.* Documents or other material are to be classified only when protecting the national security requires that the information they contain be withheld from public disclosure. Information may not be classified to conceal violations of law, inefficiency, or administrative error, or to prevent embarrassment to a person, organization or agency, or to restrain competition. No material may be classified to limit dissemination, or to prevent or delay public release, unless its classification is consistent with E.O. 12065.

(b) *Criteria.* To be eligible for classification, information must meet two requirements:

(1) First, it must deal with one of the criteria set forth in section 1-301 of E.O. 12065;

(2) Second, the President's Personal Representative for Micronesian Status Negotiations or his delegate who has original classification authority must determine that unauthorized disclosure of the information or material can reasonably be expected to cause at least identifiable harm to the national security.

(c) *Classification designations.* Only three designations of classification are authorized—"Top Secret," "Secret," "Confidential." No other classification designation is authorized or shall have force.

(d) Unnecessary classification, and classification at a level higher than is necessary, shall be avoided. If there is reasonable doubt as to which designation in section 1-1 of E.O. 12065 is appropriate, or whether information should be classified at all, the less restrictive designation should be used, or

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the information should not be classified.

§ 2700.13 Duration of original classification.

(a) Information or material which is classified after December 1, 1978, shall be marked at the time of classification with the date or event for declassification or a date for review for declassification. This date or event shall be as early as national security permits and shall be no more than six years after original classification except as provided in paragraph (b) of this section.

(b) Only the President's Personal Representative for Micronesian Status Negotiations may authorize a classification period exceeding six years. Originally classified information that is so designated shall be identified with the authority and reason for extension. This authority shall be used sparingly. In those cases where extension of classification is warranted, a declassification date or event, or a date for review shall be set. This date or event shall be early as national security permits and shall be no more than twenty years after original classification except that for foreign information the date or event may be up to thirty years after original classification.

§ 2700.14 Challenges to classification.

If holders of classified information believe the information is improperly or unnecessarily classified, or that original classification has been extended for too long a period, they should discuss the matter with their immediate superiors or the classifier of the information. If these discussions do not satisfy the concerns of the challenger, the matter should be brought to the attention of the chairman of the OMSN Information Security Oversight Committee, established pursuant to § 2700.51. Action on such challenges shall be taken within 30 days from date of receipt and the challenger shall be notified of the results. When requested, anonymity of the challenger shall be preserved.

Subpart C—Derivative Classification

§ 2700.21 Definition and application.

Derivative classification is the act of assigning a level of classification to information which is determined to be the same in substance as information which is currently classified. Thus, derivative classification may be accomplished by any person cleared for access to that level of information, regardless of whether the person has original classification authority at that level.

§ 2700.22 Classification guides.

OMSN shall issue classification guides pursuant to section 2-2 of E.O. 12065. These guides, which shall be used to direct derivative classification, shall identify the information to be protected in specific and uniform terms so that the information involved can be readily identified. The classification guides shall be approved in writing by the President's Personal Representative for Micronesian Status Negotiations. Such approval constitutes an original classification decision. The classification guides shall be kept current and shall be reviewed at least every two years.

Subpart D—Declassification and Downgrading

§ 2700.31 Declassification authority.

The Director, OMSN, is authorized to declassify OMSN originated documents after consultation with the appropriate OMSN staff members.

§ 2700.32 Declassification general.

Declassification of classified information shall be given emphasis comparable to that accorded to classification. The determination to declassify information shall not be made on the basis of the level of classification assigned, but on the loss of the sensitivity of the information with the passage of time, and with due regard for the public interest in access to official information. At the time of review, any determination not to declassify shall be based on a determination that despite the passage of time since classi-

fication, release of information reasonably could still be expected to cause at least identifiable damage to the national security.

§ 2700.33 Mandatory review for declassification.

(a) *General.* All information classified under the Order or prior orders, except as provided for in section 3-503 of E.O. 12065 shall be subject to review for declassification upon request of a member of the public, a government employee, or an agency.

(b) *Receipt.* (1) Requests for mandatory review for declassification under section 3-501 of E.O. 12065 must be in writing and should be addressed to: Office for Micronesian Status Negotiations, ATTN: Security Officer (Mandatory Review Request), Room 3356, Department of the Interior, Washington, DC 20240.

(2) The requestor shall be informed of the date of receipt of the request at OMSN. This date will be the basis for the time limits specified in paragraph (c) of this section.

(3) If the request does not reasonably describe the information sought, the requestor shall be notified that, unless additional information is provided or the request is made more specific, no further action will be taken.

(4) Subject to paragraph (b)(7) of this section, if the information requested is in the custody of and under the exclusive declassification authority of OMSN, OMSN shall determine whether the information or any reasonably segregable portion of it no longer requires protection. If so, OMSN shall promptly make such information available to the requester, unless withholding it is otherwise warranted under applicable law. If the information may not be released, in whole or in part, OMSN shall give the requester a brief statement of the reasons, a notice of the right to appeal the determination to the agency review committee, and notice that such an appeal must be filed with the review committee within 60 days.

(5) When OMSN receives a request for information in a document which is in its custody, but which was classified by

another agency, it shall refer the request to the appropriate agency for review, together with a copy of the document containing the information requested, where practicable. OMSN shall also notify the requester of the referral, unless the association of the reviewing agency with the information requires protection. The reviewing agency shall review a document in coordination with any other agency involved with the classification or having a direct interest in the subject matter. The reviewing agency shall respond directly to the requester in accordance with the pertinent procedures described above and, if requested, shall notify OMSN of its determination.

(6) Requests for declassification of classified documents originated by OMSN or another agency but in the possession and control of the Administrator of General Services, pursuant to 44 U.S.C. 2107 or 2107 *Note*, shall be referred by the Archivist to the agency of origin for processing and for direct response to the requests. The Archivist will inform requesters of such referrals.

(7) In the case of requests for documents containing foreign government information, OMSN, if it is also the agency which initially received the foreign government information, shall determine whether the foreign government information in the document may be declassified and released in accordance with agency policies or guidelines, consulting with other agencies of subject matter interest as necessary. If OMSN is not the agency which received the foreign government information, it shall refer the request to the latter agency, which shall take action on the request. In those cases where available agency policies or guidelines do not apply, consultation with the foreign originator through appropriate channels may be advisable prior to final action on the request.

(8) If any agency makes a request on behalf of a member of the public, the request shall be considered as a request by that member of the public and handled accordingly.

(c) *Review.* (1) Within sixty days from its receipt, OMSN shall inform the requestor of the determination of the mandatory review for declassification.

(2) If the determination is to withhold some or all of the material requested, the requestor may appeal the determination. The requestor shall be informed that an appeal must be made in writing within sixty days of receipt of the denial and should be addressed to the chairperson of the OMSN Classification Review Committee established pursuant to § 2700.52.

(3) No agency in possession of a classified document may, in response to a request for the document made under the Freedom of Information Act (5 U.S.C. 552) or under section 3–5 of E.O. 12065, refuse to confirm the existence or non-existence of the document, unless the fact of its existence or non-existence would itself be classifiable.

(4) The requestor shall be informed of the appellate determination within thirty days of receipt of the appeal.

(5) In considering requests for mandatory review, OMSN may decline to review again any request for material which has been recently reviewed and denied, except insofar as the request constitutes an appeal under paragraph (f) of this section.

(d) *Processing of Requests.* The processing of requests by OMSN shall be as follows:

(1) The Security Officer or his designee shall record the request, and arrange for search and review of the documents. The documents will be reviewed for declassification in accordance with these regulations or any applicable guidelines. If the documents remain classified and are not to be released, in whole or in part, the reviewing office will also prepare a letter informing the requester as described in paragraph (b)(4) of this section. The letter to the requester shall be signed by the President's Personal Representative for Micronesian Status Negotiations, his Deputy or the Status Liaison Officer. The Security Officer or his designee shall record disposition of the case and forward the letter of denial to the requester.

(2) If any request requires obtaining the views of other agencies, the receiving office shall arrange coordination of review with such other agencies.

(3) When all documents involved in the request are declassified and released, the receiving office will send a

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release statement, to the requester, and shall inform the requester of any fees due before releasing documents.

(4) In the case of documents of agency origin requested by a Presidential Library on behalf of a member of the public, if there is a partial denial, the letter will advise the requester as described in paragraph (b)(4) of this section, but the requester will be referred to the Archivist for copies of the released document, with portions excised. The receiving office will transmit such documents, with portions marked to be excised, to Archives which will transmit them with portions excised to the Presidential Library for its records and for use in the case of further similar requests.

(5) The Security Officer or his designee shall also coordinate requests from other agencies seeking the views of OMSN as to declassification of documents originated by such other agencies but involving information of primary subject matter interest to OMSN. The Security Officer or his designee will transmit the documents to the reviewing individual for a determination as to declassification and will coordinate the reply of OMSN to the requesting agency.

(e) *Appeals.* (1) The President's Personal Representative for Micronesian Status Negotiations shall receive appeals for denial of documents by OMSN. Such appeals shall be addressed to President's Personal Representative for Micronesian Status Negotiations, Suite 3356, Interior Department Building, Washington, DC 20240. The appeal must be received in OMSN within 60 days of the date of the original denial letter or the final release of documents, whichever is later.

(2) Appeals shall be decided within 30 days of their receipt.

(f) *Fees.* (1) Fees for the location and reproduction of information which is the subject of a mandatory review request shall be assessed according to the following schedule:

(i) Search for records: \$5.00 per hour when the search is conducted by a clerical employee; \$8.00 per hour when the search is conducted by a professional employee. No fee shall be assessed for searches of less than one hour.

(ii) Reproduction of documents: Documents will be reproduced at a rate of \$.25 per page for all copying of four pages or more. No fee shall be assessed for reproducing documents which are three pages or less, or for the first three pages of longer documents.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than \$25.00, and the requestor has not indicated in advance a willingness to pay fees as high as are anticipated, the requestor shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed \$25.00, an advance deposit may be required. Dispatch of such a notice or request shall suspend the running of the period for response by OMSN until a reply is received from the requestor.

(3) Remittance shall be in the form either of a personal check or bank draft on a bank in the United States, or a postal money order. Remittance shall be made payable to Treasurer of the United States and mailed to the address noted in paragraph (b)(1) of this section.

(4) A receipt for fees paid will be provided only upon request. Refund of fees for services actually rendered will not be made.

(5) OMSN may waive all or part of any fee provided for in this section when it is deemed to be in either the interest of OMSN or of the general public.

§ 2700.34 Downgrading authority.

The Security Officer, OMSN is authorized to downgrade OMSN originated documents after consultation with the staff member who is charged with functional responsibility for the subject matter under question.

Subpart E—Safeguarding

§ 2700.41 General restrictions on access.

(a) *Determination of need-to-know.* Classified information shall be made available to a person only when the possessor of the classified information establishes in each instance, except as provided in section 4-3 of E.O. 12065,

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that access is essential to the accomplishment of official Government duties or contractual obligations.

(b) *Determination of Trustworthiness.* A person is eligible for access to classified information only after a showing of trustworthiness as determined by the President's Personal Representative for Micronesian Status Negotiations based upon appropriate investigations in accordance with applicable standards and criteria.

§ 2700.42 Responsibility for safeguarding classified information.

(a) *General Policy.* The specific responsibility for the maintenance of the security of classified information rest with each person having knowledge or physical custody thereof, no matter how obtained. The ultimate responsibility for safeguarding classified information rests on each supervisor to the same degree that supervisor is charged with functional responsibility.

(b) *Security and Top Secret Control Officers.* The Director, OMSN, and the Status Liaison Officer, Saipan, are assigned specific security responsibilities as Security Officer and Top Secret Control Officer.

(c) *Handling.* All documents bearing the terms "Top Secret," "Secret" and "Confidential" shall be delivered to the Top Secret Control Officer or his designee immediately upon receipt. All potential recipients of such documents shall be advised of the names of such designees and updated information as necessary. In the event that the Top Secret Control Officer or his designees are not available to receive such documents, they shall be turned over to the office supervisor and secured, unopened, in a designated combination safe located in OMSN or SLNO, as appropriate until the Top Secret Control Officer is available. All materials not immediately deliverable to the Top Secret Control Officer shall be delivered at the earliest opportunity. Under no circumstances shall classified material that cannot be delivered to the Top Secret Control Officer be stored other than in the designated safe.

(d) *Storage.* All classified documents shall be stored in the designated combination safe or safes located in OMSN or SLNO as appropriate. The combina-

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tion shall be changed as required by ISOO Directive No. 1, section IV F (5)(a). The combinations shall be known only to the Security Officer and his designees with the appropriate security clearance.

(e) *Security Education Program.* The Security Officer shall establish a program of briefings to familiarize personnel with the provisions of E.O. 12065 and implementing directives. Such briefings shall be held once per year, or more frequently. Before any new or newly assigned employee enters on duty, he shall be given instruction in sufficient detail in security procedures and practices to inform him of his responsibilities arising from his access to classified data.

(f) *Access by Historical Researchers and Former Presidential Appointees.* In keeping with provisions 4-301 and 4-302 of E.O. 12065, the President's Personal Representative for Micronesian Status Negotiations shall designate appropriate officials to determine, prior to granting access to classified information, the propriety of such action in the interest of national security and assurance of the recipient's trustworthiness and need-to-know.

§ 2700.43 Reproduction controls.

OMSN and SLNO shall maintain records to show the number and distribution of all OMSN originated classified documents. Reproduction of classified material shall take place only in accordance with section 4-4 of E.O. 12065 and any limitations imposed by the originator. Should copies be made, they are subject to the same controls as the original document. Records showing the number of distribution of copies shall be maintained by the Office Supervisor and the log stored with the original documents. These measures shall not restrict reproduction for the purposes of mandatory review.

§ 2700.44 Administrative sanctions.

Officers and employees of the United States Government assigned to OMSN shall be subject to appropriate administrative sanctions if they knowingly and willingly commit a violation under section 5-5 of E.O. 12065. These sanctions may include reprimand, suspension without pay, removal, termination

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of classification authority, or other sanction in accordance with applicable law or the applicable regulations of the agency from which they are assigned to OMSN.

Subpart F—Implementation and Review**§ 2700.51 Information Security Oversight Committee.**

The OMSN Information Security Oversight Committee shall be chaired by the Security Officer, OMSN. The Committee shall be responsible for acting on all suggestions and complaints concerning the administration of the OMSN information security program. The chairperson shall also be respon-

sible for conducting an active oversight program to ensure effective implementation of E.O. 12065.

§ 2700.52 Classified Review Committee.

The OMSN Classification Review Committee shall be chaired by the President's Personal Representative for Micronesian Status Negotiations. The Committee shall decide appeals from denials of declassification requests submitted pursuant to section 3-5 of E.O. 12065. The Committee shall consist of the President's Personal Representative, Department of Defense/Legal Advisor and Political/Economic Advisor.

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