

§ 1203.604

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identify those that require scheduling for future disposition.

(2) All NASA information or material in the custody of the National Archives and Records Service that is permanently valuable and more than 30 years old is to be systematically reviewed for declassification by the Archivist of the United States with the assistance of the personnel designated for the purpose pursuant to paragraph (a)(4)(i) of this section. The Archivist shall refer to NASA that information or material which NASA has indicated requires further review. In the case of 30-year old information or material in the custody of NASA installations, such review will be accomplished by the custodians of the information or material. The installation having primary jurisdiction over the information or material received from the Archivist or in its custody, shall proceed as follows:

(i) Classified information or material over which NASA exercises exclusive or final original classification authority and which is to be declassified in accordance with the systematic review guidelines developed under paragraph (b) of this section shall be so marked.

(ii) Classified information or material over which NASA exercises exclusive or final original classification authority and which, in accordance with the systematic review guidelines developed under paragraph (b) of this section, is to be kept protected, shall be listed by category by the responsible custodian and referred to the Chairperson, NASA Information Security Program Committee. This listing shall:

(A) Identify the information or material involved.

(B) Recommend classification beyond 30 years to a specific event scheduled to happen or a specific period of time or, the alternative, recommend: DECLASSIFY ON: Originating Agency's Determination Required or "OADR."

(iii) The Administrator shall consider and determine which category shall be kept classified and the dates or event for declassification. Whenever a specific time or future event for declassification cannot be predetermined, the following notation will be applied: DECLASSIFY ON: Originating Agency's Determination Required or "OADR."

The Archivist of the United States will be notified in writing of this decision.

(d) *Declassification by the Director of the Information Security Oversight Office, GSA.* If the Director of the Information Security Oversight Office, GSA, determines that NASA information is classified in violation of "the Order," the Director may require the information to be declassified. Any such decision by the Director may be appealed through the NASA Information Security Program Committee to the National Security Council. The information shall remain classified pending a prompt decision on the appeal.

[48 FR 5891, Feb. 9, 1983]

§ 1203.604 Mandatory review for declassification.

(a) *Information covered.* All information classified under "the Order" or predecessor orders, except as provided at § 1203.604(b) shall be subject to a review for declassification by the originating agency, if:

(1) The request is made by a United States citizen or permanent resident alien, a Federal agency, or a State or local government; and

(2) The request describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort. After review, the information or any reasonable segregable portion thereof that no longer requires protection shall be declassified and released unless withholding is otherwise warranted under applicable law.

(b) *Presidential papers.* (1) Information originated by a President, the White House Staff, by committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or acting on behalf of a President is exempted from the provisions of § 1203.604(a).

(2) The Archivist of the United States shall have the authority to review, downgrade and declassify information under the control of the Administrator of General Services Administration or the Archivist pursuant to sections 2107, 2107 note, or 2203 of Title 44, U.S. Code. Review procedures developed by the Archivist shall provide for consultation

with NASA in matters of primary subject interest to NASA.

(c) *Submission of requests for review.* Requests for mandatory review of classified information shall be submitted in accordance with the following:

(1) Requests originating within NASA shall, in all cases, be submitted directly to the NASA installation which originated the information.

(2) For most expeditious action, requests from other Governmental agencies or from members of the public should be submitted directly to NASA installations which originated the material, or, if the originating component is not known, the requestor may submit the request to:

(i) The Chairperson, NASA Information Security Program Committee; or the head of the NASA organization most concerned with the subject matter of the material requested; or

(ii) The office designated to receive requests for records specifically citing the Freedom of Information Act pursuant to part 1206 of this chapter.

(d) *Requirement for processing.* (1) Requests which are submitted under the Freedom of Information Act shall be processed in accordance with part 1206 of this chapter.

(2) Other requests for declassification review and release of information shall be processed in accordance with the provisions of this section, subject to the following conditions:

(i) The request is in writing and reasonably describes the information sought with sufficient particularity to enable the installation to identify it.

(ii) The requestor shall be asked to correct a request that does not comply with paragraph (d)(2)(i) of this section, to provide additional information or to narrow the scope of the request and shall be notified that no action will be taken until the requestor complies.

(iii) If the request requires the rendering of services for which fees may not be charged under part 1206, but may be charged under 31 U.S.C. 483a (1976), the rates prescribed in §1206.700 shall be used, if appropriate.

(e) *Processing of requests.* Requests that meet the requirements of paragraph (d)(2) of this section will be processed as follows:

(1) NASA installation action upon the initial request shall be completed within 60 days.

(2) Receipt of the request shall be acknowledged promptly. The NASA installation shall determine whether, under the declassification provisions of this part 1203, the requested information may be declassified and, if so, shall make such information available to the requestor, unless withholding is otherwise warranted under applicable law. If the information may not be released in whole or in part, the requestor shall be given a brief statement of the reasons for denial, a notice of the right to appeal the determination to the Chairperson, NASA Information Security Program Committee, National Aeronautics and Space Administration, Washington, DC 20546, and a notice that such an appeal must be filed within 60 days in order to be considered.

(3) All appeals of denials of requests for declassification shall be acted upon and determined finally within 30 days after receipt and the requestor shall be advised that the appeal determination is final. If continued classification is required under the provisions of this part 1203, the requestor shall be notified of the reasons thereof.

(4) The declassification and release of foreign government information that is subjected to mandatory review under this section shall be determined only in accordance with §1203.703.

(5) When a NASA installation receives any request for declassification of information in documents in its custody that was classified by another NASA installation or Government agency, it shall refer copies of the request and the requested documents to the originating installation or agency for processing, and may, after consultation with the originating installation or agency, inform the requester of the referral. In cases in which the originating NASA installation determines in writing that a response under §1203.604(f) is indicated, such cases will be promptly forwarded to the Chairperson, NASA Information Security Program Committee, for final resolution and appropriate response.

(f) *Neutral response.* In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of “the Order,” NASA shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classifiable under “the Order.”

(g) *Declassification of transferred documents or material*—(1) *Material officially transferred.* In the case of classified information or material transferred by or pursuant to statute or Executive Order to NASA in conjunction with a transfer of functions (not merely for storage purposes) for NASA’s use and as part of its official files or property, as distinguished from transfers merely for purposes of storage, NASA shall be deemed to be the original classifying authority over such material for purposes of downgrading and declassification.

(2) *Material not officially transferred.* When any NASA installation has in its possession classified information or material originated by an agency which has since ceased to exist and that information has not been officially transferred to another department or agency, or when it is impossible for the possessing NASA installation to identify the originating agency, and a review of the material indicates that it should be downgraded or declassified, the possessing NASA installation shall be deemed to be the originating agency for the purpose of declassifying or downgrading such material. If it appears probable that another agency or another NASA organization may have a substantial interest in whether the classification of any particular information should be maintained, the possessing NASA installation shall not exercise the power conferred upon it by this paragraph, until after consultation with any other agency or NASA organization having an interest in the subject matter.

(3) *Transfer for storage or retirement.* (i) Insofar as practicable, classified documents shall be reviewed to determine whether or not they can be downgraded or declassified prior to being forwarded to records centers or to the National Archives for storage. Any downgrading or declassification deter-

mination shall be indicated on each document by appropriate markings.

(ii) Classified information transferred to the General Services Administration for accession into the Archives of the United States shall be downgraded or declassified by the Archivist of the United States in accordance with “the Order,” the directives of the Information Security Oversight Office, GSA, and NASA guidelines.

(h) *Downgrading and declassification actions*—(1) *Notification of changes in classification or declassification.* When classified material has been marked with specific dates or events for downgrading or declassification, it is not necessary to issue notices of such actions to any holders. However, when such actions are taken earlier than originally scheduled, or the duration of classification is shortened, the authority making such changes shall, to the extent practicable, ensure prompt notification to all addressees to whom the information or material was originally transmitted. The notification shall specify the marking action to be taken, the authority therefor, and the effective date. Upon receipt of notification, recipients shall effect the proper changes and shall notify addressees to whom they have transmitted the classified information or material.

(2) *Posted notice.* If prompt remarking of large quantities would be unduly burdensome, the custodian may attach declassification, downgrading, or upgrading notices to the storage unit in lieu of the remarking action otherwise required. Each notice shall indicate the change, the authority for the action, the date of the action, and the storage units to which it applies. Items withdrawn from such storage units shall be promptly remarked. However, when information subject to a posted downgrading or declassification notice is withdrawn from one storage unit solely for transfer to another, or a storage unit containing such information is transferred from one place to another, the transfer may be made without remarking if the notice is attached to or remains with each shipment.

(i) *Foreign Relations Series.* In order to permit the State Department editors of *Foreign Relations of the United States* to meet their mandated goal of publishing

20 years after the event, NASA shall assist these editors by facilitating access to appropriate classified materials in its custody and by expediting declassification review of items from its files selected for publication.

(ii) [Reserved]

[44 FR 34913, June 18, 1979, as amended at 45 FR 3888, Jan. 21, 1980; 48 FR 5892, Feb. 9, 1983; 53 FR 41318, Oct. 21, 1988]

Subpart G—Foreign Government Information

§ 1203.700 Identification.

In order to qualify as foreign government information, information must fall into one of the two following categories:

(a) Information provided to the United States by a foreign government or international organization of governments, such as the North Atlantic Treaty Organization (NATO), where the United States has undertaken an obligation, expressed or implied, to keep the information in confidence. The information is considered to have been provided in confidence if it is marked in a manner indicating it is to be treated in confidence or if the circumstances of the delivery indicate that the information be kept in confidence.

(b) Information requiring confidentiality produced by the United States pursuant to a written, joint arrangement with a foreign government or international organization of governments. A written, joint arrangement may be evidenced by an exchange of letters, a memorandum of understanding, or other written record of the joint arrangement.

§ 1203.701 Classification.

(a) Foreign government information that is classified by a foreign entity shall either retain its original classification designation or be marked with a United States classification designation that will ensure a degree of protection equivalent to that required by the entity that furnished the information. Original classification authority is not required for this purpose.

(b) Foreign government information that was not classified by a foreign en-

tity but was provided to NASA with the expressed or implied obligation that it be held in confidence must be classified. "The Order" states that unauthorized disclosure of foreign government information, the identity of a confidential foreign source, or intelligence sources or methods is presumed to cause damage to the national security. Therefore, such foreign government information shall be classified at least Confidential. However, at the time of classification, judicious consideration shall be given to the sensitivity of the subject matter and the impact of its unauthorized disclosure upon both the United States and the originating foreign government or organization of governments in order to determine the most appropriate level of classification. Levels above Confidential must be assigned by an original classification authority.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5892, Feb. 9, 1983]

§ 1203.702 Duration of classification.

Unless the guidelines for the systematic review of 30-year old foreign government information developed pursuant to §1203.603(b) prescribe dates or events for declassification:

(a) Foreign government information shall not be assigned a date or event for declassification unless such is specified or agreed to by the foreign entity.

(b) Foreign government information classified after December 1, 1978, shall be annotated: DECLASSIFY ON: Originating Agency's Determination Required or "OADR."

[48 FR 5893, Feb. 9, 1983]

§ 1203.703 Declassification.

(a) Information classified in accordance with §1203.400 shall not be declassified automatically as a result of any unofficial publication or inadvertent or unauthorized disclosure in the United States or abroad of identical or similar information.

(b) Following consultation with the Archivist of the United States and where appropriate, with the foreign government or international organization concerned and with the assistance of the Department of State, NASA will