

§ 7.28

6 CFR Ch. I (1-1-07 Edition)

(c) It is presumed that information that continues to meet the classification requirements under Executive Order 12958, as amended, requires continued protection. In some exceptional cases during declassification reviews, the need to protect classified information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. If it appears that the public interest in disclosure of the information may outweigh the need to protect the information, the declassification reviewing official shall refer the information with a recommendation for decision to the Chief Security Officer. The Chief Security Officer shall review the information and make a recommendation to the Secretary on whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure. The Secretary shall decide whether to declassify the information. The decision of the Secretary shall be final. This provision does not amplify or modify the substantive criteria or procedures for classification or create any substantive or procedural rights subject to judicial review.

(d) Each component shall develop schedules for declassification of records in the National Archives.

§ 7.28 Automatic declassification.

(a) Subject to paragraph (b) of this section, all classified information contained in records that are more than 25 years old that have been determined to have permanent historical value shall be declassified automatically on December 31, 2006. Subsequently, all classified information in such records shall be automatically declassified not later than 25 years after the date of its original classification with the exception of specific information exempt from automatic declassification pursuant to section 3.3 (b) through (d) of Executive Order 12958, as amended.

(b) At least 180 days before information is declassified automatically under this section, the Chief Security Officer shall notify the ISOO of any specific information that DHS proposes to exempt from automatic declassification. The notification shall include:

- (1) A description of the information;
- (2) An explanation of why the information is exempt from automatic declassification and must remain classified for a longer period of time; and
- (3) A specific date or event for declassification of the information whenever the information exempted does not identify a confidential human source or human intelligence source.

(c) Proposed exemptions under this section shall be forwarded to the Chief Security Officer. When the Chief Security Officer determines the exemption request is consistent with this section, he or she will submit the exemption request to the Executive Secretary of the Interagency Security Classification Appeals Panel (ISCAP) for approval.

(d) Declassification guides that narrowly and precisely define exempted information may be used to exempt information from automatic declassification. Declassification guides must include the exemption notification information detailed in paragraph (b) of this section, and be approved pursuant to paragraph (c) of this section.

§ 7.29 Documents of permanent historical value.

The original classification authority, to the greatest extent possible, shall declassify classified information contained in records determined to have permanent historical value under 44 U.S.C. 2107 before they are accessioned into the National Archives.

§ 7.30 Classification challenges.

(a) Authorized holders of information classified by DHS who, in good faith, believe that specific information is improperly or unnecessarily classified are encouraged and expected to challenge the classification status of that information pursuant to section 1.8 of Executive Order 12958, as amended. Authorized holders may submit classification challenges in writing to the original classification authority with jurisdiction over the information in question. If an original classification authority cannot be determined, the challenge shall be submitted to the Chief Security Officer. The challenge need not be more specific than a question as to why the information is or is not classified, or is classified at a certain level.

(b) If anonymity of the challenger is requested, the challenger may submit the challenge to the Office of Security. The Office of Security will act as an agent for the challenger and the identity of the challenger will be redacted.

(c) The original classification authority shall promptly, and in no case later than 60 days, provide a written response to the submitter. The original classification authority may classify or declassify the information subject to the challenge and, if applicable, state specific reasons why the original classification determination was proper. If the original classification authority is not able to respond within 60 days, he or she shall inform the individual who filed the challenge in writing of that fact, and the anticipated determination date.

(d) The individual challenging the classification will be notified of the determination made by the original classification authority and that the individual may appeal this determination to the Chief Security Officer. Upon receipt of such appeals, the Chief Security Officer shall convene a DHS Classification Appeals Panel (DHS/CAP). The DHS/CAP shall, at a minimum, consist of representatives from the Office of Security, the Office of General Counsel, and a representative from the component having jurisdiction over the information. Additional members may be added as determined by the DHS Chief Security Officer. The DHS/CAP shall be chaired by the Chief Security Officer.

(e) If the requester files an appeal through the DHS/CAP, and the appeal is denied, the requester shall be notified of the right to appeal the denial to the Interagency Security Classification Appeals Panel (ISCAP) pursuant to section 5.3 of Executive Order 12958, as amended, and the rules issued by the ISCAP pursuant to section 5.3 of Executive Order 12958, as amended.

(f) Any individual who challenges a classification and believes that any action has been taken against him or her in retaliation or retribution because of that challenge shall report the facts to the Office of the Inspector General or other appropriate office.

(g) Nothing in this section shall prohibit a person from informally chal-

lenging the classified status of information directly to the original classification authority.

(h) Requests for review of classified material for declassification by persons other than authorized holders are governed by 6 CFR 7.31.

§7.31 Mandatory review for declassification requests.

(a) Any person may request that classified information be reviewed for declassification pursuant to the mandatory declassification review provisions of section 3.6 of Executive Order 12958, as amended. Such requests shall be sent to the Departmental Disclosure Officer, Privacy Office, 245 Murray Lane, SW., Building 410, Washington, DC 20528.

(b) The request must sufficiently describe the document or material with enough specificity to allow it to be located by the component with a reasonable amount of effort. When the description of the information in the request is deficient, the component shall solicit as much additional identifying information as possible from the requester. If the information or material requested cannot be obtained with a reasonable amount of effort, the component shall provide the requester, through the DHS Disclosure Officer, with written notification of the reasons why no action will be taken and of the requester's right to appeal.

(c) Requests for review of information that has been subjected to a declassification review request within the preceding two years shall not be processed. The DHS Disclosure Officer will notify the requester of such denial.

(d) Requests for information exempted from search or review under sections 701, 702, or 703 of the National Security Act of 1947, as added and amended (50 U.S.C. 431 through 433), or other provisions of law, shall not be processed. The DHS Disclosure Officer will notify the requester of such denial.

(e) If documents or material being reviewed for declassification under this section contain information that has been originally classified by another government agency, the reviewing authority shall notify the DHS Disclosure Officer. Unless the association of that