

§ 171.22

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(4) Consult with the Department and/or the foreign government, as appropriate.

(h) *Cryptologic and intelligence information.* Mandatory declassification review requests for cryptologic information and information concerning intelligence activities or intelligence sources or methods shall be processed solely in accordance with special procedures established by the Secretary of Defense and the Director of Central Intelligence, respectively.

(i) *Appeals.* Upon denial of an initial request in whole or in part, the Department shall notify the requester of the right of an administrative appeal, which must be filed within 60 days of receipt of the denial. The Department shall normally make a determination within 60 days following receipt of an appeal. If additional time is needed to make a determination, the Department shall notify the requester of the additional time needed and provide the requester with a reason for extension. The Department shall notify the requester in writing of the final determination and of the reasons for any denial.

(j) *Appeals to the Interagency Security Classification Appeals Panel.* The Interagency Security Classification Appeals Panel shall publish in the FEDERAL REGISTER the rules and procedures for bringing mandatory declassification appeals before it.

§ 171.22 Determination in disputed cases.

(a) It is presumed that information that continues to meet the classification requirements under this Executive Order 12958 requires continued protection. In some exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the Secretary of State or the Department's senior agency official. That official will determine, as an exercise of discretion, whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure.

(b) This provision does not:

(1) Amplify or modify the substantive criteria or procedures for classification; or

(2) Create any substantive or procedural rights subject to judicial review.

§ 171.23 Challenges to classification.

(a) Authorized holders of information who, in good faith, believe that its classification status is improper are encouraged and expected to challenge the classification status of the information. An authorized holder is any individual, including an individual external to the Department, who has been granted access to specific classified information in accordance with section 4.2(g) of the Executive Order 12958.

(b) Challenges shall be presented to an original classification authority with jurisdiction over the information. A formal challenge under section 1.9 of the Executive Order 12958 must be in writing, but need not be any more specific than to question why information is or is not classified, or is classified at a certain level. The classification challenge provision is not intended to prevent an authorized holder from informally questioning the classification status of particular information. Such informal inquiries are encouraged in order to limit the number of formal challenges.

(c) Whenever the Department receives a classification challenge to information that has been the subject of a challenge within the past two years, or that is the subject of pending litigation, it is not required to process the challenge beyond informing the challenger of this fact and of the challenger's appeal rights, if any.

(d) Challenges, responses and appeals shall, if possible, be unclassified. However, classified information contained in a challenge, a response from the department or an appeal shall be handled and protected in accordance with this Executive Order 12958 and its implementing directives.

(e) Information being challenged for classification shall remain classified unless and until a decision is made to declassify it.

(f) The Secretary of State or the senior agency official of the Department shall establish procedures under which