

§ 1260.28 Who is responsible for declassifying records that contain nuclear-related information classified under the Atomic Energy Act of 1954, as amended, commonly referred to as Restricted Data and Formerly Restricted Data?

Only designated officials within the Department of Energy may declassify records containing Restricted Data. Records containing Formerly Restricted Data may only be declassified by designated individuals within the Department of Energy or by appropriate individuals in the Department of Defense.

Subpart C—Systematic Review

§ 1260.40 How will records at NARA be reviewed for declassification?

(a) Consistent with the requirements of section 3.4 of Executive Order 12958 and Executive Order 13142 on automatic declassification, NARA staff will systematically review for declassification records for which the originating agencies have provided declassification guidance. The originating agency must review records for which it has not provided declassification guidance.

(b) Agencies may choose to review their own records that have been accessioned by NARA by sending personnel to the NARA facility where the records are located to conduct the declassification review.

§ 1260.42 What are the procedures for agency personnel to review records at a NARA facility?

(a) NARA will make the records available to properly cleared agency reviewers. NARA will provide space for agency reviewers in the facility in which the records are located as space is available. NARA will also provide training and guidance for agency reviewers on the proper handling of archival materials.

(b) Agency reviewers must:

(1) Follow NARA security regulations and abide by NARA procedures for handling archival materials;

(2) Follow NARA procedures for identifying and marking documents that cannot be declassified; and

(3) Obtain permission from NARA before bringing into a NARA facility

computers, scanners, tape recorders, microfilm readers and other equipment necessary to view or copy records. NARA will not allow the use of any equipment that poses an unacceptable risk of damage to archival materials. See 36 CFR 1254.26 and 1254.27 for more information on acceptable equipment.

§ 1260.44 Will NARA loan accessioned records back to the agencies to conduct declassification review?

In rare cases, when agency reviewers cannot be accommodated at a NARA facility, NARA will consider a request to loan records back to an originating agency in the Washington, DC, metropolitan area for declassification review. Each request will be judged on a case-by-case basis. The requesting agency must:

(a) Ensure that the facility in which the documents will be stored and reviewed passes a NARA inspection to ensure that the facility maintains:

(1) The correct archival environment for the storage of permanent records; and

(2) The correct security conditions for the storage and handling of national security-classified materials.

(b) Meet NARA requirements for ensuring the safety of the records;

(c) Abide by NARA procedures for handling of archival materials;

(d) Identify and mark documents that cannot be declassified in accordance with NARA procedures; and

(e) Obtain NARA approval of any equipment such as scanners, copiers, or cameras to ensure that they do not pose an unacceptable risk of damage to archival materials.

Subpart D—Mandatory Review

EXECUTIVE BRANCH RECORDS

§ 1260.50 What procedures does NARA follow when it receives a request for Executive Branch records under mandatory review?

(a) If the requested records are less than 25 years old, NARA refers copies of the records to the originating agency and to agencies that have equities in the information for declassification review. Agencies may also send personnel to a NARA facility where the

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records are located to conduct a declassification review, or may delegate declassification authority to NARA in the form of declassification guidance.

(b) If the requested records are more than 25 years old, NARA will review the records using systematic declassification guidance provided by the originating agency and agencies having equities in the information. If the originating agency, or agencies having equities in the information have not provided systematic declassification guidance, or if there is a question regarding the guidance, NARA will refer any requested documents it is unable to declassify to the appropriate agency or agencies for declassification determinations.

(c) When the records were originated by a defunct agency that has no successor agency, NARA is responsible for making the declassification determinations, but will consult with agencies having primary subject matter interest.

(d) In every case, NARA will acknowledge receipt of the request and inform the requester of the action taken. If additional time is necessary to make a declassification determination on material for which NARA has delegated authority, NARA will tell the requester how long it will take to process the request. NARA will also tell the requester if part or all of the requested information is referred to other agencies for declassification review, subject to section 3.7(a) of Executive Order 12958.

§ 1260.52 What are agency responsibilities when it receives a mandatory review request forwarded by NARA?

(a) The agency must make a determination within 180 calendar days after receiving the request or inform NARA of the additional time needed to process the request. If an initial decision has not been made on the request within 1 year after the original date of the request, the requester may appeal to the Interagency Security Classification Appeals Panel (ISCAP).

(b) The agency must notify NARA of any other agency to which it forwards the request in those cases requiring the

declassification determination of another agency.

(c) The agency must return to NARA a complete copy of each declassified document with the agency determination. If documents cannot be declassified in their entirety, the agency must return to NARA a copy of the documents with those portions that must be withheld clearly marked.

(d) The agency must also furnish, for transmission to the requester, a brief statement of the reasons the requested information cannot be declassified and a statement of the requester's right to appeal the decision, along with the procedures for filing an appeal. The agency must also supply for transmission to the requester a contact name and title and the address where the appeal must be sent.

§ 1260.54 What is the appeal process when a mandatory review request for Executive Branch information is denied?

(a) If an agency denies a declassification request under mandatory review, the requester may appeal directly to the appeal authority at that agency.

(b) If requested by the agency, NARA will supply the agency with:

(1) Copies of NARA's letter to the requester transmitting the agency denial; and

(2) Copies of any documents denied in part that were furnished to the requester.

(c) The agency appeal authority must notify NARA in writing of the final determination and of the reasons for any denial.

(d) The agency must furnish to NARA a complete copy of any document they released to the requester only in part, clearly marked to indicate the portions that remain classified. NARA will give the requester a copy of any notifications from the agencies that describe what information has been denied and what the requesters appeal rights are.

(e) In the case of an appeal for information originated by a defunct agency, NARA will notify the requester of the results and furnish copies of documents declassified in full and in part. If the request cannot be declassified in its entirety, NARA will send the requester a brief statement of why the requested