

**CENTRAL INTELLIGENCE AGENCY**

**32 CFR Part 1907**

**Classification Challenge Regulations**

**AGENCY:** Central Intelligence Agency.

**ACTION:** Final rule.

**SUMMARY:** Consistent with Executive Order 13526, the Central Intelligence Agency (CIA) has undertaken and completed a review of its public Classification Challenge regulations. As a result of this review, the Agency has revised its Classification Challenge regulations to more clearly reflect the current CIA organizational structure and policies and practices, and to eliminate ambiguous, redundant and obsolete regulatory provisions. This rule is being issued as a final rule without prior notice of proposed rulemaking as allowed by the Administrative Procedures Act for rules of agency procedure and interpretation and the CIA Act.

**DATES:** Effective [INSERT DATE OF PUBLICATION OF FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Joseph W. Lambert, (703) 613-1379.

**SUPPLEMENTARY INFORMATION:** Consistent with Executive Order 13526, the CIA has undertaken and completed a review of its public Classification Challenge regulations. As a result of this review, the Agency has revised its Classification Challenge regulations to more clearly reflect the current CIA organizational structure, record system

configuration, and policies and practices and to eliminate ambiguous, redundant and obsolete regulatory provisions. This rule is being issued as a final rule without prior notice of proposed rulemaking as allowed by the Administrative Procedures Act, 5 U.S.C. 553(b)(3)(A) for rules of agency procedure and interpretation and Section 6 of the CIA Act, as amended, 50 U.S.C. 403g.

**List of Subjects in 32 CFR Part 1907**

Classification challenge,  
Classified information.

Accordingly, the CIA is amending 32 CFR Part 1907 as follows:

**PART 1907--CHALLENGES TO CLASSIFICATION OF DOCUMENTS BY AUTHORIZED HOLDERS PURSUANT TO SEC. 1.8 OF EXECUTIVE ORDER 13526 (or successor orders).**

1. The authority citation for part 1907 is amended to read as follows:

Authority: This Part is issued under the authority of and in order to implement section 1.8 of E.O. 13526, section 102 of the National Security Act of 1947, and section 6 of the CIA Act of 1949.

2. Revise the part heading to read as set forth above.

3. Revise § 1907.01 to read as follows:

**§ 1907.01 Authority and purpose.**

(a) Authority: This Part is issued under the authority of and in order to implement section 1.8 of E.O. 13526, section 102 of the National Security Act of 1947, and section 6 of the CIA Act of 1949.

(b) Purpose: This part prescribes procedures for non-Agency personnel who are authorized holders of CIA information, to challenge the classification status, whether classified or unclassified, based on

a good faith belief that the current status of CIA information is improper. This part and section 1.8 of Executive Order 13526 confer no rights upon members of the general public or individuals who are not authorized holders of CIA information.

4. In § 1907.02, revise paragraphs (b) and (j) and add paragraphs (k) and (l) as follows:

**§ 1907.02 Definitions.**

\* \* \* \* \*

(b) Authorized holder means anyone who has satisfied the conditions for access to classified information stated in section 4.1(a) of Executive Order 13526 and who has been granted access to such information; the term does not include anyone authorized such access by section 4.4 of Executive Order 13526.

\* \* \* \* \*

(j) The Order means Executive Order 13526 of December 29, 2009 and published at 75 FR 707 (or successor Orders).

(k) Chief, Classification Management and Collaboration Group refers to the Agency official authorized to make the initial Agency determination with respect to a challenge of the classification status of CIA information.

(l) Agency Release Panel refers to the Agency's forum for reviewing information review and release policy, the adequacy of resources available to all Agency declassification and release programs, and hearing appeals in accordance with this section.

5. Revise § 1907.12 to read as follows:

**§ 1907.12 Requirements as to form.**

The challenge shall include identification of the challenger by full name, Executive Branch agency, title of position, and information required for verification of access, security clearance, and status as

an authorized holder of the CIA information in question. In addition, the challenger must clearly identify documents or portions of documents at issue and identify and describe the reasons why it is believed that the information is improperly classified. The challenge, itself, must be properly marked and classified and, in this regard, the authorized holder must assume the current classification status and marking of the information is correct until determined otherwise unless the challenger asserts that the information marked unclassified should be classified or that the information should be classified at a higher level, in which case the challenger should mark the challenge and related documents at the asserted classification level.

6. Revise § 1907.21 to read as follows:

**§ 1907.21 Exceptions.**

(a) Documents required to be submitted for prepublication review or other administrative process pursuant to an approved nondisclosure agreement is not covered by this section.

(b) Whenever the Agency receives a classification challenge to information that has been the subject of a challenge within the past two years, the Agency is not required to process the challenge beyond informing the challenger of this fact and the prior review decision; advising the challenger of the right to appeal a final Agency decision to the Interagency Security Classification Appeals Panel (ISCAP); and informing the challenger that if they wish to exercise this right, they must do so through Chief, Classification Management and Collaboration Group who will then forward the appeal to the ISCAP.

(c) The Agency is not required to process classification challenges to information that is the subject of pending litigation. If the information that is the subject of a challenge falls into this category, the Agency will take no action on the challenge and will

notify the challenger of this fact within 10 business days.

**§ 1907.22 [Removed and Reserved]**

7. Remove and reserve § 1907.22.

8. Revise § 1907.23 to read as follows:

**§ 1907.23 Designation of authority to hear challenges.**

(a) Chief, Classification Management and Collaboration Group shall be responsible for the initial Agency decision in a classification challenge.

(b) Agency Release Panel (ARP). Appeals of denials of classification challenges shall be reviewed by the ARP which shall issue the final Agency decision in accordance with 1907.25(c).

(c) ARP membership: The ARP is chaired by the Chief, Information Review and Release Group and composed of the Information Review Officers from the various Directorates and the Director, Central Intelligence Agency area, as well as the representatives of the various release programs and offices. The Information and Privacy Coordinator also serves as Executive Secretary of the Panel.

9. Revise § 1907.24 to read as follows:

**§ 1907.24 Initial determination.**

(a) Formal challenges shall be directed to the CIA Information and Privacy Coordinator (Coordinator) who shall promptly forward the challenge to the C/CMCG for action. The C/CMCG shall be responsible for the administrative processing of the challenge consistent with this section.

(b) Within 10 business days of receipt of a challenge, the Coordinator shall record the receipt of the challenge and provide the challenger with written acknowledgement of the Agency's receipt.

(c) Except as provided in paragraph (d) of this section, the Agency shall render an initial written response to a challenge within 60 business days of receipt.

(d) If the C/CMCG determines that the Agency is unable to respond with a determination within 60 business days of receipt of the challenge, C/CMCG will inform the Coordinator who will provide the challenger with written notice of the date by which the Agency will respond and a statement that if no Agency response is received within 120 business days, the challenger has the right to have the challenge forwarded to the ISCAP, and may exercise this right through C/CMCG who will then forward the challenge to ISCAP.

(e) The C/CMCG, after consultation with the originator of the information and other parties shall inform the Coordinator of the initial decision on the challenge and the Coordinator shall promptly inform the challenger of the decision in writing and inform the challenger of the right to appeal to the ARP if the challenge was denied.

10. Revise § 1907.25 to read as follows:

**§ 1907.25 Action on appeal of initial Agency determination.**

(a) The challenger may, within 45 calendar days of receiving notice of a denial of the challenge, appeal the denial to the ARP by sending the appeal and any supplementary information in support of the challenge to the Executive Secretary of the ARP (ES/ARP).

(b) Within 10 business days of receipt of an appeal, the ES/ARP will record receipt, provide the challenger with written acknowledgement, and forward the appeal to C/CMCG, the appropriate IMTOs, originator, and other appropriate parties, who shall review the appeal and related materials, and within 30 business days provide a written recommendation to the ARP.

(c) The ARP shall meet on a regular schedule and may take action when a simple majority of the total membership is present. Issues shall be decided by a majority of the members present. In all cases of a divided vote, before the decision of the ARP becomes final, any member of the ARP may by written memorandum to the ES/ARP, refer such matters to the Director, Information Management Services (D/IMS) for decision. In the event of a disagreement with any decision by D/IMS related to the classification challenge, Directorate heads may appeal to the Associate Deputy Director, CIA (ADD) for resolution. The final Agency decision shall reflect the vote of the ARP, unless changed by the D/IMS or the ADD.

(d) The ES/ARP shall promptly provide the challenger with written notice of the final Agency decision and, if the appeal is denied, inform the challenger of the right to appeal to the ISCAP through C/CMCG, who will forward the appeal to the ISCAP.

11. Revise § 1907.26 to read as follows:

**§ 1907.26 Prohibition on adverse action.**

Agency correspondence to the challenger shall include a notice that CIA will take no adverse action or retribution against the challenger for bringing the classification challenge in good faith.

12. Revise § 1907.31 to read as follows:

**§ 1907.31 Right of appeal.**

A right of appeal may be available to the ISCAP established pursuant to section 5.3 of the Order. Action by that body will be the subject of rules to be promulgated by the Information Security Oversight Office.

Dated: 10 August 2011.

Joseph W. Lambert,  
Director, Information Management Services.