

[Federal Register: March 24, 2006 (Volume 71, Number 57)]  
[Rules and Regulations]  
[Page 14808-14815]  
From the Federal Register Online via GPO Access [wais.access.gpo.gov]  
[DOCID:fr24mr06-9]

=====

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1260

RIN 3095-AB38

Declassification of National Security Information

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

-----

SUMMARY: This rule updates NARA's regulations related to declassification of classified national security information in records transferred to NARA's legal custody. The rule incorporates changes resulting from amendments to Executive Order 12958, Classified National Security Information, as amended. These changes include establishing procedures for the automatic declassification of records in NARA's legal custody and revising requirements for reclassification of information to meet the provisions of EO 12958, as amended. This rule will affect members of the public and Federal agencies.

DATES: Effective April 24, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis Heaps at 301-837-1801.

SUPPLEMENTARY INFORMATION: The proposed rule was originally published in the August 12, 2005, Federal Register (70 FR 47161) for a sixty day comment period. We notified several researcher organizations about the proposed rule and posted a notice about it on our Web site, <http://www.archives.gov>.

NARA received eight responses to the proposed rule.

Two were from individuals, one was from a public interest group, and the others were from government agencies. Two of the responses from government agencies were no comments.

One individual expressed concern about actions of the George W. Bush administration, including that an Executive Order (EO) has been used to permanently seal records of the two Bush presidencies. This issue is beyond the purview of EO 12958, as amended. The other individual's comment objected to the provisions in subpart E regarding reclassification. He stated that there is no urgent need for alteration of current processes available to the agencies involved in the safeguarding of our nation's security interests. However, this rule brings NARA policy into conformity with provisions of EO 12958, as

amended, and therefore, his comments cannot be accepted.

Two comments questioned the concept of ``integral file block.'' One commenter asked if the term was new or had been used previously in a records management environment. The other commenter was concerned that an integral file block could contain records spanning an indefinite period of time--possibly decades--and this would effectively prevent the timely declassification of historically significant information that would otherwise be eligible for release. The commenter recommended that NARA adopt regulations that would provide for review of integral file blocks that span more than eight years to determine whether the integral file block could be broken up for the purpose of declassification while maintaining the integrity of the records.

Integral file blocking is a long standing practice in records management. The concept was introduced into the EO to promote better, more efficient reviews. For example, rather than review records in any one box multiple times on a year by year basis, an agency can review all records in the box at one time. Records are handled less frequently and are reviewed in relationship to each other, enhancing the possibility of contextual decisions. Most records are reviewed by the originating agencies and NARA

[[Page 14809]]

cannot control how they apply the integral file block concept. That is a matter for the originating agencies' record management personnel and for Information Security Oversight Office (ISOO) oversight of agency declassification programs. Therefore, we do not accept the recommendation to adopt regulations to review integral file blocks spanning more than eight years to see if they can be broken up to facilitate declassification.

The same commenter recommended adding language to Sec. 1260.52 to explain a requester's right to appeal to the Interagency Security Classification Appeals Panel (ISCAP) if an agency fails to respond to a mandatory review request within one year of the date of the request and further to add similar language to Sec. Sec. 1260.54 and 1260.55 to inform an appellant of the right to appeal to the ISCAP if a final decision on the appeal is not made within 180 days of the date of the appeal. NARA accepts these recommendations and has amended Sec. Sec. 1260.52, 1260.54, and 1260.55 to include additional language.

The same commenter also recommended amending Sec. 1260.70 involving reclassification. The Order states that in order for information to be reclassified, it must be ``reasonably recoverable.'' The commenter suggested including a definition of ``reasonably recoverable'' in order to better inform agencies of the circumstances under which reclassification may be inappropriate and that the Archivist may object to reclassification. NARA has added to the end of Sec. 1260.70 the language ``in accordance with section 1.7(c) of the Order and Sec. 2001.13(a) of the Implementing Directive (32 CFR 2001.13(a))''.

One commenter suggested adding a sentence to the definition of declassification in Sec. 1260.2 stating that if an agency does not review records before automatic declassification occurs, that process will supersede the agency's review. This suggested change is not necessary because section 3.3 of the EO covers this. The same commenter asked if an agency can delegate to NARA authority in the form of declassification guidance to declassify foreign government information. According to 32 CFR 2001.30(h), NARA must consult with the original

classifying agency. This commenter also suggested that the statement in Sec. 1260.42(a)(2) that NARA will ``provide space for agency reviewers in the facility in which the records are located as space is available'' is contradictory and suggested that NARA clarify the wording. NARA has revised the section to indicate that NARA will provide space to the extent that space is available.

This commenter asked why in Sec. 1260.44 NARA stated that it will consider loaning records back to an originating agency for declassification review only in the Washington, DC, metropolitan area. NARA has limited the loan of accessioned records to the Washington, DC, metropolitan area so that NARA staff can inspect an agency facility to insure that the facility has proper environmental and security conditions for accessioned archival records. NARA staff must also be able to monitor the handling and storage of archival records while in agency custody.

One commenter objected to the provisions of Sec. 1260.46 allowing a delay in automatic declassification of five years for classified information in microforms, motion pictures, audiotapes, videotapes, or comparable media that make declassification review more difficult. He stated that ``While the term `Special media records' has long been used by NARA to designate government records existing on microform, film audiotapes, videotapes and the like, it is time to not separate out government records based upon the media they reside on. Records are records.'' In the 2003 amendment to the EO, ISOO recognized that classified information contained in microforms, motion pictures, audiotapes, videotapes, or comparable media might make a review for possible declassification exemptions more difficult or costly and implemented this provision. This rule brings NARA's procedures into conformity with the EO.

One commenter suggested that the time for an agency to follow up on a preliminary telephone request for an urgent reclassification action be shortened from 5 days to 3 for fear that the longer time will lead to the formal documentation not being provided. NARA does not accept this recommendation. Initial requests for reclassification usually come from agency declassification reviewers. NARA wants to allow time for appropriate staffing of the request within the agency.

One agency commenter requested revision of Sec. 1260.28 to make it clear that the Department of Defense, in conjunction with the Department of Energy, is responsible for classification and declassification guidance for Formerly Restricted Data. We have revised Sec. 1260.28 to read, ``Only designated officials within the Department of Energy may declassify records containing Restricted Data. Any record determined to contain Restricted Data (RD) may not be reviewed for declassification of national security information until the Secretary of Energy has determined that the RD marking may be removed. Declassification review of national security information in records containing Formerly Restricted Data (FRD) may only be performed after the Secretary of Energy, in conjunction with the Secretary of Defense, has determined that the FRD marking may be removed.''

As part of NARA's analysis of comments received on the proposed rule, ISOO recommended that we add language to paragraphs (a) and (b) of Sec. 1260.20 to make it clear that while there is no requirement for an agency to review its records for its own equities, there is a requirement to review for those of other agencies. We have made the suggested changes.

In Sec. 1260.26 we have changed Director of Central Intelligence to Director of National Intelligence to conform with the change in the

law. We have deleted ``The Executive Secretary'' and corrected the room number for the address of the ISCAP cited in Sec. Sec. 1260.54(e), 1260.55(d), and 1260.62(c). We have made minor clarifications in language in Sec. Sec. 1260.40, 1260.54(b)(2), 1260.54(f), 1260.74(d), and 1260.74(e).

This rule is a significant regulatory action for the purposes of EO 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it affects Federal agencies and individual researchers. This rule does not have any federalism implications.

List of Subjects in 36 CFR Part 1260

Archives and records, Classified information.

0

For the reasons set forth in the preamble, NARA amends chapter XII of title 36, Code of Federal Regulations, by revising part 1260 to read as follows:

PART 1260--DECLASSIFICATION OF NATIONAL SECURITY INFORMATION

Subpart A--General Information

Sec.

1260.1 What is the purpose of this part?

1260.2 Definitions.

1260.4 What NARA holdings are covered by this part?

1260.6 What is the authority for this part?

Subpart B--Responsibilities

1260.20 Who is responsible for the declassification of classified national

[[Page 14810]]

security Executive Branch information that has been accessioned by NARA?

1260.22 Who is responsible for the declassification of classified national security White House originated information in NARA's holdings?

1260.24 Who is responsible for declassification of foreign government information in NARA's holdings?

1260.26 Who is responsible for issuing special procedures for declassification of information pertaining to intelligence activities, sources and methods, or of classified cryptologic information in NARA's holdings?

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

Subpart C--Systematic Review

1260.40 How are records at NARA reviewed for declassification?

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

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

1260.46 How will NARA implement automatic declassification?

## 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?
- 1260.52 What are agency responsibilities after receiving a mandatory review request forwarded by NARA?
- 1260.54 What is the appeal process when a mandatory review request for Executive Branch information is denied?
- 1260.55 What is the appeal process when an agency denies a mandatory review request for Executive Branch information within Nixon Presidential Historical materials or Presidential records?

### White House Originated Information

- 1260.56 Is White House originated information subject to mandatory review?
- 1260.58 What are the procedures for requesting a mandatory review of White House originated information?
- 1260.60 What are agency responsibilities with regard to mandatory review requests for White House originated information?
- 1260.62 What is the appeal process when a mandatory review request for White House originated information is denied?

### Subpart E--Reclassification

- 1260.70 Can previously released Executive Branch information be reclassified or have its classification restored?
- 1260.72 Can previously released White House originated information be reclassified or have its classification restored?
- 1260.74 What if NARA does not concur with an agency decision to reclassify or restore the classification of information that has been previously released?

Authority: 44 U.S.C. 2101 to 2118; 5 U.S.C. 552; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333; E.O. 13142, 64 FR 66089, 3 CFR, 1999 Comp., p. 236; E.O. 13292, 68 FR 15315; 32 CFR part 2001.

## Subpart A--General Information

Sec. 1260.1 What is the purpose of this part?

(a) This part defines the responsibilities of NARA and other Federal agencies for declassification of classified national security information in the holdings of NARA.

This part also describes NARA's procedures for:

- (1) Conducting systematic reviews of NARA holdings, and
- (2) Processing mandatory review requests for NARA holdings.

(b) Regulations for researchers who wish to request access to materials containing classified national security information are found in 36 CFR part 1256.

Sec. 1260.2 Definitions.

(a) Classified national security information or classified information means information that has been determined under EO 12958,

as amended, or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(b) Declassification means the authorized change in the status of information from classified information to unclassified information.

(c) Systematic declassification review means the review for declassification of classified information contained in records that have been determined by the Archivist of the United States to have permanent historical value in accordance with 44 U.S.C. 2107.

(d) Mandatory declassification review means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.5 of EO 12958, as amended.

(e) Integral file block means a distinct component of a file series, as defined in this section, that should be maintained as a separate unit in order to ensure the integrity of the records. An integral file block may consist of a set of records covering either a specific topic or a range of time such as presidential administration or a 5-year retirement schedule within a specific file series that is retired from active use as a group.

(f) File series means file units or documents arranged according to a filing system or kept together because they relate to a particular subject or function, result from the same activity, document a specific kind of transaction, take a particular physical form, or have some other relationship arising out of their creation, receipt, or use, such as restrictions on access or use.

Sec. 1260.4 What NARA holdings are covered by this part?

The NARA holdings covered by this part are records legally transferred to the National Archives and Records Administration (NARA), including Federal records accessioned into the National Archives of the United States, 44 U.S.C. 2107; Presidential records, 44 U.S.C. 2201-2207; Nixon Presidential materials, 44 U.S.C. 2111 note; and donated historical materials in Presidential Libraries and in the National Archives of the United States, 44 U.S.C. 2111.

Sec. 1260.6 What is the authority for this part?

Declassification of and public access to classified national security information is governed by EO 12958 of April 17, 1995 (3 CFR part 1995 Comp., p. 333), EO 13142 of November 19, 1999 (3 CFR part 1999 Comp., p. 236), EO 13292 of March 28, 2003 (68 FR 15315), collectively referred to as EO 12958, as amended, and by the Information Security Oversight Office (ISOO) Implementing Directive for EO 12958, as amended (32 CFR part 2001).

Subpart B--Responsibilities

Sec. 1260.20 Who is responsible for the declassification of classified national security Executive Branch information that has been accessioned by NARA?

(a) Consistent with the requirements on automatic declassification

in section 3.3 of EO 12958, as amended, the originating agency is responsible for declassification of its information, but may delegate declassification authority to NARA in the form of declassification guidance. Even though the agency delegates declassification authority to NARA in the form of declassification guidance, the agency remains responsible for reviewing the records to identify other agencies having primary subject matter interest ('`equities'') before the date that the records become eligible for automatic declassification.

(b) If an agency does not delegate declassification authority to NARA, the agency is responsible for both declassification of its own information and reviewing the records to identify the equities of other agencies before the date that the records become eligible for automatic declassification.

(c) NARA is responsible for the declassification of records of a defunct

[[Page 14811]]

agency that has no successor in function. NARA will consult with agencies having equities in the records before making declassification determinations.

Sec. 1260.22 Who is responsible for the declassification of classified national security White House originated information in NARA's holdings?

(a) NARA is responsible for declassification of information from a previous administration that was originated by:

- (1) The President;
- (2) The White House staff;
- (3) Committees, commissions, or boards appointed by the President;

or

(4) Others specifically providing advice and counsel to the President or acting on behalf of the President.

(b) NARA will consult with agencies having primary subject matter interest before making declassification determinations.

Sec. 1260.24 Who is responsible for declassification of foreign government information in NARA's holdings?

(a) The agency that received or classified the information is responsible for its declassification.

(b) In the case of a defunct agency, NARA is responsible for declassification of foreign government information in its holdings and will consult with the agencies having primary subject matter interest before making declassification determinations.

Sec. 1260.26 Who is responsible for issuing special procedures for declassification of information pertaining to intelligence activities, sources and methods, or of classified cryptologic information in NARA's holdings?

(a) The Director of National Intelligence is responsible for issuing special procedures for declassification of classified

information pertaining to intelligence activities and intelligence sources and methods.

(b) The Secretary of Defense is responsible for issuing special procedures for declassification of classified cryptologic information.

Sec. 1260.28 Who is responsible for declassifying records that contain 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. Any record determined to contain Restricted Data (RD) may not be reviewed for declassification of national security information until the Secretary of Energy has determined that the RD marking may be removed. Declassification review of national security information in records containing Formerly Restricted Data (FRD) may only be performed after the Secretary of Energy, in conjunction with the Secretary of Defense, has determined that the FRD marking may be removed.

Subpart C--Systematic Review

Sec. 1260.40 How are records at NARA reviewed for declassification?

(a) Consistent with the requirements on automatic declassification in section 3.3 of EO 12958, as amended, NARA staff may conduct systematic reviews for declassification of 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 transferred to NARA's legal custody, by sending personnel to the NARA facility where the records are located to conduct the declassification review.

(c) Classified materials in the Presidential Library system may be referred to agencies holding equity in the documents via the Remote Archives Capture (RAC) Project. The RAC Project is a collaborative program to implement the declassification provisions of E.O. 12958, as amended, with respect to twenty-five year old or older classified holdings in the Presidential Libraries. Classified Presidential materials at the libraries are scanned and brought to the Washington, DC, metropolitan area in electronic form for review by equity-holding agencies in the metropolitan area.

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

(a) NARA will:

(1) Make the records available to properly cleared agency reviewers;

(2) Provide space for agency reviewers in the facility in which the records are located to the extent that space is available; and

(3) 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 part 1254 for more information on acceptable equipment.

Sec. 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 classified national security 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 for the use of any equipment as described in Sec. 1260.42 (b)(3), such as scanners, copiers, or cameras, to ensure that they do not pose an unacceptable risk of damage to archival materials.

Sec. 1260.46 How will NARA implement automatic declassification?

(a) Textual records and collections. Classified records within an integral file block will be automatically declassified on December 31 of the year that is 25 years from the date of the most recent record within the file block, except as specified in paragraphs (b), (c), (d), and (e) of this section.

(b) Special media records. (1) Federal records. Upon proper notification from the originating agency, NARA will delay automatic declassification for 5 additional years for classified information contained in microforms, motion pictures, audiotapes, videotapes, or comparable media that make a review for possible declassification exemptions more difficult or costly. Information contained in special media records that has been referred to an equity holder will be automatically declassified 5 years from the date of notification or 30 years from the date of origination of the

special media, whichever is longer, unless otherwise properly exempted.

(2) Presidential collections. NARA will delay automatic declassification for 5 additional years for classified information contained in Presidential records and donated historical materials in the form of microforms, motion pictures, audiotapes, videotapes, or comparable media that make a review for possible declassification exemptions more difficult or costly. Information contained in special media records that has been referred will be automatically declassified 5 years from the date of notification or 30 years from the date of origination of the special media, whichever is longer, unless otherwise properly exempted.

(c) Delayed referrals. NARA will delay automatic declassification for up to 3 years for classified records that have been identified by the originating agency, or by NARA, and referred to an additional agency or agencies less than 3 years before automatic declassification would otherwise be required.

(d) Other exceptions. NARA will apply automatic declassification only to information that has been properly referred to the agency that created the records, or to another agency, but not acted upon by those agencies within 3 years from the date of notification, or 28 years from the date of the record or integral file block, whichever is later.

(1) Information that has not been properly identified and referred to an agency other than the agency that created the records is not subject to automatic declassification. When NARA identifies information of interest to another agency, that agency will have 3 years from the date of notification to exempt or declassify its equity, and to further refer the record if appropriate. If no action is taken, the information from the agency that received the referral will be automatically declassified 3 years from the date of notification.

(2) Information contained in special media records that has been referred to equity holders will be automatically declassified 5 years from the date of notification, or 30 years from the date of origination of the special media, whichever is longer, unless otherwise properly exempted.

(e) Discovery of information inadvertently not reviewed. When NARA identifies a file series or collection in our physical and legal custody that contains classified information over 25 years old and that was inadvertently not reviewed before the effective date of automatic declassification, NARA must report the discovery to ISOO within 90 days of discovery. Within 180 days NARA will refer the records to the originating agency or systematically review the records.

(1) The referral agency will have 3 years from the date of notification to exempt, declassify, or further refer the record. If no action is taken, the information from the agency that received the referral will be automatically declassified 3 years from the date of notification.

(2) Information contained in special media records that has been referred will be automatically declassified 5 years from the date of notification or 30 years from the date of origination of the special media, whichever is longer, unless otherwise properly exempted.

Subpart D--Mandatory Review

Executive Branch Records

Sec. 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 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) Requests for mandatory review must describe the document or material containing the information with sufficient specificity to enable NARA to locate it with a reasonable amount of effort.

(e) If the document or information has been properly reviewed for declassification within the past 2 years, or if the specific information is the subject of pending litigation, NARA will inform the requester of this fact and of the requester's appeal rights.

(f) If NARA determines that a requester has submitted a request for the same information or material under both the mandatory review and the Freedom of Information Act (FOIA), as amended, the request will be treated as a request under the FOIA, unless the requested information or materials are subject only to mandatory review.

(g) 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 3.6 (a) and (b) of EO 12958 as amended.

Sec. 1260.52 What are agency responsibilities after receiving 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.

(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 referred document with the agency determination uniformly and conspicuously identified to leave no doubt about the status of the information and the authority for its continued classification or its declassification. If a document cannot be declassified in its entirety, the agency must

return to NARA a copy of the document with those portions that require continued classification clearly marked. If a document requires continued classification in its entirety, the agency must return to NARA a copy of the document 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. Additional information on appeals for requesters is

[[Page 14813]]

located in 36 CFR part 1256 and in Appendix A to 32 CFR part 2001 (Article VIII).

(e) If the agency fails to make a decision on the mandatory review request within one year of the original date of the request, the requester may appeal to the Interagency Security Classification Appeals Panel (ISCAP).

Sec. 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. If a final decision on the appeal is not made within 180 days of the date of the appeal, the appellant may appeal to the ISCAP.

(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 in sanitized form 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 requester's appeal rights are.

(e) NARA will also notify the requester of the right to appeal denials of access to the Interagency Security Classification Appeals Panel, Attn: Mandatory Review Appeals, c/o Information Security Oversight Office, National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Room 503, Washington, DC 20408.

(f) The pertinent NARA office or Presidential Library will coordinate the potential release of information declassified by the ISCAP when the materials are subject to the Presidential Recordings and Materials Preservation Act, 44 U.S.C. 2111 note, and the Presidential Records Act, 44 U.S.C. 2203.

(g) 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 requested information cannot be declassified in its entirety, NARA will send the requester a brief statement of why the requested information cannot be declassified and a notice of the right to appeal the

determination within 60 calendar days to the Deputy Archivist of the United States, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001.

Sec. 1260.55 What is the appeal process when an agency denies a mandatory review request for Executive Branch information within Nixon Presidential Historical materials or Presidential records?

(a) If an agency denies a declassification request under mandatory review for Nixon Presidential materials or a Presidential record as defined by 44 U.S.C. 2201, the requester may appeal the determination within 60 calendar days to the Deputy Archivist of the United States, through the appropriate Presidential library. If a final decision on the appeal is not made within 180 days of the date of the appeal, the appellant may appeal to the ISCAP.

(b) When the Deputy Archivist of the United States receives an appeal, he or she will review the decision to deny the information and consult with the appellate authorities in the agencies having primary subject matter interest in the information.

(c) NARA will notify the requester in writing of the determination and make available any additional information that has been declassified as a result of the requester's appeal, according to the notification procedures of EO 13233 for Presidential records or 36 CFR part 1275.

(d) NARA will also notify the requester of the right to appeal denials of access to the Interagency Security Classification Appeals Panel, Attn: Mandatory Review Appeals, c/o Information Security Oversight Office, National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Room 503, Washington, DC 20408.

(e) The pertinent NARA office or Presidential Library will coordinate the potential release of information declassified by the ISCAP when the materials are subject to the Presidential Recordings and Materials Preservation Act, 44 U.S.C. 2111 note, and the Presidential Records Act, 44 U.S.C. 2203.

White House Originated Information

Sec. 1260.56 Is White House originated information subject to mandatory review?

White House originated information of former Presidents is subject to mandatory review consistent with the Presidential Records Act, 44 U.S.C. 2203, the Presidential Recordings and Materials Preservation Act, 44 U.S.C. 2111 note, and any deeds of gift that pertain to the materials or the respective Presidential administrations pursuant to 44 U.S.C. 2107 and 2111. Unless precluded by such laws or agreements, White House originated information is subject to mandatory or an equivalent agency review for current classification when NARA has archivally processed the materials or can identify the materials with specificity. However, records covered by the Presidential Records Act are closed for 5 years after the end of the Presidential administration, or until NARA has archivally processed an integral file segment, whichever occurs first, pursuant to 44 U.S.C. 2204.

Sec. 1260.58 What are the procedures for requesting a mandatory review of White House originated information?

(a) Requests for mandatory review must describe the document or material containing the information with sufficient specificity to enable NARA to locate it with a reasonable amount of effort.

(b) If the document or information has been properly reviewed for declassification within the past 2 years, or if the specific information is the subject of pending litigation, NARA will inform the requester of this fact and of the requester's appeal rights.

(c) If NARA determines that a requester has submitted a request for the same information or material under both the mandatory review and the Freedom of Information Act (FOIA), as amended, the request will be treated as a request under the FOIA, unless the requested information or materials are subject only to mandatory review.

(d) NARA will promptly acknowledge to the requester the receipt of a request for White House originated information.

(e) If the requested information is less than 25 years old, NARA will consult with agencies having primary subject matter interest. NARA will forward copies of the requested materials to the agencies and request their recommendations regarding declassification.

(f) 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

[[Page 14814]]

declassify to the appropriate agency or agencies for their recommendations regarding declassification.

(g) NARA will notify the requester of the results and furnish copies of the documents declassified in full and in part. If the requested records are not declassified in their entirety, NARA will send the requester a brief statement of the reasons the information cannot be declassified and a notice of the right to appeal the determination within 60 calendar days to the Deputy Archivist of the United States, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001.

Sec. 1260.60 What are agency responsibilities with regard to mandatory review requests for White House originated information?

When an agency receives a mandatory review request from NARA for consultation on declassification of White House originated material, whether it is an initial request or an appeal, the agency must:

(a) Advise the Archivist whether the information should be declassified in whole or in part or should remain classified;

(b) Provide NARA a brief statement providing the authority for the continued classification of any information not declassified; and

(c) Return all reproductions referred for consultation, including a complete copy of each document that should be declassified only in part, uniformly and conspicuously marked to leave no doubt about the status of the information and the authority for its continued

classification or its declassification.

Sec. 1260.62 What is the appeal process when a mandatory review request for White House originated information is denied?

(a) When the Deputy Archivist of the United States receives an appeal, he or she will review the decision to deny the information and consult with the appellate authorities in the agencies having primary subject matter interest in the information.

(b) NARA will notify the requester in writing of the determination and make available any additional information that has been declassified as a result of the requester's appeal.

(c) NARA will also notify the requester of the right to appeal denials of access to the Interagency Security Classification Appeals Panel, Attn: Mandatory Review Appeals, c/o Information Security Oversight Office, National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Room 503, Washington, DC 20408.

#### Subpart E--Reclassification

Sec. 1260.70 Can previously released Executive Branch information be reclassified or have its classification restored?

(a) Records that were properly declassified in accordance with EO 12958, as amended, (or predecessor orders) and that have been released may be temporarily closed and considered for reclassification at the request of an agency. Final action must be taken under the personal authority of the agency head or deputy agency head, who determines in writing within 20 workdays that the reclassification of the information is necessary in the interest of the national security. In addition, the information must be reasonably recoverable in accordance with section 1.7(c) of the Order and section 2001.13(a) of the Implementing Directive (32 CFR 2001.13(a)).

(b) Records that were not properly declassified in accordance with EO 12958, as amended, (or predecessor orders) remain classified. Upon notification, NARA will take administrative action to restore markings and controls, as appropriate. In the event that records have been released, they may be temporarily closed and their classification reviewed at the request of an agency. The agency must notify NARA of the results of the review within 30 days.

(c) Agencies must submit all requests in writing. If the urgency of the request precludes a written request, an authorized agency official may make a preliminary request by telephone and follow up with a written request within 5 working days. Requests concerning Executive Branch records must be addressed to the Assistant Archivist for Records Services--Washington, DC, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. Requests concerning information in Presidential libraries must be addressed to the Assistant Archivist for Presidential Libraries, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001.

(d) Any such written request must include all of the following:

(1) A description of the records or donated materials involved, identified with sufficient specificity to enable NARA to locate it with a reasonable amount of effort;

(2) An explanation as to why the records should be closed and

reviewed;

(3) A statement as to the authority for any classification or reclassification, to include a reference to the specific category in section 1.4 or 3.3(b) of E.O. 12958, as appropriate; and

(4) Any information the agency may have concerning any previous public disclosure of the information. NARA will assist by providing information.

Sec. 1260.72 Can previously released White House originated information be reclassified or have its classification restored?

An agency or an entity within the Executive Office of the President that solely advises and assists the President, may ask NARA to temporarily close, review, and possibly reclassify or restore the classification of White House originated information that has been declassified and previously released. The agency or other entity must follow the same procedures as a request for reclassification of Executive branch originated information in 36 CFR 1260.70.

Sec. 1260.74 What if NARA does not concur with an agency decision to reclassify or restore the classification of information that has been previously released?

(a) If NARA is concerned that relevant procedures and policies under EO 12958, as amended, or its Implementing Directives are not being properly implemented, the Archivist will promptly report such situations to the Director of ISOO.

(b) If, in the opinion of the Archivist, an agency's determination with respect to the classification status of records that have been previously released is improper, the Archivist, as an authorized holder, may challenge the classification status of the pertinent records in accordance with section 1.8 of EO 12958, as amended.

(c) NARA will direct any such challenge in writing to the agency with classification authority and jurisdiction over the information.

(d) If no response is provided by the agency within 120 days, NARA may forward the challenge directly to the ISCAP. NARA must forward the challenge within 60 days of the agency's failure to provide a response within the 120 day response period.

(e) If an agency appellate authority fails to provide NARA with a response to an appeal within 90 days of its receipt, NARA may forward the appeal directly to the ISCAP. NARA must forward the challenge within 60 days of the agency's failure to provide a response to an appeal within the 90 day response period.

(f) All records subject to classification challenges will remain classified pending final resolution of the challenge and, if necessary, any such appeals.

[[Page 14815]]

Dated: February 16, 2006.  
Allen Weinstein,  
Archivist of the United States.  
[FR Doc. 06-2866 Filed 3-23-06; 8:45 am]

BILLING CODE 7515-01-P