

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: August 10, 2011.

Joseph W. Lambert,

Director, Information Management Services.

[FR Doc. 2011-21574 Filed 9-22-11; 8:45 am]

BILLING CODE 6310-02-P

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1908

Mandatory Declassification Review

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 Mandatory Declassification Review (MDR) regulations that govern certain aspects of its processing of MDR requests. As a result of this review, the Agency has revised its MDR 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 Procedure Act for rules of agency procedure and interpretation.

DATES: Effective September 23, 2011.

FOR FURTHER INFORMATION CONTACT:

Joseph W. Lambert, (703) 613-1379.

SUPPLEMENTARY INFORMATION: Consistent with Executive Order 13526, the Central Intelligence Agency (CIA) has undertaken and completed a review of its public Mandatory Declassification Review (MDR) regulations that govern certain aspects of its processing of MDR requests. As a result of this review, the Agency has revised its MDR 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 Procedure Act, 5 U.S.C. 553(b)(3)(A) for rules of agency procedure and interpretation.

List of Subjects in 32 CFR Part 1908

Classified information, Mandatory declassification review.

Accordingly, the CIA is amending 32 CFR part 1908 as follows:

PART 1908—PUBLIC REQUESTS FOR MANDATORY DECLASSIFICATION REVIEW OF CLASSIFIED INFORMATION PURSUANT TO SEC. 3.5 OF EXECUTIVE ORDER 13526

■ 1. The authority citation for part 1908 is revised to read as follows:

Authority: Executive Order 13526 75 FR 707, 3 CFR 2010 Comp., p. 298-327 (or successor orders).

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

■ 3. Revise § 1908.01 to read as follows:

§ 1908.01 Authority and purpose.

(a) *Authority:* This part is issued under the authority of and in order to

implement section 3.5 of E.O. 13526 (or successor Orders); the CIA Information Act of 1984), as amended (50 U.S.C. 431; section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403); and section 6 of the CIA Act of 1949, as amended (5 U.S.C. 403g).

(b) *Purpose:* This part prescribes procedures, subject to limitations set forth below, for members of the public to request a declassification review of information classified under the Executive Order 13526 or predecessor Orders. Section 3.5 of Executive Order 13526 and these regulations are not intended to and do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, employees, or agents, or any other person.

■ 4. In § 1908.02, revise paragraphs (d) and (l), and add paragraph (m) to read as follows:

§ 1908.02 Definitions.

* * * * *

(d) *Coordinator* means the CIA Information and Privacy Coordinator who serves as the Agency manager of the information review and release program instituted under the mandatory declassification review provisions of Executive Order 13526;

* * * * *

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

(m) *Agency Release Panel (ARP)* 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 § 1908.04 as follows:

§ 1908.04 Suggestions and complaints.

The Agency welcomes suggestions, comments, or complaints with regard to its administration of the mandatory declassification review program established under Executive Order 13526. Members of the public shall address such communications to the CIA Information and Privacy Coordinator. The Agency will respond as determined feasible and appropriate under the circumstances.

■ 6. Revise § 1908.12 to read as follows:

§ 1908.12 Exceptions.

Mandatory Declassification Review requests will not be accepted from an individual who is not a citizen of the United States or an alien lawfully admitted for permanent residence, nor

from a foreign government entity or any representative thereof. Declassification review requests will not be accepted for documents required to be submitted for prepublication review or other administrative process pursuant to an approved nondisclosure agreement; for information that is the subject of pending litigation; nor for any document or material containing information contained within an operational file exempted from search and review, publication, and disclosure under the Freedom of Information Act. If the Agency has reviewed the requested information for declassification within the past two years, the Agency will not conduct another review, but the Coordinator will notify requester of this fact, the prior review decision, and of applicable appeal rights pursuant to section 3.5(e) of the Order.

■ 7. Revise § 1908.13 to read as follows:

§ 1908.13 Requirements as to form.

The request shall describe the document or material containing the information with sufficient specificity to enable the Agency to locate it with a reasonable amount of effort.

§ 1908.14 [Amended]

■ 8. Add § 1908.14 to read as follows:

§ 1908.14 Fees.

(a) *Form of payment.* Fees may be paid in cash, by a check drawn on or money order made payable to the Treasurer of the United States.

(b) *Reproduction fees.* Requesters submitting requests via NARA or the various Presidential libraries or making requests directly to this Agency shall be responsible for reproduction costs as follows: Fifty cents per page and \$10.00 per CD. There is a minimum fee of \$15.00 per request for reproductions.

(c) *Search and review fees.* Requesters making requests directly to this agency also shall be liable for search and review fees as follows.

(d) *Search fees.* Applicable fees will be due even if our search locates no responsive information or some or all of the responsive information must be withheld under applicable authority.

(e) *Computer searching.* (1) Clerical/Technical—\$20.00 per hour (or fraction thereof).

(2) Professional/Supervisory—\$40.00 per hour (or fraction thereof).

(3) Manager/Senior Professional—\$72.00 per hour (or fraction thereof).

(f) *Manual searching.* (1) Clerical/Technical—\$20.00 per hour (or fraction thereof).

(2) Professional/Supervisory—\$40.00 per hour (or fraction thereof).

(3) Manager/Senior Professional—\$72.00 per hour (or fraction thereof).

(g) *Document review.* (1) Professional/Supervisory—\$40.00 per hour (or fraction thereof).

(2) Manager/Senior Professional—\$72.00 per hour (or fraction thereof).

(3) CIA will not charge review fees for time spent resolving general legal or policy issues regarding the responsive information.

§ 1908.22 [Removed and Reserved]

■ 9. Remove and reserve § 1908.22.

■ 10. In § 1908.23, revise paragraph (b) to read as follows:

§ 1908.23 Determination by originator or interested party.

* * * * *

(b) *Required determinations:* These parties shall respond in writing to the Coordinator with a finding as to the classified status of the information, including the category of protected information as set forth in section 1.4 of the Order, and, if older than ten years, the basis for the extension of classification time under sections 1.5 and 3.3 of the Order. These parties shall also indicate whether withholding is otherwise authorized and warranted in accordance with sections 3.5(c) and 6.2(d) of the Order.

* * * * *

§ 1908.24 [Removed and Reserved]

■ 11. Remove and reserve § 1908.24.

■ 12. Revise § 1908.33 to read as follows:

§ 1908.33 Designation of authority to hear appeals.

(a) *Appeals:* Appeals of initial denial decisions under the Mandatory Declassification Request provisions of Executive Order 13526 shall be reviewed by the Agency Release Panel, which shall issue the final Agency decision.

(b) *Membership:* The Agency Release Panel (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 ARP.

(c) *Decisions:* 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. Any member of the ARP disagreeing with the results of a vote may appeal the decision in writing to

the Director, Information Management Services (D/IMS). The appeal shall set forth clearly and concisely the reasons D/IMS should reverse the ARP's decision. Upon receiving the written appeal, D/IMS shall have ten business days to affirm or reverse, in writing the ARP's decision and shall so notify the appellant. In the event of a disagreement with any declassification and release decision by D/IMS, Directorate heads may appeal to the Associate Deputy Director of CIA (ADD) for resolution. The final Agency decision shall reflect the vote of the ARP, unless changed by the D/IMS or the ADD.

§ 1908.35 [Removed and Reserved]

■ 13. Remove and reserve § 1908.35.

■ 14. Revise § 1908.36 to read as follows:

§ 1908.36 Notification of decision and right of further appeal.

The Executive Secretary of the Agency Release Panel shall promptly prepare and communicate the final Agency decision to the requester, NARA, or the particular Presidential Library. That correspondence shall include a notice, if applicable, that an appeal of the decision may be made to the Interagency Security Classification Appeals Panel (ISCAP) established pursuant to section 5.3 of the Order.

■ 15. Revise § 1908.41 to read as follows:

§ 1908.41 Right of Further Appeal.

A right of further appeal may be available to the Interagency Security Classification Appeals Panel established pursuant to section 5.3 of the Order. Action by that Panel will be the subject of rules to be promulgated by the Information Security Oversight Office.

Dated: August 10, 2011.

Joseph W. Lambert,
Director, Information Management Services.

[FR Doc. 2011-21572 Filed 9-22-11; 8:45 am]

BILLING CODE 6310-02-P

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1909

Access by Historical Researchers and Certain Former Government Personnel

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 regulations on access by historical researchers and certain former

government personnel. As a result of this review, the Agency has revised its access 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 Procedure Act for rules of agency procedure and interpretation.

DATES: Effective September 23, 2011.

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 regulations on access by historical researchers and certain former government personnel. As a result of this review, the Agency has revised its access 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 Procedure Act, 5 U.S.C. 553(b)(3)(A) for rules of agency procedure and interpretation.

List of Subjects in 32 CFR Part 1909

Access by historical researchers and certain former government personnel, Classified information.

Accordingly, the CIA is amending 32 CFR part 1909 as follows:

PART 1909—ACCESS BY HISTORICAL RESEARCHERS AND CERTAIN FORMER GOVERNMENT PERSONNEL PURSUANT TO SEC. 4.4 OF EXECUTIVE ORDER 13526

■ 1. The authority citation for part 1909 is revised to read as follows:

Authority: Executive Order 13526, 75 FR 707, 3 CFR 2010 Comp., p. 298-327 (or successor Orders).

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

■ 3. Revise § 1909.01 to read as follows:

§ 1909.01 Authority and purpose.

(a) *Authority.* This part is issued under the authority of and in order to implement section 4.4 of E.O. 13526 (or successor Orders); the CIA Information Act of 1984, as amended (50 U.S.C. 431); section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403); and section 6 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403g).