

outage of the bridge for testing purposes. Under the regular operating schedule required by 33 CFR 117.569(b), the bridge opens on signal, except between November 1 and March 31 the draw must open only if at least five hours advance notice is given.

The Route 675 Bridge across Pocomoke River, mile 15.6 at Pocomoke City, MD, has a vertical clearance in the closed position of three feet above mean high water. Under this temporary deviation, the engineering consulting firm has requested to maintain the bridge in the closed position to vessels beginning at 7 a.m. on January 19, 2012 until and including 5 p.m. on January 20, 2012, to allow for an electrical outage of the bridge for testing purposes.

Bridge opening data supplied by SHA and reviewed by the Coast Guard revealed that there were approximately five openings in January 2011.

The Coast Guard has coordinated the restrictions with the local users of the waterway and will inform other users through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation. There are no alternate routes for vessels transiting this section of the Pocomoke River and the drawbridge will be not able to open in the event of an emergency.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 14, 2011.

**Waverly W. Gregory, Jr.,**

*Bridge Program Manager, Fifth Coast Guard District.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG 2011-1047]

#### Safety Zone; Sacramento New Years Eve Fireworks Display, Sacramento, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the 1,000 foot safety zones during the

Sacramento New Years Eve Fireworks Display in the navigable waters of the Sacramento River during the dates and times noted below. This action is necessary to control vessel traffic and to ensure the safety of event participants and spectators. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

**DATES:** The regulations in 33 CFR 165.1191 will be enforced from 9 p.m. to 9:15 p.m. on December 31, 2011 and from 11:59 p.m. on December 31, 2011 to 12:15 a.m. on January 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Ensign William Hawn, U.S. Coast Guard, Waterways Safety Division; telephone (415) 399-7442, email *D11-PF-MarineEvents@uscg.mil*.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the Sacramento New Years Eve Fireworks Display safety zones in the navigable waters of the Sacramento River near positions 38°34'48.26" N, 121°30'38.52" W (NAD 83) and 38°34'49.84" N, 121°30'29.59" W (NAD 83). Upon the commencement of the first fireworks display, scheduled to take place from 9 p.m. to 9:15 p.m. on December 31, 2011, the safety zone applies to the navigable waters around the fireworks launch site near position 38°34'48.26" N, 121°30'38.52" W (NAD 83) within a radius of 1,000 feet. Upon the commencement of the second fireworks display, scheduled to take place at 11:59 p.m. on December 31, 2011 until 12:15 a.m. on January 1, 2012, the safety zone applies to the navigable waters around the fireworks launch sites near positions 38°34'48.26" N, 121°30'38.52" W (NAD 83) and 38°34'49.84" N, 121°30'29.59" W (NAD 83) within a radius of 1,000 feet.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order of direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: December 8, 2011.

**Cynthia L. Stowe,**

*Captain, U.S. Coast Guard, Captain of the Port San Francisco.*

[FR Doc. 2011-33372 Filed 12-28-11; 8:45 am]

BILLING CODE 9110-04-P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Part 1260

[FDMS NARA-11-0001]

RIN 3095-AB64

#### Declassification of National Security Information

**AGENCY:** National Archives and Records Administration.

**ACTION:** Final rule.

**SUMMARY:** The National Archives and Records Administration (NARA) is updating its regulations related to declassification of classified national security information in records transferred to NARA's legal custody. The rule incorporates changes resulting from issuance of Executive Order 13526, Classified National Security Information, and its Implementing Directive. 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 E.O. 13526. Executive Order 13526 also created the National Declassification Center (NDC) with a mission to align people, processes, and technologies to advance the declassification and public release of historically valuable permanent records while maintaining national security. This rule will affect members of the public and Federal agencies.

**DATES:** This rule is effective January 30, 2012.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Redman at (301) 837-1850; email: *marilyn.redman@nara.gov*.

**SUPPLEMENTARY INFORMATION:** On July 8, 2011, NARA published a proposed rule (76 FR 40296) for revisions to the regulations on declassification of national security information. These revisions were required by the issuance of Executive Order 13526, replacing Executive Order 12958, as amended. We received one formal comment from an individual on the proposed changes. This commenter identified three specific concerns. The first concern was of the adequacy of the definition of "Declassification" in Section 1260.2. Executive Order 13526 defines declassification of information in Section 6.1(m) of the Order and we have used the definition found in the Order in our regulation. We believe NARA's language for 36 CFR 1260 is consistent with the language of the Order.

The commenter's second concern was that Section 1260.28 of the proposed rule did not indicate that the three categories of nuclear weapons information are exempt from the requirements of E.O. 13526. Section 1260.28(b) specifically states that "Any record that contains RD, FRD, or TFNI shall be excluded from automatic declassification and referred by the primary reviewing agency to DOE using a completed SF 715." Additionally, the language in this section was vetted and approved by DOE.

The third comment suggested that agency responsibilities for mandatory declassification review (Section 1260.74) include a requirement for FOIA-type review. While a referral agency may provide advice to NARA on other possible restrictions, there is no requirement that it do so when responding to a mandatory declassification request. Moreover, it is NARA's responsibility to apply other restrictions in accordance with FOIA and other laws for accessioned Federal records and transferred Presidential records and papers, and communicate this to the requester.

This final rule is a significant regulatory action for the purpose of Executive Order 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 regulation does not have any federalism implications.

#### List of Subjects in 36 CFR Part 1260

Archives and records, Classified information.

For the reasons set forth in the preamble, NARA revises Subchapter D of Chapter XII of title 36, Code of Federal Regulations, to read as follows:

#### Subchapter D—Declassification

### PART 1260—DECLASSIFICATION OF NATIONAL SECURITY INFORMATION

#### Subpart A—General Information

Sec.

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- 1260.50 How are records at NARA reviewed as part of the automatic declassification process?
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- 1260.78 What is the appeal process when an MDR request for Executive Branch information in NARA's legal custody is denied in whole or in part?

#### Subpart G—Reclassification of Records Transferred to NARA

- 1260.80 What actions must NARA take when information in its physical and legal custody is reclassified after declassification under proper authority?
- 1260.82 What actions must NARA take with information in its physical and legal custody that has been made available to the public after declassification without proper authority?

**Authority:** 44 U.S.C. 2101 to 2118; 5 U.S.C. 552; E.O. 13526, 75 FR 707, 3 CFR, 2009 Comp., p. 298; Presidential Memorandum of December 29, 2009 "Implementation of the Executive Order, Classified National Security Information," 75 FR 733, 3 CFR, 2009 Comp., p. 412; 32 CFR Part 2001.

#### Subpart A—General Information

##### § 1260.1 What is the purpose of this part?

(a) This subchapter 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) Operation of the National Declassification Center,
- (2) Processing referrals to other agencies,
- (3) Facilitating systematic reviews of NARA holdings, and
- (4) Processing mandatory declassification 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.

(c) For the convenience of the user, the following table provides references between the sections contained in this part and the relevant sections of the Order and the Implementing Directive.

CFR section	Related section of E.O. 13526	Related section of Implementing Directive
1260.20 Who is responsible for the declassification of classified national security Executive Branch information that has been accessioned by NARA?	3.3, 3.3(d)(3), 3.6	
1260.22 Who is responsible for the declassification of classified national security White House originated information in NARA's holdings?	3.3(d)(3), 3.6	
1260.24 Who is responsible for declassification of foreign government information in NARA's holdings?	6.1(s)	
1260.28 Who is responsible for declassifying Restricted Data (as defined by the Atomic Energy Act of 1954, as amended), Formerly Restricted Data (as defined in 10 CFR 1045.3, and Transclassified Foreign Nuclear Information (as defined in 32 CFR 2001.24(i))?	.....	2001.24(i)
1260.34 What are the responsibilities of the NDC? .....	3.3, 3.3(d)(3), 3.4	
1260.36 What are agency responsibilities with the NDC? .....	3.3(d)(3)	
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1260.42 How does the NDC process referrals of Federal Records? .....	3.3(d)(3)(B)	
1260.46 How does the Department of Defense process referrals? .....	3.3	
1260.50 How are records at NARA reviewed as part of the automatic declassification process?	3.3	
1260.52 What are the procedures when agency personnel review records in NARA's legal and physical custody?	3.3	2001.30(p)
1260.56 What are NARA considerations when implementing automatic declassification?	3.3	
1260.72 What procedures does NARA follow when it receives a request for Executive Branch records under MDR?	3.6(a), 3.6(b)	2001.33
1260.74 What are agency responsibilities after receiving an MDR request forwarded by NARA?	3.5(c)	
1260.76 What are NARA's procedures after it has received the agency's declassification determinations?	.....	Appendix A
1260.78 What is the appeal process when an MDR request for Executive Branch information in NARA's legal custody is denied in whole or in part?	3.3	2001.30(p), 2001.33
1260.80 What actions must NARA take when information in its physical and legal custody is reclassified after declassification under proper authority?	.....	2001.13
1260.82 What actions must NARA take with information in its physical and legal custody that has been made available to the public after declassification without proper authority?	.....	2001.13

#### § 1260.2 What definitions apply to the regulations in this part?

*Classified national security information, or classified information,* means information that has been determined under Executive Order 13526 or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

*Declassification* means the authorized change in the status of information from classified information to unclassified information.

*Equity* refers to information:

- (1) Originally classified by or under the control of an agency;
- (2) In the possession of the receiving agency in the event of transfer of function; or
- (3) In the possession of a successor agency for an agency that has ceased to exist.

*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.

*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. For purposes of automatic declassification, integral file blocks shall contain only records dated within 10 years of the oldest record in the file block.

*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 Executive Order 13526.

*Records* means the records of an agency and Presidential materials or Presidential records, as those terms are defined in title 44, United States Code, including those created or maintained by a government contractor, licensee, certificate holder, or grantee that are subject to the sponsoring agency's

control under the terms of the contract, license, certificate, or grant.

*Referral* means that information in an agency's records that was originated by or is of interest to another agency is sent to that agency for a determination of its classification status.

*Systematic declassification review* means the review for declassification of classified information, including previously exempted 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.

#### § 1260.4 What NARA holdings are covered by this part?

The NARA holdings covered by this part are records legally transferred to NARA, including Federal records, 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, 44 U.S.C. 2111.

**Subpart B—Responsibilities****§ 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 of section 3.3 of the Order on automatic declassification, the originating agency is responsible for declassification of its information and identifying equity holders.

(b) An agency may delegate declassification authority to NARA.

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

(d) NARA is responsible for the declassification of records in its legal custody of defunct agencies that have no successor. NARA will consult with agencies having an equity in the records before making declassification determinations in accordance with sections 3.3(d)(3) and 3.6 of the Order.

**§ 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 and Vice 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 equity in the records before making declassification determinations in accordance with sections 3.3(d)(3) and 3.6 of Executive Order 13526.

**§ 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, as defined in section 6.1(s) of the Order, in its holdings and will consult with the agencies having equity in the records before making declassification determinations.

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

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

**§ 1260.28 Who is responsible for declassifying Restricted Data, Formerly Restricted Data, and Transclassified Foreign Nuclear Information?**

(a) Only designated officials within the Department of Energy (DOE) may declassify Restricted Data (RD) (*as defined by the Atomic Energy Act of 1954, as amended*). The declassification of Formerly Restricted Data (FRD) (*as defined in 10 CFR 1045.3*) may only be performed after designated officials within DOE, in conjunction with designated officials within DOD, have determined that the FRD marking may be removed. Declassification of Transclassified Foreign Nuclear Information (TFNI) (*as defined in 32 CFR 2001.24(i)*) may be performed only by designated officials within DOE.

(b) Any record that contains RD, FRD, or TFNI shall be excluded from automatic declassification and referred by the primary reviewing agency to DOE using a completed SF 715 to communicate both the referral action and the actions taken on the equities of the primary reviewing agency. Any record identified by the primary reviewing agency as potentially containing RD, FRD, or TFNI shall be referred to DOE using a completed SF 715.

**Subpart C—The National Declassification Center (NDC)****§ 1260.30 What is the NDC?**

The National Declassification Center (NDC) is established within NARA to streamline declassification processes, facilitate quality-assurance measures, and implement standardized training for declassification of records determined to have permanent historical value.

**§ 1260.32 How is the NDC administered?**

(a) The NDC is administered by a Director, who shall be appointed by the Archivist of the United States, in consultation with the Secretaries of State, Defense, Energy, and Homeland

Security, the Attorney General, and the Director of National Intelligence.

(b) The Archivist, in consultation with the representatives of the participants in the NDC and after receiving comments from the general public, shall develop priorities for declassification activities under the responsibility of the NDC that are based upon researcher interest and likelihood of declassification.

**§ 1260.34 What are the responsibilities of the NDC?**

The NDC shall coordinate the following activities:

- (a) Referrals, to include:
  - (1) Timely and appropriate processing of all referrals in accordance with section 3.3(d)(3) of Executive Order 13526; and
  - (2) The exchange among agencies of detailed declassification guidance to enable referrals as identified in paragraph (a)(1) of this section.
- (b) General interagency declassification activities as necessary to fulfill the requirements of sections 3.3 and 3.4 of the Order;
- (c) The development of effective, transparent, standard declassification work processes, training, and quality assurance measures;
- (d) The development of solutions to declassifying information contained in electronic records and special media; and planning for solutions for declassifying information as new technologies emerge;
- (e) The documentation and publication of declassification review decisions; and support of NDC declassification responsibilities by linking and using existing agency databases; and
- (f) Storage, and related services, on a reimbursable basis, for Federal records containing classified national security information.

**§ 1260.36 What are agency responsibilities with the NDC?**

Agency heads shall fully cooperate with the Archivist and the activities of the NDC and provide the following resources for NDC operations:

- (a) Adequate and current declassification guidelines to process referrals in accordance with section 3.3(d)(3) of the Order and as indicated in § 1260.54(a); and
- (b) Assignment of agency personnel to the NDC, at the request of the Archivist, with delegated authority by the agency head to review and exempt or declassify information originated by that agency found in records accessioned into the National Archives of the United States; and

(c) Coordination with the NDC of the establishment of any agency centralized facilities and internal operations to conduct declassification reviews to ensure that such agencies conduct internal declassification reviews of records of permanent historical value.

**§ 1260.38 How does the NDC ensure the quality of declassification reviews?**

An interagency team of experienced declassification reviewers, established by NDC, conducts a sampling of reviewed records according to a sampling regime approved by a separate interagency program management team. The interagency team will verify that each series of agency reviewed records complies with the requirements of the Special Historical Records Review Plan (Supplement) dated March 3, 2000 (DOE–NARA Plan), pursuant to the requirements of Public Law 105–261 (112 Stat. 2259) and Public Law No. 106–65 (113 Stat. 938). Record series that cannot be verified to have been reviewed in accordance with the DOE–NARA Plan will not proceed through the NDC verification process until verification is received by the NDC. The DOE will participate on the interagency team to conduct the quality control reviews required by the DOE–NARA Plan in accordance with priorities established by the NDC.

**§ 1260.40 What types of referrals will the NDC process?**

The NDC processes referrals of both Federal records and Presidential records. Referrals identified in accessioned Federal records will be processed by the Interagency Referral Center (IRC); referrals identified in records maintained by the Presidential Libraries will be processed by the Remote Archives Capture (RAC) Project. (The RAC Project is a collaborative program to facilitate the declassification review of classified records in the Presidential Libraries in accordance with section 3.3 of the Order. In this project, classified Presidential records at the various Presidential Libraries are scanned and brought to the Washington, DC, metropolitan area in electronic form for review by equity-holding agencies.)

**§ 1260.42 How does the NDC process referrals of Federal Records?**

(a) All referrals are processed through the IRC.

(b) Agencies will have one year from the time they receive formal notification of referrals by the NDC to review their equity in the records. If an agency does not complete its review within one year of formal notification, its information will be automatically declassified in accordance with section 3.3(d)(3)(B) of

the Order unless the information has been properly exempted by an equity holding agency under section 3.3 of the Order.

(c) Once notified, the agencies will coordinate their review with the NDC so the NDC can properly manage the workflow of the IRC.

**§ 1260.44 How does the NDC process RAC Project referrals?**

(a) The Presidential Libraries use the RAC Project to process referrals.

(b) Agencies will be notified of RAC Project referrals according to an annual prioritization schedule via the NDC.

(c) The RAC Project identifies the primary agency with equity in the record.

(d) The primary agency will have up to one year from the time it is notified of their referral to complete the review of its equity and identify all other agencies (“secondary agencies”) with an interest in the record. If an agency does not complete its review in one year, its equity will be automatically declassified.

(e) Secondary agencies receiving notification of their referrals through the RAC Project will have up to one year from the date of notification to complete their review.

**§ 1260.46 How does the Department of Defense process referrals?**

(a) The Department of Defense (DOD) established the Joint Referral Center (JRC) to review DOD agencies’ records and all DOD equities within those records for declassification in accordance with section 3.3 of the Order.

(b) The JRC shall include sufficient quality assurance review policies that are in accordance with policies at the NDC and will provide the NDC with sufficient information on the results of these reviews to facilitate non-DOD agency referral processing and final archival processing for public release.

(c) NARA may loan accessioned records to the JRC for this purpose.

**Subpart D—Automatic Declassification**

**§ 1260.50 How are records at NARA reviewed as part of the automatic declassification process?**

(a) Consistent with the requirements of section 3.3 of Executive Order 13526 on automatic declassification, NARA staff may review for declassification records for which the originating agencies have provided written authority to apply their approved declassification guides. The originating agency must review records for which this authority has not been provided.

(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 Libraries may be referred to agencies holding equity in the records through the RAC Project.

**§ 1260.52 What are the procedures when agency personnel review records in NARA’s legal and physical custody?**

(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) Use the Standard Form (SF) 715 and follow NARA procedures for identifying and documenting records that require exemption, referral, or exclusion in accordance with section 3.3 of the Order or 32 CFR 2001.30(p); 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.

(4) Provide NARA with information, as requested by the Archivist and/or NDC Director, on their review so as to facilitate the processing of referrals and archival processing.

**§ 1260.54 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 use of any equipment such as scanners, copiers, or cameras to ensure that they do not pose an unacceptable risk of damage to archival materials.

**§ 1260.56 What are NARA considerations when implementing automatic declassification?**

(a) *Integral File Blocks.* Classified records within an integral file block that have not been reviewed and properly exempted from declassification, or referred to an equity holder, 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), and (d) of this section. For the purposes of automatic declassification, integral file blocks shall contain only records dated within 10 years of the oldest record in the block. The records of each Presidential Administration will be treated as an integral file block and will be scanned for declassification review through the RAC Project.

(b) *Special media records.* After consultation with the Director of the National Declassification Center and before the records are subject to automatic declassification, an agency head or senior agency official may delay automatic declassification for up to five additional years for classified information contained in media that make a review for possible declassification exemptions more difficult or costly. NARA, through the NDC, will coordinate processing of referrals made in these special media records as part of its overall prioritization strategy.

(c) *Referrals.* The IRC at the NDC will provide official notification for Federal records, while the RAC Project will provide formal notification for Presidential records. For agencies which fail to act on their referrals after formal notification by the IRC or the RAC Project, NARA will automatically declassify their information in accordance with section 3.3(d)(3)(B) of the Order.

(d) *Additional referrals.* Agencies will identify referrals in accordance with section 3.3(d)(3) of the Order. NARA will delay automatic declassification for

up to 1 year for classified records that have been identified by the originating agency or by NARA as having classified information that requires referral that were not identified by the primary reviewing agency.

(e) *Other circumstances.* Information from another agency that has not been properly identified and referred is not subject to automatic declassification. When NARA identifies information, in accordance with section 3.3 of the Order, that agency will have up to 1 year from the date of formal notification to review its information for declassification.

(f) *Discovery of information inadvertently not reviewed.* When NARA identifies a file series or collection in its 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 the Information Security Oversight Office (ISOO) and to the responsible agency head or senior agency official within 90 days of discovery. ISOO, the responsible agency, and NARA will consult on a delay of up to three years to review the records.

**Subpart E—Systematic Declassification**

**§ 1260.60 How does the NDC facilitate systematic review of records exempted at the individual record or file series level?**

(a) NARA, through the NDC, follows the procedures established in § 1260.52 above regarding agency access for review of exempt file series.

(b) NARA, through the NDC, will establish a prioritization schedule for review of exempted individual Federal records. This schedule will take into account upcoming exemption expiration, researcher interest and likelihood of declassification. This schedule will be included as part of the NDC annual work plan.

(c) The Presidential Libraries will work directly with agencies to facilitate the review of records exempted at the file series level.

(d) The Presidential Libraries, through the NDC, will establish a prioritization schedule for review of previously exempted classified materials in the Presidential Library system. These materials will be referred to agencies holding equity in the records via the RAC Project.

**Subpart F—Mandatory Declassification Review (MDR)**

**§ 1260.70 How does a researcher submit an MDR request?**

(a) For Federal records in NARA's physical and legal custody, requests for MDR should be submitted to: National Archives at College Park, ANDC (Attn: MDR Staff), 8601 Adelphi Road, Room 2600, College Park MD 20740 or *specialaccess\_foia@nara.gov*;

(b) For Presidential records, Nixon Presidential materials, or donated presidential materials in the custody of the Presidential Libraries, MDR requests should be submitted to the Presidential Library with physical and legal custody of the records;

(c) For Congressional records in NARA's custody, MDR requests should be submitted to: The Center for Legislative Archives, 700 Pennsylvania Ave. NW., Washington, DC 20408 or *legislative.archives@nara.gov*.

(d) For all records in NARA's physical and legal custody, MDR requests must describe the record or material with sufficient specificity to enable NARA to locate it with a reasonable amount of effort. If NARA is unable to locate the record or material, or requires additional information, NARA will inform the requester.

**§ 1260.72 What procedures does NARA follow when it receives a request for Executive Branch records under MDR?**

(a) NARA will review the requested records and determine if they have already been released. If not, NARA will refer copies of the records to the originating agency and to agencies that may have an interest or activity with respect to the classified 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.

(b) 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 interest in or activity with respect to the classified information.

(c) If the document or information has been reviewed for declassification within the past 2 years, NARA may opt not to conduct a second review and may instead inform the requester of this fact and of the prior review decision and advise the requester of appeal rights in accordance with 32 CFR 2001.33.

(d) If NARA determines that a requester has submitted a request for the

same information under both MDR and the Freedom of Information Act (FOIA), as amended, NARA will notify the requester that he/she is required to elect one process or the other. If the requester fails to elect one or the other, the request will be treated under the FOIA, unless the requested information or materials are subject only to mandatory review.

(e) 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 and advise the requester of available appeal rights. NARA may also inform the requester if part or all of the requested information is referred to other agencies for declassification review in accordance with section 3.6(a) and (b) of the Executive Order.

(f) If NARA fails to provide the requester with a final 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).

**§ 1260.74 What are agency responsibilities after receiving an MDR request forwarded by NARA?**

(a) The agency receiving the referral will promptly process and review the referral for declassification and public release on a line-by-line basis in accordance with section 3.5(c) of the Order and communicate its review decisions to NARA.

(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 to which NARA has not already sent a referral for review.

(c) The agency must return to NARA a complete copy of each referred document with the agency determination clearly stated to leave no doubt about the status of the information and the authority for its continued classification or its declassification.

**§ 1260.76 What are NARA's procedures after it has received the agency's declassifications determination?**

(a) 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 so marked.

(b) NARA will notify the requester of the results of its review and make available 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 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. Additional information on appeals is located in 36 CFR Part 1264 and in Appendix A to 32 CFR Part 2001 (Article VIII).

**§ 1260.78 What is the appeal process when an MDR request for Executive Branch information in NARA's legal custody is denied in whole or in part?**

(a) NARA shall respond to the requester in writing that her/his mandatory declassification review request was denied in full or in part and the rationale for the denial by using the appropriate category in either section 1.4 of the Order for information that is less than 25 years old, or section 3.3 of the Order for information that is older than 25 years, or 32 CFR 2001.30(p) for information governed by the Atomic Energy Act of 1954, as amended, or the National Security Act of 1947, as amended. NARA will send the requester 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. If a final decision on the appeal is not made within 60 working days of the date of the appeal, the requester may appeal to the Interagency Security Classification Appeals Panel (ISCAP).

(b) NARA will process all appeals in accordance with 32 CFR 2001.33(a)(2)(iii). NARA will inform all agencies with equity interests in the denied information. Those agencies will assist NARA in the appellate process and provide NARA with final declassification review decisions in a timely manner and consistent with 32 CFR 2001.33(a)(2)(iii).

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

(d) The pertinent NARA office or Presidential Library will coordinate the potential release of information

declassified by the Interagency Security Classification Appeals Panel (ISCAP).

**Subpart G—Reclassification of Records Transferred to NARA**

**§ 1260.80 What actions must NARA take when information in its physical and legal custody is reclassified after declassification under proper authority?**

(a) When information in the physical and legal custody of NARA that has been available for public use following declassification under proper authority is proposed for reclassification in accordance with 32 CFR 2001.13(b)(1), NARA shall take the following actions:

(1) The agency head making the determination to reclassify the information shall notify the Archivist of the potential reclassification in writing,

(2) The Archivist shall suspend public access pending approval or disapproval by the Director of the Information Security Oversight Office of the reclassification request, and

(3) The Director of the Information Oversight Office shall normally make a decision on the validity of the reclassification request within 30 days, and

(4) The decision of the Director of ISOO may be appealed by the Archivist or the agency head to the President through the National Security Advisor.

(5) Access shall remain suspended pending a prompt decision on the appeal.

(b) [Reserved]

**§ 1260.82 What actions must NARA take with information in its physical and legal custody that has been made available to the public after declassification without proper authority?**

(a) When information in the physical and legal custody of NARA has been made available for public use following declassification without proper authority and needs to have its original classification markings restored, the original classification authority shall notify the Archivist in writing in accordance with 32 CFR 2001.13(a)(1).

(b) If the Archivist does not agree with the reclassification decision and the information is more than 25 years old, the information will be temporarily withdrawn from public access and the Archivist will appeal the agency decision to the Director of ISOO, who will make a final decision in accordance with 32 CFR 2001.13(a)(1). The decision of the Director of ISOO may be appealed by the Archivist or the agency head to the President through the National Security Advisor.

(c) Information about records that have been reclassified or have had their classification restored as described in



§§ 1260.80 and 1260.82 will be made available quarterly through the NARA Web site, <http://www.archives.gov/about/plans-reports/withdrawn/>. Information will include the responsible agency, NARA location, date withdrawn, number of records, and number of pages.

Dated: December 14, 2011.

David S. Ferriero,

Archivist of the United States.

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

RIN 2900-AO09

#### Extension of Statutory Period for Compensation for Certain Disabilities Due to Undiagnosed Illnesses and Medically Unexplained Chronic Multi-Symptom Illnesses

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Interim final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is issuing this interim final rule to amend its adjudication regulation regarding compensation for disabilities suffered by veterans who served in the Southwest Asia Theater of Operations during the Persian Gulf War. This amendment is necessary to extend the period during which disabilities associated with undiagnosed illnesses and medically unexplained chronic multi-symptom illnesses must become manifest in order for a veteran to be eligible for compensation.

**DATES:** *Effective Date:* This interim final rule is effective *December 29, 2011*. Comments must be received by VA on or before February 27, 2012.

**ADDRESSES:** Written comments may be submitted through [www.Regulations.gov](http://www.Regulations.gov); by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. (This is not a toll-free number). Comments should indicate that they are submitted in response to “RIN 2900-AO09—Extension of Statutory Period for Compensation for Certain Disabilities Due to Undiagnosed Illnesses and Medically Unexplained Chronic Multi-Symptom Illnesses.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the

hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number). In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at [www.Regulations.gov](http://www.Regulations.gov).

#### FOR FURTHER INFORMATION CONTACT:

Nancy Copeland, Consultant, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461-9428. (This is not a toll-free number.)

#### SUPPLEMENTARY INFORMATION:

In response to the needs and concerns of veterans who served in the Southwest Asia theater of operations during the Persian Gulf War, Congress enacted the Persian Gulf War Veterans' Benefits Act, Title I of the Veterans' Benefits Improvement Act of 1994, Public Law 103-446, which was codified at 38 U.S.C. 1117. This law provided authority for the Secretary of Veterans Affairs (Secretary) to compensate Gulf War veterans with a chronic disability resulting from an undiagnosed illness that became manifest either during service on active duty in the Southwest Asia theater of operations during the Persian Gulf War or to a degree of ten percent or more disabling during a presumptive period determined by the Secretary.

Public Law 103-446 directed the Secretary to prescribe by regulation the period of time, following service in the Southwest Asia theater of operations, determined to be appropriate for the manifestation of an illness warranting payment of compensation. It further directed that the Secretary's determination of a presumptive period be made only following a review of any credible medical or scientific evidence and the historical treatment afforded disabilities for which manifestation periods have been established, taking into account other pertinent circumstances regarding the experiences of veterans of the Persian Gulf War.

To implement 38 U.S.C. 1117, VA published a final rule to add 38 CFR 3.317, which established the framework for the Secretary to pay compensation under the authority granted by the Persian Gulf War Veterans' Benefits Act. See 60 FR 6660, February 3, 1995. As part of that rulemaking, VA established a 2 year, post-Gulf War service presumptive period based primarily on the historical treatment of disabilities for which manifestation periods have been established and pertinent facts known regarding service in the

Southwest Asia theater of operations during the Persian Gulf War. VA determined that there was little or no scientific or medical evidence, at that time, useful in determining an appropriate presumptive period for undiagnosed illnesses.

Due to the continuing lack of medical and scientific evidence about the nature and cause of the illnesses suffered by Gulf War veterans and the inadequacy of a designated presumptive period for undiagnosed illnesses, the Secretary established December 31, 2001, as the date by which an undiagnosed illness must become manifest for purposes of claims based on service in the Southwest Asia theater of operations during the Persian Gulf War. In 2001, VA further extended the period from December 31, 2001, to December 31, 2006.

In December 2001, section 202(a) of Public Law 107-103 amended 38 U.S.C. 1117 by revising the term “chronic disability” to include the following (or any combination of the following): (a) An undiagnosed illness; (b) a medically unexplained chronic multi-symptom illness (such as chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome) that is defined by a cluster of signs and symptoms; or (c) any diagnosed illness that the Secretary determines warrants a presumption of service connection. The revised term “qualifying chronic disability,” has broadened the scope of those health outcomes the Secretary may include under the presumption of service connection. Under 38 U.S.C. 1117, a chronic disability must still occur during service in the Southwest Asia theater of operations during the Persian Gulf War, or to a degree of ten percent or more disabling during the prescribed presumptive period following such service. VA amended 38 CFR 3.317 to reflect these changes. See 68 FR 34539, June 10, 2003.

As required by Public Law 105-277, the National Academy of Sciences (NAS) conducts ongoing review, evaluation, and summarization of the scientific and medical literature for peer review regarding the possible association between service in the Southwest Asia theater of operations and long-term adverse health effects. Due to the inconclusive nature of the scientific and medical evidence concerning the manifestation period for the subject illnesses, in December 2007, VA published a final rule to further extend the manifestation period from December 31, 2006 (previously extended), to December 31, 2011. See 72 FR 68507-01. Additionally, on October 13, 2010, Congress enacted section 806