

with this section. The declassifying agency is the agency that initially received or classified the information. When foreign government information is being considered for declassification, the declassifying agency shall determine whether the information is subject to a treaty or international agreement that would prevent its declassification at that time. The declassifying agency or the Department of State, as appropriate, may consult with the foreign government(s) prior to declassification.

(c) *Cryptologic and intelligence information.* Mandatory declassification review requests for cryptologic information and information concerning intelligence activities (including special activities) or intelligence sources or methods shall be processed solely in accordance with special procedures issued by the Secretary of Defense and the Director of Central Intelligence, respectively.

(d) *Fees.* In responding to mandatory declassification review requests for classified records, agency heads may charge fees in accordance with section 9701 of title 31, United States Code.

(e) *Assistance to the Department of State.* Heads of agencies should assist the Department of State in its preparation of the Foreign Relations of the United States (FRUS) series by facilitating access to appropriate classified materials in their custody and by expediting declassification review of documents proposed for inclusion in the FRUS.

(f) *Requests filed under mandatory declassification review and the Freedom of Information Act.* When a requester submits a request both under mandatory review and the Freedom of Information Act (FOIA), the agency shall require the requester to elect one process or the other. If the requester fails to elect one or the other, the request will be treated as a FOIA request unless the requested materials are subject only to mandatory review.

(g) *FOIA and Privacy Act requests.* Agency heads shall process requests for declassification that are submitted under the provisions of the FOIA, as amended, or the Privacy Act of 1974, in accordance with the provisions of those Acts.

(h) *Redaction standard.* Agencies shall redact documents that are the subject of an access demand unless the overall meaning or informational value of the document is clearly distorted by redaction.

§ 2001.34 Referrals [3.3, 3.6].

(a) *Approaches to declassification.* The exchange of information between agencies and the final disposition of

documents are affected by differences in the approaches to declassification. To facilitate this process, the Information Security Oversight Office, in coordination with the National Archives and Records Administration and the other concerned agencies, shall standardize the referral process, including the development of standard forms. Agencies conducting pass/fail reviews may refer documents to agencies that redact. Actions taken by the sender and the recipient may differ as noted below:

(1) When a referral is from a pass/fail agency to a pass/fail agency, both agencies conduct a pass/fail review and annotate the classification or declassification decisions in accordance with NARA guidelines. The receiving agency should also notify the referring agency that the review has been completed.

(2) When a referral is from a pass/fail agency to a redaction agency, the redaction agency is only required to conduct pass/fail reviews of documents referred by a pass/fail agency. If the redaction agency wishes to redact the document, it must do so on a copy of the referred document, then file the redacted version with the original. The redaction agency should also notify the pass/fail referring agency that the review has been completed.

(3) Referrals from redaction agencies to pass/fail agencies will be in the form of document copies. In the course of review the pass/fail agency may either pass or fail the document or its equities. The pass/fail agency may review and redact failed documents when practicable.

(4) Referrals between redaction agencies may result in redaction of any exemptible equities.

(b) *Referral decisions.* When agencies review documents or folders only to the point at which exemptible information is identified, they must take one of the following actions to protect any other unidentified equities that may be in the unreviewed portions of the document:

(1) Complete a review of the document or folder to identify other agency equities and notify those agencies; or

(2) Exempt the document or folder and assign a Date/Event for automatic declassification, before which time they must provide timely notification to any equity agencies. Agencies reviewing a previously exempted document or folder may apply a different exemption and new Date/Event for automatic declassification based upon the content of previously unreviewed equities.

(c) *Unmarked or improperly marked documents.* Agencies that find other

agency information in unmarked or improperly marked documents may apply a different exemption and new Date/Event for automatic declassification based upon the content of previously unreviewed equities.

(d) *Means of Referral.* The reviewing agency must communicate referrals to equity agencies. They may use either of the methods below:

(1) Full text referral. Agencies will make referrals in a format mutually agreed to by the referring and receiving agencies. Each referral request will clearly identify the referring agency and may identify the sections or areas of the document containing the receiving agency's equities and the requested action; or

(2) Tab and notify.

(i) Agencies will use NARA-approved tabs and will clearly indicate on them the agency or agencies having equity in the document(s) held within the tabs. Successive documents with identical equity(ies) may be grouped within a single tab. Documents with differing equities, or non-successive documents, must be tabbed individually. In general, document order may not be changed to facilitate tabbing. In cases where there are so many tabbed documents in a box that tabbing documents individually would seriously overfill the box, the reviewer may group documents under a single tab for each agency equity at the back of each file folder, or back of the box if there is no file folder. If this becomes necessary, the reviewer shall prepare a folder/document list or consult with NARA so that original order can be restored during archival processing.

(ii) Agency notification must include, at a minimum, the following information: the approximate volume of equity, the highest classification of documents, the exact location (to box level) of the documents so marked, and instructions related to access to the boxes containing the documents.

(iii) Agencies will acknowledge receipt of referral notifications. They should notify the agency that placed the tabs that the review is complete. Any additional equities noted in the review must be annotated on the tab and brought to the attention of the agency that tabbed the document so the tabbing agency can notify those newly identified agencies.

(iv) Equity Notification Database. Agencies may also use an electronic notification database as a means of notification. Use of such a database, when available, will constitute referral and acknowledgement of referrals received under the Order.