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DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4a

Classification, De-Classification, and Public Availability of National Security Information

[Docket No. 170329327-88116-01]

**RIN** 0605-AA41

**AGENCY:** Office of Security, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rulemaking updates and clarifies the Secretary of Commerce’s delegation of authority, consistent with current practice, for implementation of the executive order “Classified National Security Information,” as well as for designations of “Original Classification Authorities,” prohibitions of further delegation, the designation of classification levels and durations of information classification, the process for mandatory reviews of information subject to declassification, and the process and conditions for allowing access to Department of Commerce classified information by individuals outside of the Government.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Jason Groves, Information and Personnel Security Division, Office of Security, United States Department of Commerce, Washington, D.C. 20230, (202) 482-2685.

**SUPPLEMENTARY INFORMATION:** Part 4a of title 15 of the Code of Federal Regulation establishes responsibility within the Department of Commerce for the classification,

declassification, and public availability of national security information in accordance with applicable executive orders. Sections 4a.1, 4a.2, 4a.3 and 4a.5 of part 4a reference Executive Order 12958 (E.O. 12958) of April 17, 1995 (60 FR 19825; April 20, 1995). However, E.O. 12958 was revoked and replaced by Executive Order 13526 (E.O. 13526) on December 29, 2009 (75 FR 707; January 5, 2010) (See also, correction of signature date at 75 FR 1013; January 8, 2010). This final rule updates and clarifies part 4a by deleting all outdated references to E.O. 12958, and, instead, referring to the requirements of E.O. 13526. In addition, section 4a.2 lists the Deputy Assistant Secretary for Security as the position designated by the Secretary of Commerce as being responsible for implementing the executive order and part 4a. However, the position of Deputy Assistant Secretary no longer exists, having been replaced by a Director for Security. The Director for Security, a member of the Senior Executive Service, is now responsible for these duties. Therefore, this rule also updates part 4a by removing all references to “Deputy Assistant Secretary” and instead, referring to the “Director for Security” throughout.

E.O. 13526. E.O. 12958, which was issued by President Clinton in 1995, was the first post-Cold War executive order to protect information critical to the Nation’s security by prescribing a uniform system for classifying, safeguarding, and declassifying national security information within the Executive Branch. It also provided for automatic declassification for information determined to have permanent historical value. E.O. 13526, which was issued by President Obama in 2009, was generally consistent with the previous executive order, but it included additional procedural and systemic changes to reinforce the concept of openness in government by further promoting the declassification and public access to information as soon as national security considerations permit. Among other things, E.O. 13526 established within the National

Archives and Records Administration a National Declassification Center to streamline the declassification process, facilitate quality-assurance measures, and implement standardized training regarding the declassification of records determined to have permanent historical value. In addition to the updates noted above, this final rule makes changes to part 4a to add language consistent with requirements set forth in E.O. 13526.

### *Classification*

This final rule has been determined to be not significant for the purposes of review under Executive Order 12866. Prior notice and an opportunity for public comment are not necessary, as they are not required by the Administrative Procedure Act (APA) for rules concerning agency organization, procedure, or practice (5 U.S.C. 553(b)(A)). The Department finds good cause to waive the 30-day delay in the date of effectiveness because a 30-day delay is unnecessary (5 U.S.C. 553(d)(3)). This final rule merely updates the regulations to reflect the current position title and the requirements of the current, applicable executive order. The changes in this final rule are consistent with existing policies and procedures. Because notice and opportunity for comment are not required pursuant to the APA or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. Therefore, a regulatory flexibility analysis is not required, and none has been prepared.

### **List of Subjects in 15 CFR Part 4a**

Classified information.

Dated: April 9, 2020

Michael Harman  
Assistant Director for Security

For the reasons stated in the preamble, 15 CFR part 4a is amended as follows:

**PART 4a—CLASSIFICATION, DECLASSIFICATION, AND PUBLIC AVAILABILITY  
OF NATIONAL SECURITY INFORMATION**

1. The authority citation for part 4a is revised to read as follows:

**Authority:** E.O. 13526; 75 FR 707, January 5, 2010 (as corrected at 75 FR 1013, January 8, 2010)

2. Revise § 4a.1 to read as follows:

**§ 4a.1 General.**

Executive Order 13526 provides the only basis for classifying information within the Department of Commerce (Department), except as provided in the Atomic Energy Act of 1954, as amended. The Department's policy is to make information concerning its activities available to the public, consistent with the need to protect the national defense and foreign relations of the United States. Accordingly, security classification shall be applied only to protect the national security.

3. Revise § 4a.2 to read as follows:

**§ 4a.2 Director for Security.**

The Director for Security is responsible for implementing and ensuring compliance with E.O. 13526 and this part.

4. Revise § 4a.3 to read as follows:

**§ 4a.3 Classification levels.**

Information may be classified as national security information by a designated original classifier of the Department if it is determined the information concerns one or more of the categories described in section 1.4 of E.O. 13526. The levels established in section 1.2 of E.O. 13526 (Top Secret, Secret, and Confidential) are the only terms that may be applied to national security

information. Except as provided by statute, no other terms shall be used within the Department for the three classification levels.

5. Revise § 4a.4 to read as follows:

**§ 4a.4 Classification authority.**

(a) Authority to originally classify information as Secret or Confidential may be exercised only by the Secretary of Commerce and by officials to whom such authority is specifically delegated. No official of the Department is authorized to originally classify information as Top Secret.

(b) In accordance with section 1.3(c)(1) of E.O. 13526, delegations of original classification authority shall be limited to the minimum required to administer E.O. 13526. The Secretary of Commerce shall ensure that designated subordinate officials have a demonstrable and continuing need to exercise delegated original classification authority.

(c) In accordance with section 1.3(c)(4) of E.O. 13526, each delegation of original classification authority shall be in writing and the authority shall not be redelegated except as provided in E.O. 13526.

(d) In accordance with section 1.3(c)(4) of E.O. 13526, each delegation shall identify the official by name or position.

(e) In accordance with section 1.3(c)(5) of E.O. 13526, delegations of original classification authority shall be reported or made available by name or position to the Director of the Information Security Oversight Office in the National Archives and Records Administration.

(f) In accordance with section 1.3(d) of E.O. 13526, all original classification authorities and their designates shall receive training in proper classification (including the avoidance of over-classification) and declassification as provided in E.O. 13526 and its implementing directives at least once a calendar year.

6. Revise § 4a.5 to read as follows:

**§ 4a.5 Duration of classification.**

(a) Information shall remain classified no longer than ten years from the date of its original classification, unless, in accordance with section 1.5(b) of E.O. 13526, the original classification authority otherwise determines that the sensitivity of the information requires that it be marked for declassification for up to 25 years from the date of the original decision.

(b) For Department of Commerce originally classified information marked for an indefinite duration which contains incomplete declassification instructions, or lacks them entirely:

(1) the information shall be declassified in accordance with E.O. 13526 as soon as it no longer meets the standards for classification under E.O. 13526, or

(2) if the standards for classification under E.O. 13526 are met, the information shall be declassified after 10 years from the date of the original classification, unless the original classification authority determines that the sensitivity of the information requires that it remain classified for up to 25 years from the date of the original classification, as provided in section 1.5.(b) of E.O. 13526.

7. Amend § 4a.7 by revising paragraphs (a), (c), (d), and (e) to read as follows:

**§ 4a.7 Mandatory review for declassification.**

(a) *Requests.* Classified information under the jurisdiction of the Department is subject to review for declassification in accordance with 32 CFR 2001.33, upon receipt of a written request that describes the information with sufficient specificity to locate it with a reasonable amount of effort. Requests must be submitted to the Director for Security, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

\* \* \* \* \*

(c) *Processing requirements.* (1) For requests for review of classified information not received from the National Archives and Records Administration, the Director for Security, or their designate, shall acknowledge receipt of the request directly to the requester. If a request does not adequately describe the information sought in accordance with paragraph (a) of this section, the requester shall be notified that unless additional information is provided, no further action will be taken. The request shall be forwarded to the component that originated the information or that has primary interest in the subject matter. The component assigned action shall review the information in accordance with §4a.7(c)(2) through (4) within twenty working days.

(2) The component assigned action shall determine whether, under the declassification provisions of the U.S. Department of Commerce's Manual of Security, the entire document or portions thereof may be declassified. Declassification of the information shall be accomplished by a designated declassification authority. Upon declassification, the information shall be remarked. If the information is not partially or entirely declassified, the reviewing official shall provide the reasons for denial by citing the applicable provisions of E.O. 13526. If the classification is a derivative decision based on classified source material of another Federal agency, the component shall provide the information to the originator for review.

(3) If information is declassified, the component shall also determine whether it is releasable under the Freedom of Information Act (FOIA) as amended (5 U.S.C. 552). If the information is not releasable, the component shall advise the Director for Security that the information has been declassified but that it is exempt from disclosure, citing the appropriate exemption of the FOIA as amended.

(4) If the request for declassification is denied in whole or in part, the requester shall be notified of the right to appeal the determination within sixty calendar days and of the procedures for such an appeal. If declassified information remains exempt from disclosure under the FOIA as amended, the requester shall be advised of the appellate procedures under that law.

(d) *Fees.* If the request requires services for which fees are chargeable, the component assigned action shall calculate the anticipated fees to be charged, and may be required to ascertain the requester's willingness to pay the allowable charges as a precondition to taking further action on the request, in accordance with Department of Commerce rules promulgated under 5 U.S.C. 552(a)(4)(A) of the Freedom of Information Act as amended and Department of Commerce rules promulgated under 5 U.S.C. 552a(f)(5) of the Privacy Act of 1974 (5 U.S.C 552a).

(e) *Right of appeal.* (1) A requester may appeal to the Director for Security when information requested under this section is not completely declassified and released after expiration of the applicable time limits. Within thirty working days (i.e., excluding Saturdays, Sundays, and legal public holidays) of receipt of a written appeal:

(i) The Director for Security shall determine whether continued classification of the requested information is required in whole or in part;

(ii) If information is declassified, determine whether it is releasable under the Freedom of Information Act as amended; and

(iii) Notify the requester of his or her determination, making available any information determined to be releasable. If continued classification is required under the provisions of the Department of Commerce Manual for Security, the Director for Security shall notify the requester of his or her determination, including the reasons for denial based on applicable

provisions of E.O. 13526, and of the right of final appeal to the Interagency Security Classification Appeals Panel.

(2) During the declassification review of information under appeal the Director for Security may overrule previous determinations in whole or in part if continued protection in the interest of national security is no longer required. If the Director for Security determines that the information no longer requires classification, it shall be declassified and, unless it is otherwise exempt from disclosure under the Freedom of Information Act as amended, released to the requester. The Director for Security shall advise the original reviewing component of his or her decision.

8. Amend § 4a.8 by revising paragraph (b)(5) introductory text to read as follows:

**§ 4a.8 Access to classified information by individuals outside the Government.**

\* \* \* \* \*

(b) \* \* \*

(5) Receives from the Director for Security:

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[FR Doc. 2020-10248 Filed: 6/9/2020 8:45 am; Publication Date: 6/10/2020]