

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION****32 CFR Chapter XX and Part 2001****[Directive No. 1: Appendix A]****Information Security Oversight Office; Classified National Security Information**

**AGENCY:** Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA).

**ACTION:** Bylaws of the Interagency Security Classification Appeals Panel.

**SUMMARY:** The Information Security Oversight Office, National Archives and Records Administration, is publishing the bylaws of the Interagency Security Classification Appeals Panel (ISCAP) in accordance with section 5.4(c) of Executive Order 12958, "Classified National Security Information." Under the terms of E.O. 12958, the Director of ISOO serves as Executive Secretary to the ISCAP. These bylaws are being published as Appendix A to Part 2001, the Executive Order's implementing Directive No. 1, issued by the Director of the Office of Management and Budget (OMB) on October 13, 1995, while ISOO remained a component of OMB. With the enactment of the Treasury, Postal Service and General Government Appropriations Act for Fiscal Year 1996, ISOO became a component of the National Archives and Records Administration.

**EFFECTIVE DATE:** March 15, 1996.

**FOR FURTHER INFORMATION CONTACT:** Steven Garfinkel, Executive Secretary, Interagency Security Classification Appeals Panel. Telephone: 202-219-5250.

**SUPPLEMENTARY INFORMATION:** This amendment is issued pursuant to the provisions of Section 5.4(c) of Executive Order 12958 published April 20, 1995 (60 CFR 19825). The ISCAP performs several critical functions in implementing several provisions of E.O. 12958. These include: (a) deciding appeals brought by authorized persons who have filed classification challenges under section 1.9 of the Order; (b) approving, denying or amending agency exemptions from automatic declassification, as provided in section 3.4(d) of the Order; and (c) deciding on appeals by parties whose requests for declassification of information under section 3.6 of the Order have been denied. These bylaws describe the procedures to be followed by individuals or organizations who wish to bring matters before the ISCAP, and

the procedures that the ISCAP will follow to resolve these matters.

**List of Subjects in 32 CFR Part 2001**

Archives and records, Authority delegations (Government agencies), Classified information, Executive orders, Freedom of information, Information, Intelligence, National defense, National security information, Presidential documents, Security information, Security measures.

**CHAPTER XX—INFORMATION SECURITY OVERSIGHT OFFICE, NATIONAL ARCHIVES AND RECORDS SERVICE**

Title 32 of the Code of Federal Regulations, chapter XX, is amended as follows:

1. The heading of chapter XX is revised to read as set forth above.

**PART 2001—CLASSIFIED NATIONAL SECURITY INFORMATION**

2. The authority citation of part 2001 is revised to read as follows:

Authority: Section 5.2 (a) and (b), and section 5.4, E.O. 12958, 60 FR 19825, April 20, 1995.

3. Part 2001 is amended by adding Appendix A to read as follows:

**Appendix A to Part 2001—Interagency Security Classification Appeals Panel Bylaws****Article I. Purpose**

The purpose of the Interagency Security Classification Appeals Panel (ISCAP) and these bylaws is to fulfill the functions assigned to the ISCAP by Executive Order 12958, "Classified National Security Information."

**Article II. Authority**

Executive Order 12958, "Classified National Security Information" (hereafter the "Order"), and its implementing directives.

**Article III. Membership**

A. Primary Membership. Appointments under section 5.4(a) of the Order establish the primary membership of the ISCAP.

**B. Alternate Membership.**

1. Primary members are expected to participate fully in the activities of the ISCAP. The Executive Secretary shall request that each agency or office head represented on the ISCAP also designate in writing addressed to the Chair an alternate to represent his or her agency or office on all occasions when the primary member is unable to participate. When serving for a primary member, an alternate member shall assume all the rights and responsibilities of that primary member, including voting.

2. When a vacancy in the primary membership occurs, the designated alternate shall represent the agency or office until the agency or office head fills the vacancy. The Chair, working through the Executive Secretary, shall take all appropriate measures to encourage the agency or office head to fill

a vacancy in the primary membership as quickly as possible.

C. Chair. As provided in section 5.4(a) of the Order, the President shall select the Chair from among the primary members.

D. Vice Chair. The members may elect from among the primary members a Vice Chair who shall:

1. Chair meetings that the Chair is unable to attend; and
2. Serve as Acting Chair during a vacancy in the Chair of the ISCAP.

**Article IV. Meetings**

A. Purpose. The primary purpose of ISCAP meetings is to discuss and bring formal resolution to matters before the ISCAP.

B. Frequency. As provided in section 5.4(a) of the Order, the ISCAP shall meet at the call of the Chair, who shall schedule meetings as may be necessary for the ISCAP to fulfill its functions in a timely manner. The Chair shall also convene the ISCAP when requested by a majority of its primary members.

C. Quorum. Meetings of the ISCAP may be held only when a quorum is present. For this purpose, a quorum requires the presence of at least five primary or alternate members.

D. Attendance. As determined by the Chair, attendance at meetings of the ISCAP shall be limited to those persons necessary for the ISCAP to fulfill its functions in a complete and timely manner.

E. Agenda. The Chair shall establish the agenda for all meetings. Potential items for the agenda may be submitted to the Chair by any member or the Executive Secretary. Acting through the Executive Secretary, the Chair will distribute the agenda and supporting materials to the members as soon as possible before a scheduled meeting.

F. Minutes. The Executive Secretary shall be responsible for the preparation of each meeting's minutes, and the distribution of draft minutes to each member. The minutes will include a record of the members present at the meeting and the result of each vote. At the subsequent meeting of the ISCAP, the Chair will read or reference the draft minutes of the previous meeting. At that time the minutes will be corrected, as necessary, and approved by the membership and certified by the Chair. The approved minutes will be maintained among the records of the ISCAP.

**Article V. Voting**

A. Motions. When a decision or recommendation of the ISCAP is required to resolve a matter before it, the Chair shall request or accept a motion for a vote. Any member, including the Chair, may make a motion for a vote. No second shall be required to bring any motion to a vote. A quorum must be present when a vote is taken.

B. Eligibility. Only the members, including the Chair, may vote on a motion before the ISCAP, with each agency or office represented having one vote.

C. Voting Procedures. Votes shall ordinarily be taken and tabulated by a show of hands.

D. Passing a Motion. In response to a motion, members may vote affirmatively, negatively, or abstain from voting. Except as otherwise provided in these bylaws, a motion

passes when it receives a majority of affirmative votes of the members voting. However, in no instance will the ISCAP reverse an agency's decision without the affirmative vote of at least a majority of the members present.

E. Votes in a Non-meeting Context. In extraordinary circumstances, the Chair may call for a vote of the membership outside the context of a formal ISCAP meeting. An alternate member may also participate in such a vote if the primary member cannot. The Executive Secretary shall record and retain such votes in a documentary form and immediately report the results to the Chair and other primary and alternate members.

#### Article VI. First Function: Appeals of Agency Decisions Regarding Classification Challenges

In accordance with section 5.4(b) of the Order, the ISCAP shall decide on appeals by authorized persons who have filed classification challenges under section 1.9 of the Order.

A. Jurisdiction. The ISCAP will consider appeals from classification challenges that otherwise meet the standards of the Order if:

1. The appeal is filed in accordance with these bylaws;

2. The appellant has previously challenged the classification action at the agency that originated or is otherwise responsible for the information in question in accordance with the agency's procedures or, if the agency has failed to establish procedures for classification challenges, by filing a written challenge directly with the agency head or designated senior agency official, as defined in section 1.1(j) of the Order;

3. The appellant has

(a) Received a final agency decision denying his or her challenge; or

(b) Not received (i) an initial written response to the classification challenge from the agency within 120 days of its filing, or (ii) a written response to an internal agency appeal within 90 days of the filing of the appeal;

4. There is no action pending in the federal courts regarding the information in question; and

5. The information in question has not been the subject of review by the federal courts or the ISCAP within the past two years.

B. Addressing of Appeals. Appeals should be addressed to: Executive Secretary, Interagency Security Classification Appeals Panel, Attn: Classification Challenge Appeals, c/o Information Security Oversight Office, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Room 5W, Washington, DC 20408.

The appeal must contain enough information for the Executive Secretary to be able to obtain all pertinent documents about the classification challenge from the affected agency. No classified information should be included within the initial appeal document. The Executive Secretary will arrange for the transmittal of classified information from the agency after receiving the appeal. If it is impossible for the appellant to file an appeal without including classified information,

prior arrangements must be made by contacting the Information Security Oversight Office.

C. Timeliness of Appeals. An appeal to the ISCAP must be filed within 60 days of:

1. The date of the final agency decision; or

2. The agency's failure to meet the time frames established in paragraph (A)(3)(b) of this Article.

D. Rejection of Appeal. If the Executive Secretary determines that the appeal does not meet the requirements of the Order or these bylaws, the Executive Secretary shall notify the appellant in writing that the appeal will not be considered by the ISCAP. The notification shall include an explanation of why the appeal is deficient.

E. Preparation. The Executive Secretary shall notify the Chair and the designated senior agency official(s) of the affected agency(ies) when an appeal is lodged. Under the direction of the ISCAP, the Executive Secretary shall supervise the preparation of an appeal file, pertinent portions of which will be presented to the members of the ISCAP for their review prior to a vote on the appeal. The appeal file will eventually include all records pertaining to the appeal.

F. Resolution of Appeals. The ISCAP may vote to affirm the agency's decision, to reverse the agency's decision in whole or in part, or to remand the matter to the agency for further consideration. A decision to reverse an agency's decision requires the affirmative vote of at least a majority of the members present.

G. Notification. The Executive Secretary shall promptly notify in writing the appellant, the agency head, and designated senior agency official of the ISCAP's decision.

H. Agency Appeals. Within 60 days of receipt of an ISCAP decision that reverses a final agency decision, the agency head may petition the President through the Assistant to the President for National Security Affairs to overrule the decision of the ISCAP.

I. Protection of Classified Information. All persons involved in the appeal shall make every effort to minimize the inclusion of classified information in the appeal file. Any classified information contained in the appeal file shall be handled and protected in accordance with the Order and its implementing directives. Information being challenged for classification shall remain classified unless and until a final decision is made to declassify it. In no instance will the ISCAP declassify properly classified information solely because of an agency's failure to prescribe or follow appropriate procedures for handling classification challenges.

J. Maintenance of File. The Executive Secretary shall maintain the appeal file among the records of the ISCAP.

#### Article VII. Second Function: Review of Agency Exemptions From Automatic Declassification

In accordance with section 5.4(b) of the Order, the ISCAP shall approve, deny or amend agency exemptions from automatic declassification as provided in section 3.4(d) of the Order.

A. Agency Notification of Exemptions. The agency head or designated senior agency

official shall notify the Executive Secretary of agency exemptions in accordance with the requirements of the Order and its implementing directives. Agencies shall provide any additional information or justification that the Executive Secretary believes is necessary or helpful in order for the ISCAP to review and decide on the exemption. The agency head may seek relief from the ISCAP from any request for information by the Executive Secretary to which the agency objects.

B. Preparation. The Executive Secretary shall notify the Chair of the agency submission. At the direction of the ISCAP, the Executive Secretary shall supervise the preparation of an exemption file, pertinent portions of which will be presented to the members of the ISCAP for their review prior to a vote on the exemptions. The exemption file will eventually include all records pertaining to the ISCAP's consideration of the agency's exemptions.

C. Resolution. The ISCAP may vote to approve an agency exemption, to deny an agency exemption, to amend an agency exemption, or to remand the matter to the agency for further consideration. A decision to deny or amend an agency exemption requires the affirmative vote of a majority of the members present.

D. Notification. The Executive Secretary shall promptly notify in writing the agency head and designated senior agency official of the ISCAP's decision.

E. Agency Appeals. Within 60 days of receipt of an ISCAP decision that denies or amends an agency exemption, the agency head may petition the President through the Assistant to the President for National Security Affairs to overrule the decision of the ISCAP.

F. Protection of Classified Information. Any classified information contained in the exemption file shall be handled and protected in accordance with the Order and its implementing directives. Information that the agency maintains is exempt from declassification shall remain classified unless and until a final decision is made to declassify it.

G. Maintenance of File. The Executive Secretary shall maintain the exemption file among the records of the ISCAP.

#### Article VIII. Third Function: Appeals of Agency Decisions Denying Declassification Under Mandatory Review Provisions of the Order

In accordance with section 5.4(b) of the Order, the ISCAP shall decide on appeals by parties whose requests for declassification under section 3.6 of the Order have been denied.

A. Jurisdiction. The ISCAP will consider appeals from denials of mandatory review for declassification requests that otherwise meet the standards of the Order if:

1. The appeal is filed in accordance with these bylaws;

2. The appellant has previously filed a request for mandatory declassification review at the agency that originated or is otherwise responsible for the information in question in accordance with the agency's procedures or, if the agency has failed to establish

procedures for mandatory review, by filing a written request directly with the agency head or designated senior agency official;

3. The appellant has

(a) Received a final agency decision denying his or her request; or

(b) Not received (i) an initial decision on the request for mandatory declassification review from the agency within one year of its filing, or (ii) a final decision on an internal agency appeal within 180 days of the filing of the appeal;

4. There is no action pending in the federal courts regarding the information in question; and

5. The information in question has not been the subject of review by the federal courts or the ISCAP within the past two years.

B. Addressing of Appeals. Appeals should be addressed to: Executive Secretary, Interagency Security Classification Appeals Panel, Attn: Mandatory Review Appeals, c/o Information Security Oversight Office, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Room 5W, Washington, DC 20408.

The appeal must contain enough information for the Executive Secretary to be able to obtain all pertinent documents about the request for mandatory declassification review from the affected agency.

C. Timeliness of Appeals. An appeal to the ISCAP must be filed within 60 days of:

1. The date of the final agency decision; or

2. The agency's failure to meet the time frames established in paragraph (A)(3)(b) of this Article.

D. Rejection of Appeal. If the Executive Secretary determines that the appeal does not meet the requirements of the Order or these bylaws, the Executive Secretary shall notify the appellant in writing that the appeal will not be considered by the ISCAP. The notification shall include an explanation of why the appeal is deficient.

E. Preparation. The Executive Secretary shall notify the Chair and the designated senior agency official(s) of the affected agency(ies) when an appeal is lodged. Under the direction of the ISCAP, the Executive Secretary shall supervise the preparation of an appeal file, pertinent portions of which will be presented to the members of the ISCAP for their review prior to a vote on the appeal. The appeal file will eventually include all records pertaining to the appeal.

F. Narrowing Appeals. To expedite the resolution of appeals and minimize backlogs, the Executive Secretary is authorized to

consult with appellants with the objective of narrowing or prioritizing the information subject to the appeal.

G. Resolution of Appeals. The ISCAP may vote to affirm the agency's decision, to reverse the agency's decision in whole or in part, or to remand the matter to the agency for further consideration. A decision to reverse an agency's decision requires the affirmative vote of at least a majority of the members present.

H. Notification. The Executive Secretary shall promptly notify in writing the appellant, the agency head, and designated senior agency official of the ISCAP's decision.

I. Agency Appeals. Within 60 days of receipt of an ISCAP decision that reverses a final agency decision, the agency head may petition the President through the Assistant to the President for National Security Affairs to overrule the decision of the ISCAP.

J. Protection of Classified Information. All persons involved in the appeal shall make every effort to minimize the inclusion of classified information in the appeal file. Any classified information contained in the appeal file shall be handled and protected in accordance with the Order and its implementing directives. Information that is subject to an appeal from an agency decision denying declassification under the mandatory review provisions of the Order shall remain classified unless and until a final decision is made to declassify it. In no instance will the ISCAP declassify properly classified information solely because of an agency's failure to prescribe or follow appropriate procedures for handling mandatory review for declassification requests and appeals.

K. Maintenance of File. The Executive Secretary shall maintain the appeal file among the records of the ISCAP. All information declassified as a result of ISCAP action shall be available for inclusion within the database established by the Archivist of the United States in accordance with section 3.8 of the Order.

#### Article IX. Additional Functions

In its consideration of the matters before it, the ISCAP shall perform such additional advisory functions as are consistent with and supportive of the successful implementation of the Order.

#### Article X. Support Staff

As provided in section 5.4(a) of the Order, the Director of the Information Security Oversight Office will serve as Executive

Secretary to the ISCAP, and the staff of the Information Security Oversight Office will provide program and administrative support for the ISCAP. The Executive Secretary will supervise the staff in this function pursuant to the direction of the Chair and ISCAP. On an as needed basis, the ISCAP may seek detailees from its member agencies to augment the staff of the Information Security Oversight Office in support of the ISCAP.

#### Article XI. Records

A. Integrity of ISCAP Records. The Executive Secretary shall maintain separately documentary materials, regardless of their physical form or characteristics, that are produced by or presented to the ISCAP or its staff in the performance of the ISCAP's functions, consistent with applicable federal law.

B. Referrals. Any Freedom of Information Act request or other access request for a document that originated within an agency other than the ISCAP shall be referred to that agency for processing.

#### Article XII. Annual Reports to the President

The ISCAP has been established for the sole purpose of advising and assisting the President in the discharge of his constitutional and discretionary authority to protect the national security of the United States (section 5.4(e) of the Order). As provided in section 5.4(a) of the Order, pertinent information and data about the activities of the ISCAP shall be included in the Reports to the President issued by the Information Security Oversight Office. The Chair, in coordination with the other members of the ISCAP and the Executive Secretary, shall determine what information and data to include in each Report.

#### Article XIII. Approval, Amendment, and Publication of Bylaws

The approval and amendment of these bylaws shall require the affirmative vote of at least four of the ISCAP's members. In accordance with the Order, the Executive Secretary shall submit the approved bylaws and their amendments for publication in the Federal Register.

Steven Garfinkel,

*Director, Information Security Oversight Office and Executive Secretary, Interagency Security Classification Appeals Panel.*

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