



UNDER SECRETARY OF DEFENSE

5000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-5000

April 26, 2011

INTELLIGENCE

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
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UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
DIRECTOR, COST ASSESSMENT AND PROGRAM
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INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DoD FIELD ACTIVITIES

SUBJECT: Directive-Type Memorandum (DTM) 11-004 – “Immediate Implementation Provisions of Executive Order 13526, ‘Classified National Security Information’ ”

References: See Attachment 1

Purpose. This DTM:

- Implements the immediate implementation provisions of Executive Order 13526, Presidential Memorandum, and parts 2001 and 2003 of title 32, Code of Federal Regulations (References (a) through (c)) in accordance with the authority in DoD Directive 5143.01 (Reference (d)).
- Updates sections C2.3.2, C.2.4, C4.3, and Appendix 1 of DoD 5200.1-R (Reference (e)) (Attachments 2, 3, 4, and 5).
- Is effective upon its publication to the DoD Issuances Website. Its provisions shall be reflected in a conforming change to DoD Instruction 5200.01 (Reference (f)) and shall be incorporated in a multi-volume revision of Reference (e). This DTM shall expire effective October 28, 2011.

Applicability

- This DTM applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational

entities within the DoD (hereinafter referred to collectively as the “DoD Components”).

- The provisions of Attachments 2 through 4 to this DTM supersede any conflicting provisions of DTM 04-010 (Reference (g)).

Responsibilities. The Heads of the DoD Components shall perform the responsibilities in Attachments 2 through 4, and shall ensure their respective Components implement the procedures in those attachments.

Releasability. UNLIMITED. This DTM is approved for public release and is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.



Michael G. Vickers
Under Secretary of Defense
for Intelligence

Attachments:
As stated

ATTACHMENT 1

REFERENCES

- (a) Executive Order 13526, "Classified National Security Information," December 29, 2009
- (b) Presidential Memorandum – "Implementation of the Executive Order, 'Classified National Security Information,' " December 29, 2009
- (c) Parts 2001 and 2003 of title 32, Code of Federal Regulations
- (d) DoD Directive 5143.01, "Under Secretary of Defense for Intelligence (USD(I)),", November 23, 2005
- (e) DoD 5200.1-R, "Information Security Program," January 14, 1997
- (f) DoD Instruction 5200.01, "DoD Information Security Program and Protection of Sensitive Compartmented Information," October 9, 2008
- (g) Directive-Type Memorandum 04-010, "Interim Information Security Guidance," April 14, 2004

ATTACHMENT 2

CHANGES TO SECTION C2.3.2 OF DoD 5200.1-R

Subparagraphs C2.3.2 through C2.3.2.8 of this attachment replace C2.3.2 through C2.3.2.7 of Reference (e) in their entirety.

C2.3.2. Eligibility for Classification. Classification may be applied only to information that is owned by, produced by or for, or is under the control of the U.S. Government. Information shall not be considered for classification unless its unauthorized disclosure could reasonably be expected to cause identifiable or describable damage to the national security and it pertains to one or more of the following categories specified in Section 1.4 of Executive Order 13526 (Reference (hhh)).

C2.3.2.1. Military plans, weapons systems, or operations;

C2.3.2.2. Foreign government information;

C2.3.2.3. Intelligence activities (including covert action), intelligence sources or methods, or cryptology;

C2.3.2.4. Foreign relations or foreign activities of the United States, including confidential sources;

C2.3.2.5. Scientific, technological, or economic matters relating to the national security;

C2.3.2.6. U.S. Government programs for safeguarding nuclear materials or facilities;

C2.3.2.7. Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security; or

C2.3.2.8. The development, production, or use of weapons of mass destruction.

ATTACHMENT 3

CHANGES TO SECTION C2.4 OF DoD 5200.1-R

Subparagraphs C2.4.3.1 through C2.4.3.4 of this attachment replace subparagraphs C2.4.3.1 through C2.4.3.6 of Reference (e) in their entirety.

C2.4.3.1. General

C2.4.3.1.1. In no case shall information be classified, continue to be maintained as classified, or fail to be declassified to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; or to restrain competition.

C2.4.3.1.2. Basic scientific research may be classified only if it clearly relates to national security.

C2.4.3.1.3. Classification may not be used to prevent or delay the release of information that does not require protection in the interest of national security.

C2.4.3.2. Reclassification After Declassification and Release to the Public Under Proper Authority. Information shall not be reclassified after declassification and release to the public under proper authority unless:

C2.4.3.2.1. The information may be reasonably recovered without bringing undue attention to the information.

C2.4.3.2.2. The Secretary of Defense approves it based on a document-by-document determination and recommendation by the Head of the originating DoD Component, other than the Secretary of a Military Department, that reclassification is required to prevent significant and demonstrable damage to national security. The Secretary of a Military Department shall approve the release for originating Military Department activities and shall notify the Under Secretary of Defense for Intelligence (USD(I)) of the action. The originating DoD Component Head, other than the Secretary of a Military Department, shall submit requests for reclassification to the Secretary of Defense through the USD(I). Requests shall provide all information necessary for the original classification decision process in accordance with section C2.3 of this chapter, and shall address how this information is to be recovered. The Military Departments shall provide implementing guidance to their subordinate activities for submitting such requests to the respective Secretaries of their Military Departments.

C2.4.3.2.3. The reclassification action is promptly reported through the Secretary of Defense to the Assistant to the President for National Security Affairs (National Security Advisor) and the Director of the Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA). The Secretaries of the Military Departments shall report such actions directly to the National Security Advisor, the Director of ISOO, and the USD(I).

C2.4.3.2.4. For documents in the physical and legal custody of NARA that have been available for public use, the Secretary of Defense or the Secretary of the Military Department concerned, after making the determination to reclassify, notifies the Archivist of the United States (hereafter referred to as the “Archivist”), who suspends public access pending approval of the reclassification action by the Director of ISOO. The Secretary of the Military Department concerned shall also notify the USD(I) when the documents contain Military Department information. Requests to reclassify shall include the fact that the documents are in the custody of NARA.

C2.4.3.2.5. Should the Director of ISOO disapprove the reclassification action, the Secretary of Defense or the Secretary of the Military Department concerned may appeal the decision to the President through the National Security Advisor. Public access shall remain suspended pending a prompt decision on the appeal. The originating DoD Component Head, other than the Secretary of a Military Department, shall notify the Secretary of Defense through the USD(I) of the need to appeal ISOO decisions. The Military Departments shall provide implementing guidance to their subordinate activities for submitting such notifications to the respective Secretaries of their Military Departments and will include notification to the USD(I). Notifications shall clearly articulate the compelling national security reasons for reclassifying the information and shall counter the ISOO rationale for denying the request. Once a final decision is rendered, the original classification authorities (OCAs) shall consider the need to update their security classification guidance.

C2.4.3.3. Reclassification or Classification of Information not Previously Disclosed Under Proper Authority

C2.4.3.3.1. Information that has not previously been disclosed to the public under proper authority, and information that has been declassified in accordance with a specific date or event determined by an OCA may be classified or reclassified, as appropriate, after a DoD Component has received a request for such action pursuant to section 552 of title 5, United States Code (U.S.C.) (also known as “The Freedom of Information Act” (Reference (g))), section 2204(c)(1) of title 44, U.S.C. (also known as “The Presidential Records Act” (Reference (p))), section 552a of Reference (h) (also known as “The Privacy Act of 1974”), or to the mandatory review provisions in section C4.4 of this regulation, only if such classification:

C2.4.3.3.1.1. Meets the requirements of this regulation.

C2.4.3.3.1.2. Is accomplished on a document-by-document basis with the personal participation or under the direction of the USD(I) or the Secretary of the Military Department concerned, as appropriate. The Secretaries of the Military Departments may delegate this authority to their respective deputy agency heads or senior agency officials.

C2.4.3.3.2. OCAs shall submit requests through the Heads of their respective DoD Components to the USD(I) or the Secretary of the Military Department concerned, as appropriate. The Secretary of the Military Department shall also notify the USD(I) when the request pertains to Military Department information. Requests shall provide all information

necessary for the original classification decision process in accordance with section C2.3 of this chapter.

C2.4.3.3.3. Once a decision is rendered, OCAs shall update their security classification guidance as necessary.

C2.4.3.4. Classification of Non-Government Information. Information that is a product of non-Government research and development that does not incorporate or reveal classified information to which the producer or developer was given prior access may be classified only as provided in section C2.6 of this chapter.

ATTACHMENT 4

CHANGES TO SECTION C4.3 OF DoD 5200.1-R

Section C4.3 of this attachment replaces section C4.3 of Reference (d) in its entirety.

C4.3. AUTOMATIC DECLASSIFICATION SYSTEM

C4.3.1. General. Executive Order 13526 (Reference (hhh)) establishes a system for declassification of information in permanently valuable historical records (as identified in title 44, U.S.C. (Reference (p))) 25 years from the date of origin, or, if the date of origin of an individual record cannot be readily determined, the date of original classification. This system applies to all permanently valuable historical records as they become 25 years old. Therefore, all classified records shall be automatically declassified on December 31 of the year that is 25 years from the date of origin, except those records that are exempted, excluded from the provisions of Reference (hhh), referred to another agency because of multi-agency equities, or delayed as provided in this regulation.

C4.3.2. Joint Referral Center (JRC). In accordance with the provisions of section 3.7 of Reference (hhh), the JRC is established to serve as an adjunct to the National Declassification Center (NDC) for processing referrals containing defense information. The JRC is a joint DoD Component operation co-located with the Army Declassification Activity. The JRC shall streamline declassification processes, facilitate quality assurance measures, and implement standardized training consistent with those of the NDC regarding the declassification review of accessioned DoD Component records determined to have permanent historical value and containing DoD information. DoD Component declassification activities shall continue to conduct initial reviews of records eligible for automatic declassification in accordance with section C4.3 of this chapter and Directive-Type Memorandum 04-010 (Reference (iii)) until the NDC issues implementing instructions.

C4.3.3. Exemptions. The Secretary of Defense or the Secretaries of the Military Departments, as appropriate, shall approve exemptions from the automatic declassification provisions and notify the Interagency Security Classification Appeals Panel (ISCAP) of their decision. Information not exempted from automatic declassification and not otherwise excluded or delayed as authorized by this regulation, shall be automatically declassified at 25 years. References (hhh) and (iii) allow three types of exemptions:

C4.3.3.1. Exemption Types

C4.3.3.1.1. Specific Information. This exemption option permits OCAs to identify and select specific information that should be exempted from the automatic declassification provisions. The information is described topically in a manner similar to how topics of information are described in a security classification guide and must fall within one or more of the exemption categories in subparagraph C4.3.3.2 of this chapter.

C4.3.3.1.2. Specific Records. This exemption option permits OCAs to identify and select specific records for exemption from the automatic declassification provisions. The records must be described at the records-title level and must contain information that is eligible for exemption under one or more of the exemption categories in subparagraph C4.3.3.2 of this chapter.

C4.3.3.1.3. File Series. This exemption option allows OCAs to identify entire file series that should be exempted from the automatic declassification provisions. File series exemptions shall only be considered for exemption after a review or assessment has determined that the information within those file series almost invariably falls within one or more of the exemption categories in subparagraph C4.3.3.2 of this chapter.

C4.3.3.2. Exemption Criteria and Duration

C4.3.3.2.1. Exempting 25-Year-Old Information. Information that is 25 years old may be exempted (by topic or file series) from automatic declassification for a period of 25 years when the release would clearly and demonstrably be expected to:

C4.3.3.2.1.1. Reveal the identity of a confidential human source, a human intelligence source, a relationship with an intelligence or security service of a foreign government or international organization, or a non-human intelligence source; or to impair the effectiveness of an intelligence method currently in use, available for use, or under development.

C4.3.3.2.1.2. Reveal information that would assist in the development, production, or use of weapons of mass destruction.

C4.3.3.2.1.3. Reveal information that would impair U.S. cryptologic systems or activities.

C4.3.3.2.1.4. Reveal information that would impair the application of state-of-the-art technology within a U.S. weapon system.

C4.3.3.2.1.5. Reveal formally named or numbered U.S. military war plans that remain in effect, or reveal operational or tactical elements of prior plans that are contained in such active plans.

C4.3.3.2.1.6. Reveal information, including foreign government information, that would cause serious harm to relations between the United States and a foreign government, or to ongoing diplomatic activities of the United States.

C4.3.3.2.1.7. Reveal information that would impair the current ability of U.S. Government officials to protect the President, Vice President, and other protectees for whom protection services, in the interest of national security, are authorized.

C4.3.3.2.1.8. Reveal information that would seriously impair current national security emergency preparedness plans or reveal current vulnerabilities of systems, installations, or infrastructures relating to national security.

C4.3.3.2.1.9. Violate a statute, treaty, or international agreement that does not permit the automatic or unilateral declassification of information at 25 years.

C4.3.3.2.2. Exempting 50-Year-Old Information

C4.3.3.2.2.1. Information that is 50 years old may continue to be exempted (by topic or file series) from automatic declassification for an additional 25 years when the release should clearly and demonstrably be expected to reveal the identity of a confidential human source or a human intelligence source, or key design concepts of weapons of mass destruction.

C4.3.3.2.2.2. In extraordinary cases, the Secretary of Defense or Secretaries of the Military Departments, as appropriate, may, within 5 years of the onset of automatic declassification, propose to exempt additional specific information from declassification at 50 years.

C4.3.3.2.3. Exempting 75-Year-Old Information. As in the case of exempting 50-year-old information for extraordinary circumstances, the Secretary of Defense or Secretaries of the Military Departments, as appropriate, may, within 5 years of the onset of automatic declassification, propose to exempt additional specific information from declassification at 75 years.

C4.3.3.2.4. Extending Duration of an Exemption. Extending the duration of an exemption shall be requested and processed in the same manner as an initial request for exemption. (See paragraph C4.3.3).

C4.3.3.2.5. File Series Exemptions Approved Prior to December 31, 2008. File series exemptions approved by the President prior to December 31, 2008, shall remain valid without any additional agency action pending ISCAP review by the later of December 31, 2010, or December 31 of the year that is 10 years from the date of previous approval.

C4.3.3.3. Exemption Requests. Requests for exemption shall include all information necessary for making a decision.

C4.3.3.3.1. Requesting an Exemption for Specific Information or Specific Records. OCAs shall provide:

C4.3.3.3.1.1. A detailed description of the information, in the form of a declassification guide.

C4.3.3.3.1.2. An explanation of why the information should be exempt from automatic declassification and must remain classified for a longer period of time.

C4.3.3.3.1.3. A specific date or a specific and independently verifiable event for declassification of information, not to exceed December 31 of the year that is 50 years from the date of origin of the records, except when the information identifies a confidential human source or a human intelligence source or key design concepts of weapons of mass destruction. (See subparagraph C4.3.3.2.2. of this chapter.)

C4.3.3.3.2. Requesting an Exemption for a File Series. OCAs shall provide:

C4.3.3.3.2.1. A description of the file series.

C4.3.3.3.2.2. An explanation of why the information within the file series is almost invariably exempt from automatic declassification and why the information must remain classified for a longer period of time.

C4.3.3.3.2.3. A specific date or event for declassification of the information, not to exceed December 31 of the year that is 50 years from the date of origin of the records, except when the information within the file series almost invariably identifies a confidential human source or a human intelligence source or key design concepts of weapons of mass destruction. (See subparagraph C4.3.3.2.2. of this chapter.)

C4.3.3.4. When to Request an Exemption. Exemptions shall be requested within 5 years of but no later than 1 year before information is subject to automatic declassification.

C4.3.3.5 Who Requests and Approves an Exemption. In all cases, OCAs are responsible for identifying information that should be exempted from automatic declassification. The type of exemption requested, determines who must approve it.

C4.3.3.5.1 Requests

C4.3.3.5.1.1. Specific Information or Records. Non-Military Department OCAs shall request exemptions for specific information through the Heads of their respective DoD Components to the USD(I). The USD(I) shall notify the Director of ISOO, serving as the ISCAP Executive Secretary, of any specific information that the agency proposes to exempt from automatic declassification. Military Department OCAs shall request exemptions for specific information through their Department's senior agency official to the Director of ISOO. The Military Departments shall provide an information copy of such requests to the USD(I) for oversight purposes.

C4.3.3.5.1.2. File Series. Non-Military Department OCAs shall submit requests for file series exemptions through the Heads of their respective DoD Components to the USD(I). The USD(I) shall forward the request to the Secretary of Defense for approval and notification to the Director of ISOO (ISCAP Executive Secretary). Military Department OCAs shall submit requests for file series exemptions to their respective Secretaries for approval and notification to the Director of ISOO (ISCAP Executive Secretary). The Military Departments shall provide an information copy of such requests to the USD(I) for oversight purposes.

C4.3.3.5.2. Approval Authority. For specific information, the senior agency official of a Military Department, or the USD(I) for the other DoD Components, shall approve information that shall be exempted from automatic declassification. For file series, the Secretary of Defense or the Secretary of the Military Department, as appropriate, approves the request. In either case, the applicable senior agency official shall notify ISCAP of the agency's decision. The Military Departments shall provide an information copy to the USD(I) for oversight purposes.

C4.3.3.5.3. ISCAP Authority. ISCAP may direct the Department of Defense not to exempt the specific information or file series, or may direct the Department of Defense to declassify it at an earlier date than recommended. The Secretary of Defense or the Secretary of a Military Department, as appropriate, may appeal such a decision to the President through the National Security Advisor. The information will remain classified while such an appeal is pending. The Military Departments shall provide an information copy to the USD(I) for oversight purposes.

C4.3.3.5.4. Mandatory and Systematic Declassification Reviews of Exempted Information. Information exempted from automatic declassification at 25 years remains subject to the mandatory and systematic declassification review provisions of this regulation.

C4.3.4. Excluded Information: Restricted Data and Formerly Restricted Data. Information designated as Restricted Data by the Department of Energy, or designated Formerly Restricted Data jointly by the Department of Defense and the Department of Energy, are excluded from the automatic declassification provisions of Reference (hhh) and this regulation. The Secretary of Energy determines when information concerning foreign nuclear programs that was removed from the Restricted Data category in order to carry out provisions of Reference (r) may be declassified. Unless otherwise determined by the appropriate OCA, such information shall be declassified when comparable information concerning the United States nuclear program is declassified. When it pertains to defense nuclear information, such actions shall be referred to the Deputy Assistant Secretary of Defense for Nuclear Matters, who has original classification authority for defense nuclear information, to include joint OCA with the Department of Energy for Formerly Restricted Data.

C4.3.5 Referrals

C4.3.5.1. Referring Other Agency Information. Other than records that are properly excluded or exempted from automatic declassification, records containing classified information that originated with other agencies or that the disclosure of which would affect the interests or activities of other agencies, and that could reasonably be expected to fall under one or more of the exemptions in paragraph C.4.3.3.2.1 of this chapter shall be identified prior to the onset of automatic declassification for later referral to those agencies. The DoD Components shall identify other agency information for referral review during initial review of Component records and referral reviews will take place under the auspices of the NDC or the JRC.

C4.3.5.2. Other Agency Referrals to the Department of Defense. Other agency records containing defense information that are subject to automatic declassification shall be reviewed by the appropriate DoD Component at the NDC.

C4.3.5.3. DoD Component Referrals to Other DoD Components. DoD Component records containing other DoD Component information that are subject to automatic declassification shall be processed through the NDC or JRC, as appropriate.

C4.3.5.4. Disagreements Over Referral Review Period. If any disagreement arises between the JRC and the NDC regarding the referral review period, the Director of ISOO shall determine the appropriate period of review of referred records. In such cases, the JRC shall notify ISOO and USD(I) of the disagreement. Otherwise, the JRC shall provide a final determination on referrals received within 1 year of referral or the information shall be automatically declassified. If any disagreement arises between the DoD Components regarding the referral review period, the JRC, under the auspices of the USD(I), shall determine the appropriate period of review for the referred records

C4.3.5.5. Referrals Prior to the NDC and JRC Referrals identified prior to NDC and JRC establishment shall be subject to automatic declassification in accordance with paragraph C4.3.8. of this section.

C4.3.6. Delayed Automatic Declassification

C4.3.6.1. Missed Records. Automatic declassification may be delayed for up to 3 years from the date of discovery that records were inadvertently not reviewed prior to the effective date of automatic declassification with the approval of the Secretary of Defense or Secretary of a Military Department, as appropriate. The Head of the originating DoD Component, other than the Secretaries of the Military Departments, shall notify the Director of ISOO, through the USD(I), of such discoveries. Notifications shall explain the circumstances surrounding the missed records. For the Military Departments, the Secretary of the Military Department concerned shall notify ISOO and provide a copy of this notification to the USD(I) for oversight purposes. Prior to taking such action, originating DoD Components shall consult with the Director of ISOO.

C4.3.6.2. Media. The USD(I) or the senior agency official of a Military Department, as appropriate, may delay automatic declassification for up to 5 additional years for classified information contained in media that make a review for possible declassification exemptions more difficult or costly. Prior to taking such action, originating DoD Components shall consult with the Director of the NDC.

C4.3.7. Integral File Blocks. Classified records within an integral file block, as defined in this regulation, that are otherwise subject to automatic declassification shall not be automatically declassified until December 31 of the year that is 25 years from the date of the most recent record, or according to the exemption instructions of the most recent exempted record, whichever is later, within the file block. For purposes of automatic declassification, integral file blocks shall contain only records dated within 10 years of the oldest record in the file block.

C4.3.8. Automatic Declassification of Backlogged Records at NARA. In accordance with Presidential Memorandum (Reference (jjj)); under NDC direction; and utilizing the recommendations of the business process review (BPR) in support of the NDC:

C4.3.8.1. Referrals and quality assurance problems within a backlog of more than 400 million pages of accessioned Federal records previously subject to automatic declassification shall be addressed in a manner that will permit public access to all declassified records from this backlog no later than December 31, 2013.

C4.3.8.2. DoD Components shall review all referrals to DoD in the backlogged records and identify potentially exemptible information for further referral to other agencies. For DoD, this includes all records reviewed for automatic declassification from April 1995 to December 2009 that have not been processed by NARA.

C4.3.9. Records Determined Not to Have Permanent Historical Value. Classified records determined not to have permanent historical value are subject to the automatic declassification provisions of this regulation. The duration of classification beyond 25 years shall be the same as the disposition (destruction) date of those records in each agency records control schedule or the General Records Schedule. However, the duration of classification shall be extended if the record has been retained for business reasons beyond the scheduled disposition date and the ISCAP has received and approved a request for exemption.

ATTACHMENT 5

CHANGES TO APPENDIX 1 OF DoD 5200.1-R

These references shall be added to Appendix 1 of Reference (e) per the changes in Attachments 2 through 4 of this DTM.

(hhh) Executive Order 13526, "Classified National Security Information," December 29, 2009

(iii) Directive-Type Memorandum 04-010, "Interim Information Security Guidance," April 14, 2004

(jjj) Presidential Memorandum, "Implementation of the Executive Order, 'Classified National Security Information,'" December 29, 2009

(kkk) Parts 2001 and 2003 of title 32, Code of Federal Regulations