

(d) In responding to mandatory review requests, agencies shall either make a prompt declassification determination and notify the requester accordingly, or inform the requester of the additional time needed to process the case. Agencies shall make a final determination in one year from the date of receipt, except in unusual circumstances.

(e) Information originated by a President, the White House Staff, by committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or acting on behalf of a President is exempted from mandatory review. However, the Archivist of the United States has the authority to review, downgrade, and declassify such information which is under the control of the Administrator of General Services or the Archivist, for example in Presidential Libraries, pursuant to section 2107, 2107 note, or 2203 of title 44, United States Code. The Archivist will consult with agencies having primary subject matter interest concerning the declassification of the requested material. Any decision by the Archivist may be appealed to the Director of ISOO, with the right of further appeal to the National Security Council. The information shall remain classified pending a prompt decision on the appeal.

(f) Requests for classified information not specifically identified as being made under the Mandatory Review provisions of the Order will be processed under the terms of the FOIA, the Privacy Act, or other appropriate procedures.

(g) In considering requests for mandatory review, the agency may decline to review again any request for material which has been recently reviewed and denied, unless the request constitutes an appeal of an initial denial.

(h) Mandatory 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.

(i) In response to a request for information under the Freedom of Informa-

tion Act, the Privacy Act of 1974, or the mandatory review provisions of the Order, an agency shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classifiable under these regulations.

(j) For detailed regulations for the internal processing of mandatory review initial requests and appeals see:

(1) Department of State: 5 FAM 900, 22 CFR 171.22 and 171.60;

(2) AID: AID Handbook 18, part III, chapter 11; or

(3) USIA: 22 CFR part 503.

#### §9.17 Schedule of fees.

For State, see 22 CFR 171.6 and 171.13; For AID, see 22 CFR 212.35; or For USIA, see 22 CFR 503.6(c).

#### §9.18 Access by presidential appointees.

For procedures of the Department of State, see 22 CFR 171.25; For procedures of AID, see 22 CFR 171.25; or For procedures of USIA, see 22 CFR part 503.

#### APPENDIX A TO PART 9—DEFINITIONS

For the purpose of these security regulations, the following definitions of terms shall apply.

*Agency.* A Federal agency, including department, agency, commission etc, as defined in 5 U.S.C. 552(e).

*Original classification.* The initial determination that, in the interest of national security, information requires protection against unauthorized disclosure, together with a classification designation signifying the level of protection required.

*Original classification authority.* The authority vested in an executive branch official to make a determination of original classification. A person having original classification authority may also have the authority to prolong or restore classification.

*Originating agency.* The agency responsible for the initial determination that particular information is classified.

*Information.* Any information or material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the U.S. Government.

*National security information.* Information that has been determined pursuant to this Order or any predecessor Order to require protection against unauthorized disclosure and that is so designated.

*Foreign government.* Includes foreign governments and international organizations of governments.

*Foreign government information.* Foreign government information is: (1) Information provided by a foreign government or governments, an international organization of governments, or any element thereof with the expectation, expressed or implied, that the information, the source of the information, or both, are to be held in confidence; or (2) Information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence.

*National security.* The national defense or foreign relations of the United States.

*Confidential source.* Any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation, expressed or implied, that the information or relationship, or both, be held in confidence.

*Classification guide.* A document issued by an authorized original classifier that prescribes the level of classification and appropriate declassification instructions for specified information to be classified derivatively.

*Derivative classification.* A determination that information is in substance the same as information currently classified, together with the designation of the level of classification.

*Special access program.* Any program imposing “need-to-know” or access controls beyond those normally provided for access to Confidential, Secret, or Top Secret information. Such a program may include, but is not limited to, special clearance, adjudication, or investigative requirements, special designations of officials authorized to determine “need-to-know,” or special lists of persons determined to have a “need-to-know.” It does not include special captions such as NODIS, LIMDIS.

*Intelligence activity.* An activity that an agency within the Intelligence Community is authorized to conduct pursuant to the Order.

*Unauthorized disclosure.* A communication or physical transfer of classified information to an unauthorized recipient.

## **PART 9a—SECURITY INFORMATION REGULATIONS APPLICABLE TO CERTAIN INTERNATIONAL ENERGY PROGRAMS; RELATED MATERIAL**

Sec.

- 9a.1 Security of certain information and material related to the International Energy Program.
- 9a.2 General policy.
- 9a.3 Scope.
- 9a.4 Classification.
- 9a.5 Declassification and downgrading.
- 9a.6 Marking.
- 9a.7 Access.
- 9a.8 Physical protection.

AUTHORITY: E.O. 11932 (41 FR 32691), E.O. 11652 (37 FR 5209, National Security Council Directive of May 17, 1972 (37 FR 10053)).

SOURCE: 42 FR 46516, Sept. 16, 1977; 42 FR 57687, Nov. 4, 1977, unless otherwise noted.

### **§ 9a.1 Security of certain information and material related to the International Energy Program.**

These regulations implement Executive Order 11932 dated August 4, 1976 (41 FR 32691, August 5, 1976) entitled “Classification of Certain Information and Material Obtained from Advisory Bodies Created to Implement the International Energy Program.”

### **§ 9a.2 General policy.**

(a) The United States has entered into the Agreement on an International Energy Program of November 18, 1974, which created the International Energy Agency (IEA). This program is a substantial factor in the conduct of our foreign relations and an important element of our national security. The effectiveness of the Agreement depends significantly upon the provision and exchange of information and material by participants in advisory bodies created by the IEA. Confidentiality is essential to assure the free and open discussion necessary to accomplish the tasks assigned to those bodies.