

large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;

(4) Whether the contribution to public understanding of Federal government operations or activities will be significant;

(5) Whether the requestor has a commercial interest that would be furthered by the requested disclosure; and

(6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure that disclosure is primarily in the commercial interest of the requestor.

(g) Documents will be furnished without charge or at a reduced charge if the official having initial denial authority determines that the request concerns records related to the death of an immediate family member who was, at the time of death, a DOT employee or a member of the Coast Guard.

(h) Documents will be furnished without charge or at a reduced charge if the official having initial denial authority determines that the request is by the victim of a crime who seeks the record of the trial or court-martial at which the requestor testified.

#### § 7.45 Transcripts.

Transcripts of hearings or oral arguments are available for inspection. Where transcripts are prepared by a nongovernmental contractor, and the contract permits DOT to handle the reproduction of further copies, § 7.43 applies. Where the contract for transcription services reserves the sales privilege to the reporting service, any duplicate copies must be purchased directly from the reporting service.

#### § 7.46 Alternative sources of information.

In the interest of making documents of general interest publicly available at as low a cost as possible, alternative sources will be arranged whenever possible. In appropriate instances, material that is published and offered for sale may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; U.S. Department of Commerce's

National Technical Information Service (NTIS), Springfield, Virginia 22151; or National Audio-Visual Center, National Archives and Records Administration, Capital Heights, MD 20743-3701.

## PART 8—CLASSIFIED INFORMATION: CLASSIFICATION/DECLASSIFICATION/ACCESS

### Subpart A—General

Sec.

8.1 Scope.

8.3 Applicability.

8.5 Definitions.

8.7 Spheres of responsibility.

### Subpart B—Classification/Declassification of Information

8.9 Information Security Review Committee.

8.11 Authority to classify information.

8.13 Authority to downgrade or declassify.

8.15 Mandatory review for classification.

8.17 Classification challenges.

8.19 Procedures for submitting and processing requests for classification reviews.

8.21 Burden of proof.

8.23 Classified information transferred to the Department of Transportation.

### Subpart C—Access to Information

8.25 Personnel Security Review Board.

8.27 Public availability of declassified information.

8.29 Access by historical researchers and former Presidential appointees.

8.31 Industrial security.

AUTHORITY: E. O. 10450, 3 CFR, 1949-1953 Comp., p. 936; E. O. 12829, 3 CFR, 1993 Comp., p. 570; E. O. 12958, 3 CFR, 1995 Comp., p. 333; E. O. 12968, 3 CFR, 1995 Comp., p. 391.

SOURCE: 62 FR 23661, May 1, 1997, unless otherwise noted.

### Subpart A—General

#### § 8.1 Scope.

This part sets forth procedures for the classification, declassification, and availability of information that must be protected in the interest of national security, in implementation of Executive Order 12958 of April 17, 1995, "Classified National Security Information;" and for the review of decisions to revoke, or not to issue, national security information clearances, or to deny access to classified information, under

### § 8.3

Executive Order 12968 of August 2, 1995, "Access to National Security Information".

#### § 8.3 Applicability.

This part applies to all elements of the Department of Transportation.

#### § 8.5 Definitions.

As used in this part:

*Classification* means the act or process by which information is determined to be classified information.

*Classification levels* means the following three levels at which information may be classified:

(a) Top secret. Information that requires the highest degree of protection, and the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security that the original classification authority is able to identify or describe.

(b) Secret. Information that requires a substantial degree of protection, and the unauthorized disclosure of which could reasonably be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.

(c) Confidential. Information that requires protection and the unauthorized disclosure of which could reasonably be expected to cause damage to the national security that the original classification authority is able to identify or describe.

*Classified information* or "classified national security information" means information that has been determined under Executive Order 12958, or any predecessor or successor order, to require protection against unauthorized disclosure, and is marked to indicate its classified status when in documentary form.

*Clearance* means that an individual is eligible, under the standards of Executive Orders 10450 and 12968 and appropriate DOT regulations, for access to classified information.

*Damage to the national security* means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, to include the sensitivity, value, and utility of that information.

### 49 CFR Subtitle A (10-1-07 Edition)

*Declassification* means the authorized change in the status of information from classified information to unclassified information.

*Downgrading* means a determination by a declassification authority that information classified and safeguarded at a specific level shall be classified and safeguarded at a lower level.

*Information* means any knowledge that can be communicated, or documentary material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government. "Control" means the authority of the agency that originates information, or its successor in function, to regulate access to the information.

*Mandatory declassification review* means the review for declassification of classified information in response to a request for declassification that qualifies under Section 3.6 of Executive Order 12958.

*Original classification* means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure.

*Original classification authority* means an individual authorized in writing, either by the President or by agency heads or other officials designated by the President, to classify information in the first instance.

#### § 8.7 Spheres of responsibility.

(a) Pursuant to Section 5.6(c) of Executive Order 12958, and to section 6.1 of Executive Order 12968, the Assistant Secretary for Administration is hereby designated as the senior agency official of the Department of Transportation with assigned responsibilities to assure effective compliance with and implementation of Executive Order 12958, Executive Order 12968, Office of Management and Budget Directives, the regulations in this part, and related issuances.

(b) In the discharge of these responsibilities, the Assistant Secretary for Administration will be assisted by the Director of Security and Administrative Management, who, in addition to other actions directed by this part, will evaluate the overall application of and