



## PART 400—EMPLOYEE FINANCIAL DISCLOSURE AND ETHICAL CONDUCT STANDARDS REGULATIONS

AUTHORITY: 5 U.S.C. 7301.

### § 400.101 Cross-reference to employee financial disclosure and ethical conduct standards regulations.

Employees of the Export-Import Bank of the United States (Bank) should refer to:

(a) The executive branch-wide financial disclosure regulations at 5 CFR part 2634;

(b) The executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635; and

(c) The Bank regulations at 5 CFR part 6201 which supplement the executive branch-wide standards.

[60 FR 17628, Apr. 7, 1995]

## PART 403—CLASSIFICATION, DECLASSIFICATION, AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION

Sec.

403.1 General policies and definitions.

403.2 Responsibilities.

403.3 Classification principles and authority.

403.4 Derivative classification.

403.5 Declassification and downgrading.

403.6 Systematic review for declassification.

403.7 Mandatory review for declassification.

403.8 Appeals.

403.9 Fees.

403.10 Safeguarding.

403.11 Enforcement and investigation procedures.

AUTHORITY: E.O. 12356, National Security Information, April 2, 1982 (3 CFR, 1982 Comp. p. 166) (hereafter referred to as the *Order*), Information Security Oversight Directive No. 1, June 25, 1982 (32 CFR part 2001) (hereafter referred to as the *Directive*), and National Security Decision Directive 84, "Safeguarding National Security Information," signed by the President on March 11, 1983 (hereafter referred to as *NSDD 84*).

SOURCE: 50 FR 27215, July 2, 1985, unless otherwise noted.

### § 403.1 General policies and definitions.

(a) This regulation of the Export-Import Bank (the Bank) implements exec-

utive orders which govern the classification, declassification, and safeguarding of national security information and material of the United States. This regulation is based on Executive Order 12356, National Security Information, April 2, 1982 (3 CFR, 1982 Comp. p. 166) (hereafter referred to as the *Order*), Information Security Oversight Directive No. 1, June 25, 1982 (32 CFR part 2001) (hereafter referred to as the *Directive*), and National Security Decision Directive 84, "Safeguarding National Security Information," signed by the President on March 11, 1983 (hereafter referred to as *NSDD 84*). Violation of the provisions of part 403 may result in the imposition of administrative penalties, and civil and criminal penalties under applicable law. Executive Order 12356 prescribes a uniform system for classifying, declassifying, and safeguarding national security information. It recognizes that it is essential that the public be informed concerning the activities of the Government, but that the interests of the United States and its citizens require that certain information concerning the national defense and foreign relations be protected against unauthorized disclosure. Information may not be classified under the Order unless its disclosure reasonably could be expected to cause damage to the national security.

(b) For the purposes of the Order, the Directive and these guidelines, the following terms shall have the meanings specified below:

(1) *Information* means 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 United States Government.

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

(3) *Foreign government information* means: (i) 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

(ii) 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.

(4) *National security* means the national defense or foreign relations of the United States.

(5) *Confidential source* means 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.

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

#### § 403.2 Responsibilities.

In the carrying out of security procedures, responsibility falls on all personnel generally and on certain personnel in a more particular manner.

(a) *Individual*. Each employee of the Bank having access to classified material has an individual responsibility to protect such information. Classified information should be secured in approved equipment or facilities whenever it is not under the direct control of the employee.

(b) *Office and Division Heads*. These officials have the additional responsibility of a continuing review for ascertaining that security procedures are properly observed by the personnel comprising their respective offices.

(c) *Security Officer*. (1) The Security Officer has the responsibility for developing, inspecting, and advising on procedures and controls for safeguarding classified material originating in, received by, in transit through, or in custody of the Bank; the training and orientation of employees; the carrying

out of inspections; and the destruction of obsolete and non-record material.

(2) The Security Officer shall be responsible for disseminating written material and conducting oral briefings to inform Bank personnel of the Order, Directive, and regulations. An explanation of the practical application of these procedures and the underlying policy objectives thereof shall be emphasized.

(d) *Security Committee*. (1) This Committee consists of the General Counsel, as Chairperson, the Security Officer, and other Bank employees, as designated by the President and Chairman (hereinafter referred to as the *Chairman*) and is responsible for the implementation and enforcement of the Order and the Directive. This Committee will act on all matters with respect to the Bank's administration of these regulations.

(2) All suggestions and complaints regarding the Bank's Information Security Program, including those regarding over-classification, failure to declassify, or delay in declassifying, not otherwise provided for herein, shall be referred to the Security Committee for review.

(3) The Security Committee shall have responsibility for recommending to the Chairman appropriate administrative action to correct abuse or violation of these regulations or of any provision of the Order or Directive thereunder, including but not limited to notification by warning letter, formal suspension without pay, and removal. Upon receipt of such a recommendation, the Chairman shall make a decision and advise the Security Committee of this action.

#### § 403.3 Classification principles and authority.

(a) *Classification Principles*. (1) Except as provided in the Atomic Energy Act of 1954, as amended, the Order provides the only basis for classifying national security information. Information held by the Bank will be made available to the public to the extent possible consistent with the need to protect the national defense or foreign relations, as required by the interests of the United

**Export-Import Bank of the U.S.**

**§ 403.3**

States and its citizens. Accordingly, security classification shall be applied only to protect the national security.

(2) Before a classification determination is made, each item of information that may require protection shall be identified exactly. This requires identification of that specific information, disclosure of which could affect the national security. When there is reasonable doubt about the need to classify, the information should be safeguarded as if it were confidential until a final determination is made by an authorized classifier as to its classification. The final determination must be made within thirty (30) days.

(b) *Classification Designations.* Information which requires protection against unauthorized disclosure in the interest of national security (*classified information*) shall be classified at one of the following three levels:

(1) TOP SECRET shall be applied only to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.

(2) SECRET shall be applied only to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security.

(3) CONFIDENTIAL shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security.

Except as provided by statute, no other terms, such as *SENSITIVE, OFFICIAL BUSINESS ONLY, AGENCY, BUSINESS, ADMINISTRATIVELY*, etc., shall be used within the Bank in conjunction with any of the three classification levels defined above.

(c) *Original Classification Authority and Criteria.* (1) The Bank's authority to assign original classification to any document is limited as follows and is nondelegable:

Classification	Classifier
CONFIDENTIAL	President and Chairman. First Vice President and Vice Chairman. General Counsel. Senior Vice Presidents. Security Officer.

(2) A determination to classify information shall be made by an original classification authority when the information concerns one or more of categories (i) through (x) of this paragraph, and when the unauthorized disclosure of the information, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security. Information shall be considered for classification if it concerns:

(i) Military plans, weapons, or operations;

(ii) The vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security;

(iii) Foreign government information;

(iv) Intelligence activities (including special activities), or intelligence sources or methods;

(v) Foreign relations or foreign activities of the United States;

(vi) Scientific, technological, or economic matters relating to the national security;

(vii) United States Government programs for safeguarding nuclear materials or facilities;

(viii) Cryptology;

(ix) A confidential source; or

(x) Other categories of information that are related to the national security and that require protection against unauthorized disclosure as determined by the President of the United States, by the Chairman or by other officials who have been delegated original classification authority by the President. Recommendations concerning the need to designate additional categories of information that may be considered for classification shall be forwarded through the Security Officer to the Chairman for determination. Such a determination shall be reported to the Director of the Information Security Oversight Office.

(3) Information that is determined to concern one or more of the above categories shall be classified when an original classification authority also determines that its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to