

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. A/D/05	W	3/11
2.		
3. DD/PS	o	11/2
4. C/CG	7	11/3
5. C/SSC		

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

Policy Branch will be working with C/SSC to develop our position and response on this issue.

STAT

12 Nov 87

Per C/SSC, he agrees w/ proposed definition.

STAT

DO NOT use this form as a RECORD of approvals, concurrences, dis-
 clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

F.O

Room No.—Bldg.

Phone No.

30 October 1987

OS REGISTRY
87-1521X

MEMORANDUM FOR: Director/CCISCMO/ICS
Director of Security
Chief, Special Security Center/OS
Information and Privacy Coordinator
IRO/DO
IRO/DA
IRO/DI
IRO/DS&T

FROM: [Redacted]
Assistant General Counsel

SUBJECT: Definition of "Classifiable Information"

1. Attached is a definition proposed by the Director, Information Security Oversight Office (ISOO) for the term "classifiable information" as used in Standard Form 189, the Classified Information Nondisclosure Agreement (SF-189). As you know, the Agency does not use SF-189 but has its own Secrecy Agreement that also uses the term "classifiable information." In addition, the term appears in Form 4193, the Sensitive Compartmented Information Nondisclosure Form, which the DCI administers and which is used throughout the Executive Branch, including the Agency.

2. You may also be aware that there is pending litigation challenging the term "classifiable information" as used in SF-189 and Form 4193. For purposes of the litigation, OGC is formulating a definition of "classifiable information" for the Form 4193. We would like you to review the proposed ISOO definition and evaluate whether it is appropriate for purposes of the Form 4193. Although the Agency's basic Secrecy Agreement is not the subject of litigation, we would also like you to examine the proposed ISOO definition in terms of the Agency's Secrecy Agreement. Of particular concern is whether there is any category of information not included in the ISOO definition which deserves protection as "classifiable information."

3. Please send me your comments by 16 November. If you have any questions, give me a call at [Redacted]

Attachment

[Redacted]

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SUBJECT: Definition of "Classifiable Information"

DCI/OGC/LD/ [redacted] (30 October 1987)

STAT

Distribution:

Orig - Addressees

- 1 - Chief, Special Security Center/OS
- 1 - Information and Privacy Coordinator
- 1 - Director/CCISCMO/ICS
- 1 - Director of Security
- 1 - Subject File
- 1 - [redacted] Signer
- 1 - [redacted] Signer
- 1 - OGC Subject
- 1 - OGC Chrono

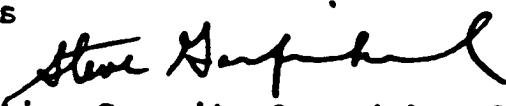
STAT

Washington, DC 20405

BY MESSENGER

October 27, 1987

MEMORANDUM FOR: Interested Parties

FROM: Steven Garfinkel 
Director, Information Security Oversight Office

SUBJECT: Proposed revision to regulatory definition
of "classifiable information"

As agreed at our meeting yesterday, I enclose a draft of a revised rule that would redefine the term "classifiable information," as used in the Standard Form 189, "Classified Information Nondisclosure Agreement." Please phone in your comments to me at 535-7251, by the close of business today.

Enclosure

BILLING CODE 6820 KC

INFORMATION SECURITY OVERSIGHT OFFICE

32 CFR Part 2003

**National Security Information
Standard Forms**

AGENCY: Information Security Oversight Office (ISOO)

ACTION: Final Rule.

SUMMARY: This is an amendment to 32 CFR § 2003.20. In recent months, questions have been raised about the intended scope of the term "classifiable information," a term that has been used in the Standard Form 189, "Classified Information Nondisclosure Agreement," since it was first issued in September 1983. On August 3 and 11, 1987, ISOO published definitions of the term "classifiable information" in the Federal Register. These definitions were designed to clarify the meaning of this term and to demonstrate that it applies to a very narrow class of information. Subsequently, it has become evident that further clarification is desirable for purposes of alleviating concern and dispelling confusion about the actual scope of the nondisclosure obligation in regard to such information. Relevant explanatory information circulated by ISOO since August 1987 has proved useful in further clarifying the intended reach of the term "classifiable information." As a result, ISOO has determined that it would be desirable to amend its published definition to incorporate such further explanation. The revised

definition does not change the substance of the applicability of "classifiable information" in each executed nondisclosure agreement, but may, nevertheless, prove useful to a better understanding by affected employees of their nondisclosure obligations. While ISOO will include this definition in future reprints of the Standard Form 189, it is intended to apply to all editions of the Form.

EFFECTIVE DATE: Upon Publication.

FOR FURTHER INFORMATION CONTACT:

Steven Garfinkel, Director, ISOO.

Telephone: (202) 535-7251

SUPPLEMENTARY INFORMATION: This amendment to 32 CFR Part 2003 is issued pursuant to Section 5.2(b)(7) of Executive Order 12356.

List of Subjects in 32 CFR Part 2003

Classified information, Executive orders, Information, National security information, Security information.

32 CFR Part 2003 is amended as follows:

PART 2003 -- NATIONAL SECURITY INFORMATION -- STANDARD FORMS

1. The authority citation for 32 CFR Part 2003 continues to read:

AUTHORITY: Sec. 5.2(b)(7) of E.O. 12356.

Subpart B - Prescribed Forms

2. Section 2003.20 (h)(1) is revised to read as follows:

(h) * * *

(1)(i) As used in paragraph 1 of SF 189, the term "classifiable information" refers to two categories of information only: (a) unmarked classified information, including oral communications; and (b) unclassified information that meets the standards for classification and is in the process of a classification determination. "Classifiable information" does not refer to currently unclassified information that may be subject to possible classification at some future date, but is not currently in the process of a classification determination. Therefore, the only circumstances under which a party to SF 189 might violate its terms by disclosing unclassified information are when a party knows, or reasonably should know, that such information is in the process of a classification determination and requires interim protection as provided in Section 1.1(c) of Executive Order 12356 or any other statute or Executive order that requires interim protection for certain unclassified information while a classification determination is pending.

(ii) A party to SF 189 may be liable for disclosing "classifiable information" only if: (a) he or she knows that the unmarked information is classified, or is in the process of a classification determination, in which case the unauthorized disclosure is willful or negligent; or (b) he or she should know that the unmarked information is classified, or is in the process of a classification determination, in which case the unauthorized disclosure is negligent. In no instance could a party to SF 189 be liable for violating its nondisclosure provisions by disclosing unmarked information when, at the time of the disclosure, there was no basis to suggest, other than pure speculation, that the information was classified or in the process of a classification determination.

Dated:

Steven Garfinkel
Director, Information
Security Oversight Office