

(e) In an emergency requiring immediate communication of the information, after taking the action prescribed by paragraphs (a) and (b) of this section transmit the information and then proceed in accordance with paragraph (c) of this section.

§ 159a.20 Information developed by private sources.

(a) *General.* There are some circumstances in which information not meeting the definition in § 159a.9(f) may warrant protection in the interest of national security.

(b) *Patent Secrecy Act.* The Patent Secrecy Act of 1952 provides that the Secretary of Defense, among others, may determine that disclosure of an invention by granting of a patent would be detrimental to national security. See DoD Directive 5535.2⁸. A patent application on which a secrecy order has been imposed shall be handled as follows within the Department of Defense:

(1) If the patent application contains information that warrants classification, it shall be assigned a classification and be marked and safeguarded accordingly.

(2) If the patent application does not contain information that warrants classification, the following procedures shall be followed:

(i) A cover sheet (or cover letter for transmittal) shall be placed on the application with substantially the following language:

The attached material contains information on which secrecy orders have been issued by the U.S. Patent Office after determination that disclosure would be detrimental to national security (Patent Secrecy Act of 1952, 35 U.S.C. 181-188). Its transmission or revelation in any manner to an unauthorized person is prohibited by law. Handle as though classified CONFIDENTIAL (or such other classification as would have been assigned had the patent application been within the definition provided in § 159a.9(f)).

(ii) The information shall be withheld from public release; its dissemination within the Department of Defense shall be controlled; the applicant shall be instructed not to disclose it to any unauthorized person; and the patent application (or other document incor-

porating the protected information) shall be safeguarded in the manner prescribed for equivalent classified material.

(3) If filing of a patent application with a foreign government is approved under provisions of the Patent Secrecy Act of 1952 and agreements on interchange of patent information for defense purposes, the copies of the patent application prepared for foreign registration (but only those copies) shall be marked at the bottom of each page as follows:

Withheld under the Patent Secrecy Act of 1952 (35 U.S.C. 181-188). Handle as CONFIDENTIAL (or such other level as has been determined).

(c) *Independent Research and Development.* (1) Information in a document or material that is a product of government-sponsored independent research and development conducted without access to classified information may not be classified unless the government first acquires a proprietary interest in such product.

(2) If no prior access was given but the person or company conducting the independent research or development believes that protection may be warranted in the interest of national security, the person or company should safeguard the information in accordance with § 159a.19 and submit it to an appropriate DoD element for evaluation. The DoD element receiving such a request for evaluation shall make or obtain a determination whether a classification would be assigned if it were government information. If the determination is negative, the originator shall be advised that the information is unclassified. If the determination is affirmative, the DoD element shall make or obtain a determination whether a proprietary interest in the research and development will be acquired. If so, the information shall be assigned proper classification. If not, the originator shall be informed that there is no basis for classification and the tentative classification shall be canceled.

(d) *Other Private Information.* The procedure specified in § 159a.19 shall apply in any case not specified in paragraph

⁸See footnote 1 to § 159a.3.

(c) of this section, such as an unsolicited contract bid, in which private information is submitted to a DoD element for a determination of classification.

§ 159a.21 Regrading.

(a) *Raising to a Higher Level of Classification.* The upgrading of classified information to a higher level than previously determined by officials with appropriate classification authority and jurisdiction over the subject matter is permitted only when all known holders of the information:

(1) Can be notified promptly of such action, and

(2) Are authorized access to the higher level of classification, or the information can be retrieved from those not authorized access to information at the contemplated higher level of classification.

(b) *Classification of Information Previously Determined to be Unclassified.* Unclassified information, once communicated as such, may be classified only when the classifying authority:

(1) Makes the determination required for upgrading in paragraph (a) of this section;

(2) Determines that control of the information has not been lost by such communication and can still be prevented from being lost; and

(3) In the case of information released to secondary distribution centers, such as the DTIC, determines that no secondary distribution has been made and can still be prevented (see also § 159a.15(e) (6) and (7)).

(c) *Notification.* All known holders of information that has been upgraded shall be notified promptly of the upgrading action.

(d) *Downgrading.* When it will serve a useful purpose, original classification authorities may, at the time of original classification, specify that downgrading of the assigned classification will occur on a specified date or upon the occurrence of a stated event.

§ 159a.22 Industrial operations.

(a) *Classification in Industrial Operations.* Classification of information in private industrial operations shall be based only on guidance furnished by the government. Industrial manage-

ment may not make original classification determinations and shall implement the classification decisions of the U.S. Government contracting authority.

(b) *Contract Security Classification Specification.* DD Form 254, "Contract Security Classification Specification," shall be used to convey contractual security classification guidance to industrial management. DD Forms 254 shall be changed by the originator to reflect changes in classification guidance and reviewed for currency and accuracy not less than once every 2 years. Changes shall conform with this part and DoD 5220.22-R and DoD 5220.22-M and shall be provided to all holders of the DD Form 254 as soon as possible. When no changes are made as a result of the biennial review, the originator shall so notify all holders of the DD Form 254 in writing.

Subpart D—Declassification and Downgrading

§ 159a.24 General provisions.

(a) *Policy.* Information classified under E.O. 12356 and prior orders shall be declassified or downgraded as soon as national security considerations permit. Decisions concerning declassification shall be based on the loss of sensitivity of the information with the passage of time or on the occurrence of an event that permits declassification. Information that continues to meet the classification requirements of § 159a.15(c) despite the passage of time will continue to be protected in accordance with this part.

(b) *Responsibility of Officials.* Officials authorized under § 159a.12(c) to declassify or downgrade information that is under the final classification jurisdiction of the Department of Defense shall take such action in accordance with this subpart.

(c) *Declassification Coordination.* DoD Component declassification review of classified information shall be coordinated with any other DoD or non-DoD office, Component, or agency that has a direct interest in the subject matter.

(d) *Declassification by the Director of the ISOO.* If the Director of the ISOO