

(3) Specific reproduction equipment shall be designated for the reproduction of classified information. Rules for reproduction of classified information shall be posted on or near the designated equipment;

(4) Notices prohibiting reproduction of classified information shall be posted on equipment used only for the reproduction of unclassified information;

(5) DoD Components shall ensure that equipment used for reproduction of classified information does not leave latent images in the equipment or on other material;

(6) All copies of classified documents reproduced for any purpose including those incorporated in a working paper are subject to the same controls prescribed for the document from which the reproduction is made; and

(7) Records shall be maintained for 2 years to show the number and distribution of reproduced copies of all Top Secret documents, of all classified documents covered by special access programs distributed outside the originating agency, and of all Secret and Confidential documents that are marked with special dissemination and reproduction limitations.

(See § 159a.35(f))

Subpart I—Transmission

§ 159a.57 Methods of transmission or transportation.

(a) *Policy.* Classified information may be transmitted or transported only as specified in this subpart.

(b) *Top Secret Information.* Transmission of Top Secret information shall be effected only by:

(1) The Armed Forces Courier Service (ARFCOS);

(2) Authorized DoD Component Courier Services,

(3) If appropriate, the Department of State Courier System;

(4) Cleared and designated U.S. military personnel and Government civilian employees traveling on a conveyance owned, controlled, or chartered by the U.S. Government or DoD contractors;

(5) Cleared and designated U.S. Military personnel and government civilian employees by surface transportation;

(6) Cleared and designated U.S. Military personnel and government civilian employees on scheduled commercial passenger aircraft within and between the United States, its Territories, and Canada, when approved in accordance with § 159a.59(d)(1).

(7) Cleared and designated U.S. Military personnel and government civilian employees on scheduled commercial passenger aircraft on flights outside the United States, its territories, and Canada, when approved in accordance with § 159a.59(d)(2).

(8) Cleared and designated DoD contractor employees within and between the United States and its Territories provided that the transmission has been authorized in writing by the appropriate contracting officer or his designated representative, and the designated employees have been briefed on their responsibilities as couriers or escorts for the protection of Top Secret material. Complete guidance for Top Secret transmission is specified in DoD 5220.22-R and DoD 5220.22-M.

(9) A cryptographic system authorized by the Director, NSA, or via a protected distribution system designed and installed to meet the standards included in the National COMSEC and Emanations Security (EMSEC) Issuance System.

(c) *Secret Information.* Transmission of Secret information may be effected by:

(1) Any of the means approved for the transmission of Top Secret information except that Secret information may be introduced into the ARFCOS only when the control of such information cannot be otherwise maintained in U.S. custody. This restriction does not apply to SCI and COMSEC information;

(2) Appropriately cleared contractor employees within and between the United States and its Territories provided that:

(i) The designated employees have been briefed in their responsibilities as couriers or escorts for protecting Secret information;

(ii) The classified information remains under the constant custody and protection of the contractor personnel at all times; and

(iii) The transmission otherwise meets the requirements specified in

DoD 5220.22-R and DoD 5220.22-M. In other areas, appropriately cleared DoD contractor employees may transmit classified material only as prescribed by DoD 5220.22-R and DoD 5220.22-M.

(3) U.S. Postal Service registered mail within and between the United States and its Territories;

(4) U.S. Postal Service registered mail through Army, Navy, or Air Force Postal Service facilities outside the United States and its Territories, provided that the information does not at any time pass out of U.S. citizen control and does not pass through a foreign postal system or any foreign inspection;

(5) U.S. Postal Service and Canadian registered mail with registered mail receipt between U.S. Government and Canadian Government installations in the United States and Canada;

(6) Carriers authorized to transport Secret information by way of a Protective Security Service (PSS) under the DoD Industrial Security Program. This method is authorized only within the U.S. boundaries and only when the size, bulk, weight, and nature of the shipment, or escort considerations make the use of other methods impractical. Routings for these shipments will be obtained from the Military Traffic Management Command (MTMC);

(7) The following carriers under appropriate escort: government and government contract vehicles including aircraft, ships of the U.S. Navy, civil service-operated U.S. Naval ships, and ships of U.S. registry. Appropriately cleared operators of vehicles, officers of ships or pilots of aircraft who are U.S. citizens may be designated as escorts provided the control of the carrier is maintained on a 24-hour basis. The escort shall protect the shipment at all times, through personal observation or authorized storage to prevent inspection, tampering, pilferage, or unauthorized access. However, observation of the shipment is not required during the period it is stored in an aircraft or ship in connection with flight or sea transit, provided the shipment is loaded into a compartment that is not accessible to any unauthorized persons or in a specialized secure, safe-like container that is:

(i) Constructed of solid building material that provides a substantial resistance to forced entry;

(ii) Constructed in a manner that precludes surreptitious entry through disassembly or other means, and that attempts at surreptitious entry would be readily discernible through physical evidence of tampering; and

(iii) Secured by a numbered cable seal lock affixed to a substantial metal hasp in a manner that precludes surreptitious removal and provides substantial resistance to forced entry.

(8) Use of specialized containers aboard aircraft requires that:

(i) Appropriately cleared personnel maintain observation of the material as it is being loaded aboard the aircraft and that observation of the aircraft continues until it is airborne;

(ii) Observation by appropriately cleared personnel is maintained at the destination as the material is being off-loaded and at any intermediate stops. Observation will be continuous until custody of the material is assumed by appropriately cleared personnel.

(d) *Confidential Information.* Transmission of Confidential information may be effected by:

(1) Means approved for the transmission of Secret information. However, U.S. Postal Service registered mail shall be used for Confidential only as indicated in paragraph (c)(2) of this section;

(2) U.S. Postal Service registered mail for:

(i) Confidential information of NATO;

(ii) Other Confidential material to and from FPO or APO addressees located outside the United States and its Territories;

(iii) Other addressees when the originator is uncertain that their location is within U.S. boundaries. Use of return postal receipts on a case-by-case basis is authorized.

(3) U.S. Postal Service first class mail between DoD Component locations anywhere in the United States and its Territories. However, the outer envelope or wrappers of such Confidential material shall be endorsed "POST-MASTER: Address Correction Requested/Do Not Forward." Certified or,

if appropriate, registered mail shall be used for material directed to DoD contractors and to non-DoD agencies of the Executive Branch. U.S. Postal Service Express Mail Service may be used between DoD Component locations, between DoD contractors, and between DoD Components and DoD contractors.

(4) Within U.S. boundaries, commercial carriers that provide a Constant Surveillance Service (CSS). Information concerning commercial carriers that provide CSS may be obtained from the MTMC.

(5) In the custody of commanders or masters of ships of U.S. registry who are U.S. citizens. Confidential information shipped on ships of U.S. registry may not pass out of U.S. Government control. The commanders or masters must give and receive classified information receipts and agree to:

(i) Deny access to the Confidential material by unauthorized persons, including customs inspections, with the understanding that Confidential cargo that would be subject to customs inspection will not be unloaded; and

(ii) Maintain control of the cargo until a receipt is obtained from an authorized representative of the consignee.

(6) Such alternative or additional methods of transmission as the head of any DoD Component may establish by rule or regulation, provided those methods afford at least an equal degree of security.

(e) *Transmission of Classified Material to Foreign Governments.* After a determination by designated officials pursuant to DoD Directive 5230.11 that classified information or material may be released to a foreign government, the material shall be transferred between authorized representatives of each government in compliance with the provisions of this subpart. To assure compliance, each contract, agreement, or other arrangement that involves the release of classified material to foreign entities shall either contain transmission instructions or require that a separate transportation plan be approved by the appropriate DoD security and transportation officials prior to release of the material. (See DoD TS-

5105.21-M-3³¹ for guidance regarding SCI.)

(1) Classified material to be released directly to a foreign government representative shall be delivered or transmitted only to a person who has been designated in writing by the recipient government as its officer, agent, or employee (hereafter referred to as the designated representative). Foreign governments may designate a freight forwarder as their agent. This written designation shall contain assurances that such person has a security clearance at the appropriate level and that the person will assume full security responsibility for the material on behalf of the foreign government. The recipient will be required to execute a receipt for the material, regardless of the level of classification.

(2) Classified material that is suitable for transfer by courier or postal service, and which cannot be transferred directly to a foreign government's designated representative as specified in paragraph (e)(1) of this section, shall be transmitted by one of the methods specified in paragraph (b), (c), or (d) of this section, for the designated classification level to:

(i) An embassy, consulate, or other official agency of the recipient government having extraterritorial status in the United States, or to

(ii) A U.S. Embassy or a U.S. military organization in the recipient country or in a third-party country, if applicable, for delivery to a designated representative of the intended recipient government. In either case, the assurance in paragraph (e)(1) of this section, and a receipt, must be obtained.

(3) The shipment of classified material as freight via truck, rail, aircraft, or ship shall be in compliance with the following:

(i) *Shipment Resulting from Foreign Military Sales (FMS).* DoD officials authorized to approve a FMS transaction that involves the delivery of U.S. classified material to a foreign purchaser shall, at the outset of negotiation or consideration of proposal, consult with DoD transportation authorities (Military Traffic Management Command, Military Sealift Command, Military

³¹ See footnote 13 to § 159a.33(j)

Airlift Command, or other, as appropriate) to determine whether secure shipment from the CONUS point of origin to the ultimate foreign destination is feasible. Normally, the United States will use the Defense Transportation System (DTS) to deliver classified material to the recipient government. If, in the course of FMS case processing, the foreign purchaser proposes to take delivery and custody of the classified material in the United States and use its own facilities and transportation for onward shipment to its territory, the foreign purchaser or its designated representative shall be required to submit a transportation plan for DoD review and approval. This plan, as a minimum, shall specify the storage facilities, delivery and transfer points, carriers, couriers or escorts, and methods of handling to be used from the CONUS point of origin to the final destination and return shipment when applicable. (See Appendix E to this part) Security officials of the DoD Component that initiates the FMS transaction shall evaluate the transportation plan to determine whether the plan adequately ensures protection of the highest level of classified material involved. Unless the DoD Component initiating the FMS transaction approves the transportation plan as submitted, or it is modified to meet U.S. security standards, shipment by other than DTS shall not be permitted. Transmission instructions or the requirement for an approved transportation plan shall be incorporated into the security requirements of the United States Department of Defense Offer and Acceptance (DD Form 1513).

(ii) *Shipments Resulting from Direct Commercial Sales.* Classified shipments resulting from direct commercial sales must comply with the same security standards that apply to FMS shipments. Defense contractors, therefore, will consult, as appropriate, with the purchasing government, the DIS Regional Security Office, and the owning Military Department prior to consummation of a commercial contract that will result in the shipment of classified material to obtain approval of the transportation plan.

(iii) *Delivery within the United States, Its Territories, or Possessions.* Delivery of

classified material to a foreign government at a point within the United States, its territories, or its possessions, shall be made only to a person identified in writing by the recipient government as its designated representative as specified in paragraph (e)(1) of this section. The only authorized delivery points are:

(A) An embassy, consulate, or other official agency under the control of the recipient government.

(B) Point of origin. When a designated representative of the recipient government accepts delivery of classified U.S. material at the point of origin (for example, a manufacturing facility or depot), the DoD official who transfers custody shall obtain a receipt for the classified material and assure that the recipient is cognizant or secure means of onward movement of the classified material to its final destination, consistent with the approved transportation plan.

(C) Military or commercial ports of embarkation (POE) that are recognized points of departure from the United States, its territories, or possessions, for onloading aboard a ship, aircraft, or other carrier authorized under paragraph (e)(3)(v) of this section. In these cases, the transportation plan shall provide for U.S.-controlled secure shipment to the CONUS transshipment point and the identification of a secure storage facility, government or commercial, at or in proximity to the POE. A DoD official authorized to transfer custody is to supervise or observe the onloading of FMS material being transported via the DTS and other onloading wherein physical and security custody of the material has yet to be transferred formally to the foreign recipient. In the event that transfer of physical and security custody cannot be accomplished promptly, the DoD official shall ensure that the classified material is either returned to a secure storage facility of the U.S. shipper (government or contractor); or segregated and placed under constant surveillance of a duly cleared U.S. security force at the POE; or held in the secure storage facility (government or commercial) designated in the transportation plan.

(D) Freight forwarder facility that is identified by the recipient government as its designated representative and that is cleared in accordance with paragraph (e)(3)(vi) of this section, to the level of the classified material to be received. In these cases, a person identified as a designated representative must be present to accept delivery of the classified material and receipt for it, to include full acceptance of security responsibility.

(iv) *Delivery Outside the United States, Its Territories, or Possessions*—(A) *Delivery within the recipient country.* Classified U.S. material to be delivered to a foreign government within the recipient country shall be delivered on arrival in the recipient country to a U.S. Government representative who shall arrange for its transfer to a designated representative of the recipient government. If the shipment is escorted by a U.S. Government official authorized to accomplish the transfer of custody, the material may be delivered directly to the recipient government's designated representative upon arrival.

(B) *Delivery Within a Third Country.* Classified material to be delivered to a foreign government representative within a third country shall be delivered to an agency or installation of the United States, or of the recipient government, that has extraterritorial status or otherwise is exempt from the jurisdiction of the third country. Unless the material is accompanied by a U.S. Government official authorized to accomplish the transfer of custody, a U.S. Government official shall be designated locally to receive the shipment upon arrival and be vested with authority to effect delivery to the intended recipient government's designated representative.

(v) *Overseas Carriers.* Overseas shipments of U.S. classified material shall be made only via ships, aircraft, or other carriers that are:

(A) Owned or chartered by the U.S. Government or under U.S. registry,

(B) Owned or chartered by or under the registry of the recipient government, or

(C) Otherwise expressly authorized by the head of the DoD Component having classification jurisdiction over the material involved. Overseas shipments of

classified material shall be escorted, prepared for shipment, packaged, and stored onboard as prescribed elsewhere in this subpart and in DoD 5220.22-R and DoD 5220.22-M.

(vi) *Freight Forwarders.* Only freight forwarders that have been granted an appropriate security clearance by the Department of Defense or the recipient government are eligible to receive, process, and store U.S. classified material authorized for release to foreign governments. However, a freight forwarder that does not have access to or custody of the classified material need not be cleared.

(f) *Consignor-Consignee Responsibility for Shipment of Bulky Material.* The consignor of a bulk shipment shall:

(1) Normally, select a carrier that will provide a single line service from the point of origin to destination, when such a service is available;

(2) Ship packages weighing less than 200 pounds in closed vehicles only;

(3) Notify the consignee, and military transshipping activities, of the nature of the shipment (including level of classification), the means of shipment, the number of seals, if used, and the anticipated time and date of arrival by separate communication at least 24 hours in advance of arrival of the shipment. Advise the first military transshipping activity that, in the event the material does not move on the conveyance originally anticipated, the transshipping activity should so advise the consignee with information of firm transshipping date and estimated time of arrival. Upon receipt of the advance notice of a shipment of classified material, consignees and transshipping activities shall take appropriate steps to receive the classified shipment and to protect it upon arrival.

(4) Annotate the bills of lading to require the carrier to notify the consignor immediately by the fastest means if the shipment is unduly delayed enroute. Such annotations shall not under any circumstances disclose the classified nature of the commodity. When seals are used, annotate substantially as follows:

DO NOT BREAK SEALS EXCEPT IN EMERGENCY OR UPON AUTHORITY OF CONSIGNOR OR CONSIGNEE. IF BROKEN APPLY CARRIER'S SEALS AS SOON AS

POSSIBLE AND IMMEDIATELY NOTIFY CONSIGNOR AND CONSIGNEE.

(5) Require the consignee to advise the consignor of any shipment not received more than 48 hours after the estimated time of arrival furnished by the consignor or transshipping activity. Upon receipt of such notice, the consignor shall immediately trace the shipment. If there is evidence that the classified material was subjected to compromise, the procedures set forth in subpart G of this part for reporting compromises shall apply.

(g) *Transmission of COMSEC Information.* COMSEC information shall be transmitted in accordance with National COMSEC Instruction 4005.

(h) *Transmission of Restricted Data.* Restricted Data shall be transmitted in the same manner as other information of the same security classification. The transporting and handling of nuclear weapons or nuclear components shall be in accordance with DoD Directives 4540.1³² and 5210.41³³ and applicable DoD Component directives and regulations.

[54 FR 26959, June 27, 1989; 54 FR 46610, Nov. 6, 1989]

§ 159a.58 Preparation of material for transmission, shipment, or conveyance.

(a) *Envelopes or Containers.* (1) Whenever classified information is transmitted, it shall be enclosed in two opaque sealed envelopes or similar wrappings when size permits, except as provided by the following:

(2) Whenever classified material is transmitted of a size not suitable for transmission in accordance with paragraph (a)(1) of this section, it shall be enclosed in two opaque sealed containers, such as boxes or heavy wrappings.

(i) If the classified information is an internal component of a packageable item of equipment, the outside shell or body may be considered as the inner enclosure provided it does not reveal classified information.

(ii) If the classified material is an inaccessible internal component of a bulky item of equipment that is not reasonably packageable, the outside or

body of the item may be considered to be a sufficient enclosure provided the shell or body does not reveal classified information.

(iii) If the classified material is an item or equipment that is not reasonably packageable and the shell or body is classified, it shall be concealed with an opaque covering that will hide all classified features.

(iv) Specialized shipping containers, including closed cargo transporters, may be used instead of the above packaging requirements. In such cases, the container may be considered the outer wrapping or cover.

(3) Material used for packaging shall be of such strength and durability as to provide security protection while in transit, prevent items from breaking out of the container, and to facilitate the detection of any tampering with the container. The wrappings shall conceal all classified characteristics.

(4) Closed and locked vehicles, compartments, or cars shall be used for shipments of classified information except when another method is authorized by the consignor. Alternative methods authorized by the consignor must provide security equivalent to or better than the methods specified herein. In all instances, individual packages weighing less than 200 pounds gross shall be shipped only in a closed vehicle.

(5) To minimize the possibility of compromise of classified material caused by improper or inadequate packaging thereof, responsible officials shall ensure that proper wrappings are used for mailable bulky packages. Responsible officials shall require the inspection of bulky packages to determine whether the material is suitable for mailing or whether it should be transmitted by other approved means.

(6) When classified material is hand-carried outside an activity, a locked briefcase may serve as the outer wrapper. In such cases, the addressing requirements of paragraph (b)(4) of this section do not apply; however, the requirements of paragraph (b)(3) of this section are applicable.

(b) *Addressing.* (1) Classified information shall be addressed to an official government activity or DoD contractor with a facility clearance and not to an

³² See footnote 1 to § 159a.3

³³ See footnote 1 to § 159a.3