

§ 159a.26, except that foreign government information will be declassified only in accordance with the guidelines developed for such purpose and after necessary consultation with other DoD Components or government agencies with subject matter interest. When these guidelines cannot be applied to the foreign government information requested, or in the absence of such guidelines, consultation with the foreign originator through appropriate channels normally should be effected prior to final action taken on the request. When the responsible DoD Component is knowledgeable of the foreign originator's view toward declassification or continued classification of the types of information requested, consultation with the foreign originator may not be necessary.

§ 159a.77 Marking.

(a) *Equivalent U.S. Classification Designations.* Except for the foreign security classification designation RESTRICTED, foreign classification designations, including those of international organizations of governments, that is, NATO, generally parallel U.S. classification designations. A table of equivalents is contained in Appendix A to this part.

(b) *Marking NATO Documents.* Classified documents originated by NATO, if not already marked with the appropriate classification in English, shall be so marked. Markings required under § 159a.34(c) shall not be placed on documents originated by NATO. Documents originated by NATO that are marked RESTRICTED shall be marked with the following additional notation: "To be safeguarded in accordance with USSAN Instruction 1-69" (see DoD Directive 5100.55).

(c) *Marking Other Foreign Government Documents.* (1) If the security classification designation of foreign government documents is shown in English, no other classification marking shall be applied. If the foreign classification designation is not shown in English, the equivalent overall U.S. classification designation (see Appendix A to this part) shall be marked conspicuously on the document. When foreign government documents are marked with a classification designation hav-

ing no U.S. equivalent, as in the last column of Appendix A to this part, such documents shall be marked in accordance with paragraph (c)(2) of this section.

(2) Certain foreign governments use a fourth classification designation as shown in the last column of Appendix A to this part. Such designations equate to the foreign classification RESTRICTED. If the foreign government documents are marked with any of the classification designations listed in the last column of Appendix A to this part, no other classification marking shall be applied. In all such cases, the notation, "This classified material is to be safeguarded in accordance with DoD 5200.1-R or DoD 5220.22-M," shall be shown on the face of the document.

(3) Other marking requirements prescribed by this Regulation for U.S. classified documents are not applicable to documents of foreign governments or international organizations of governments.

(d) *Marking of DoD Classification Determinations.* Foreign documents containing foreign government information not classified by the foreign government but provided to the Department of Defense in confidence shall be classified as prescribed in § 159a.75(a)(2) and marked with the appropriate U.S. classification.

(e) *Marking of Foreign Government Information in DoD Documents.* (1) Except where such markings would reveal that information is foreign government information when that fact must be concealed, or reveal a confidential source or relationship not otherwise evident in the document or information, foreign government information incorporated in DoD documents shall be identified in a manner that ensures that such information is not declassified prematurely or made accessible to nationals of a third country without consent of the originator. This requirement may be satisfied by marking the face of the document "FOREIGN GOVERNMENT INFORMATION," or with another marking that otherwise indicates that the information is foreign government information, and by including the appropriate identification in the portion or paragraph classification markings, for example, (NS) or

(U.K.-C). All other markings prescribed by § 159a.31(d) are applicable to these documents. In addition, DoD classified documents that contain extracts of NATO classified information shall bear a marking substantially as follows on the cover or first page: "THIS DOCUMENT CONTAINS NATO CLASSIFIED INFORMATION."

(2) When foreign RESTRICTED or NATO RESTRICTED information is included in an otherwise unclassified DoD document, the DoD document shall be marked CONFIDENTIAL. All requirements of § 159a.31(d) apply to such documents. Portion markings on such a document include, for example "(U)," "(NR)," and "(FRG-R)." In addition, the appropriate caveat from paragraph (a) of this section, shall be included on the face of the document.

(3) The "Classified by" line of DoD documents containing only foreign government information normally shall be completed with the identity of the foreign government or international organization involved, for example, "Classified by Government of Australia" or "Classified by NATO," provided that other requirements of § 159a.31(e) do not pertain to such documents.

(4) The "Declassify on" line of DoD documents containing foreign government information normally shall be completed with the notation "Originating Agency's Determination Required" or "OADR" (see § 159a.36 and § 159a.75(b)).

§ 159a.78 Protective measures.

(a) *NATO Classified Information.* NATO classified information shall be safeguarded in accordance with the provisions of DoD Directive 5100.55.

(b) *Other Foreign Government Information.* (1) Classified foreign government information other than NATO information shall be protected as is prescribed by this part for U.S. classified information of a comparable classification.

(2) Foreign government information, unless it is NATO information, that is marked under § 159a.77(c)(2) or § 159a.77(e)(2) shall be protected as U.S. CONFIDENTIAL, except that such information may be stored in locked filing cabinets, desks, or other similar

closed spaces that will prevent access by unauthorized persons.

Subpart M—Special Access Programs

§ 159a.80 Policy.

It is the policy of the Department of Defense to use the security classification categories and the applicable sections of E.O. 12356 and its implementing ISOO Directive, to limit access to classified information on a "need-to-know" basis to personnel who have been determined to be trustworthy. It is further policy to apply the "need-to-know" principle in the regular system so that there will be no need to resort to formal Special Access Programs. Also, need-to-know control principles shall be applied within Special Access Programs. In this context, Special Access Programs may be created or continued only on specific showing that:

(a) Normal management and safeguarding procedures are not sufficient to limit "need-to-know" or access; and

(b) The number of persons who will need access will be reasonably small and commensurate with the objective of providing extra protection for the information involved.

§ 159a.81 Establishment of special access programs.

(a) Procedures for the establishment of Special Access Programs involving NATO classified information are based on international treaty requirements (see DoD Directive 5100.55).

(b) The policies and procedures for access to and dissemination of Restricted Data and Critical Nuclear Weapon Design Information are contained in DoD Directive 5210.2.

(c) Special Access Programs for foreign intelligence information under the cognizance of the Director of Central Intelligence, or those of the National Telecommunications and Information Systems Security Committee originate outside the Department of Defense. However, coordination with the DUSD(P) and the Component's central point of contact is necessary before the establishment or implementation of any such Programs by any DoD Component. The information required by § 159a.80(f)(1) will be provided.