

§ 223.7 Information requirements.

(a) Section 128 of 10 U.S.C. requires that the Secretary of Defense prepare on a quarterly basis a report to be made available on the request of any interested person. Appendix A to this part outlines the procedures for preparing the quarterly report.

(b) The report is exempt from licensing in accordance with paragraph E.4.e of DoD 7750.5-M.⁵

APPENDIX A TO PART 223—PROCEDURES
FOR IDENTIFYING AND CONTROLLING
DoD UCNI

A. General

1. The Secretary of Defense's authority for prohibiting the unauthorized disclosure and dissemination of DoD UCNI may be exercised by the Heads of the DoD Components and by the officials to whom such authority is specifically delegated by the Heads of the DoD Components. These procedures for identifying and controlling DoD UCNI are provided as guidance for the Heads of the DoD Components to implement the Secretary of Defense's authority to prohibit the unauthorized dissemination of unclassified information on security measures, including security plans, procedures, and equipment, for the physical protection of DoD SNM, equipment, or facilities.

2. The decision to protect unclassified information as DoD UCNI shall be based on a determination that the unauthorized dissemination of such information could reasonably be expected to have an adverse effect on the health and safety of the public or the common defense and security by increasing significantly the likelihood of the illegal production of nuclear weapons or the theft, diversion, or sabotage of DoD SNM, equipment, or facilities.

3. Government information shall be made publicly available to the fullest extent possible by applying the minimum restrictions consistent with the requirements of 10 U.S.C. 128, necessary to protect the health and safety of the public or the common defense and security.

4. DoD personnel, in making a determination to protect unclassified information as DoD UCNI, shall consider the probability of an illegal production, theft, diversion, or sabotage if the information proposed for protection were made available for public disclosure and dissemination. The determination to protect specific documents or information is not related to the ability of DoD UCNI to be obtained by other sources. For determining the control of DoD UCNI, the cognizant

official should consider how the unauthorized disclosure or dissemination of such information could assist a potential adversary in the following:

a. Selecting a target for an act of theft, diversion, or sabotage of DoD SNM, equipment, or facilities (e.g., relative importance of a facility or the location, form, and quantity of DoD SNM). Information that can be obtained by observation from public areas outside controlled locations should not be considered as DoD UCNI.

b. Planning or committing an act of theft, diversion, or sabotage of DoD SNM, equipment, or facilities (e.g., design of security systems; building plans; methods and procedures for transfer, accountability, and handling of DoD SNM; or security plans, procedures, and capabilities).

c. Measuring the success of an act of theft, diversion, or sabotage of DoD SNM, equipment, or facilities (e.g., actual or hypothetical consequences of the sabotage of specific vital equipment or facilities).

d. Illegally producing a nuclear explosive device (e.g., unclassified nuclear weapon design information useful in designing a primitive nuclear device; location of unique DoD SNM needed to fabricate such a device; or location of a nuclear weapon).

e. Dispersing DoD SNM in the environment (e.g., location, form, and quantity of DoD SNM).

5. DoD UCNI shall be identified, controlled, marked, transmitted, and safeguarded in the DoD Components, the North Atlantic Treaty Organization (NATO), and among DoD contractors, consultants, and grantees authorized to conduct official business for the Department of Defense. Contracts requiring the preparation of unclassified information that could be DoD UCNI shall have the requirements for identifying and controlling the DoD UCNI.

6. DoE GG-2¹ and DoE Orders 5635.4² and 5650.3³ provide background on implementation of the UCNI Program in the DoE. The DoD Components maintaining custody of DoE UCNI should refer to those documents for its identification and control.

B. Identifying DoD UCNI

1. To be considered for protection as DoD UCNI, the information must:

a. Be unclassified.

b. Pertain to security measures, including plans, procedures, and equipment, for the physical protection of DoD SNM, equipment, or facilities.

c. Meet the adverse effects test; i.e., that the unauthorized dissemination of such information could reasonably be expected to

¹See footnote 3 to § 223.2(c).

²See footnote 3 to § 223.2(c).

³See footnote 3 to § 223.2(c).

⁵See footnote 3 to § 223.2(c).

have an adverse effect on the health and safety of the public or the common defense and security by increasing significantly the likelihood of the illegal production of nuclear weapons or the theft, diversion, or sabotage of DoD SNM, equipment, or facilities.

2. Information, in the categories in section C. of appendix B to this part, about DOD SNM should be considered for protection as DoD UCNI.

3. Material originated before the effective date of those procedures, which is found in the normal course of business to have DoD UCNI, shall be protected as DoD UCNI. There is no requirement to conduct detailed file searches to retroactively identify and control DoD UCNI. As existing documents or materials are withdrawn from file, they should be reviewed to determine if they meet the criteria for protection as DoD UCNI and marked and controlled, accordingly.

C. Access to DOD UCNI

1. A Reviewing Official is an Authorized Individual for documents or materials that the Reviewing Official determines to contain DoD UCNI. An Authorized Individual, for DoD UCNI, may determine that another person is an Authorized Individual who may be granted routine access to the DoD UCNI, and who may further disseminate the DoD UCNI under the procedures specified in paragraph E., below. This recipient of DoD UCNI from an Authorized Individual is also an Authorized Individual for the specific DoD UCNI to which routine access has been granted. An Authorized Individual designates another person to be an Authorized Individual by the act of giving that person a document or material that contains DoD UCNI. No explicit designation or security clearance is required. This second Authorized Individual may further disseminate the UCNI under the procedures specified in section E. of the appendix.

2. A person granted routine access to DoD UCNI must have a need to know the specific DoD UCNI in the performance of official duties or of DoD-authorized activities. The recipient of the document or material shall be informed of the physical protection and access requirements for DoD UCNI. In addition to a need to know, the person must meet at least one of the following requirements:

a. The person is a U.S. citizen who is one of the following:

(1) A Federal Government employee or member of the U.S. Armed Forces.

(2) An employee of a Federal Government contractor, subcontractor, or of a prospective Federal Government contractor or subcontractor who will use the DoD UCNI for the purpose of bidding on a Federal Government contract or subcontract.

(3) A Federal Government consultant or DoD advisory committee member.

(4) A member of Congress.

(5) A staff member of a congressional committee or of an individual Member of Congress.

(6) The Governor of a State or designated State government official or representative.

(7) A local government official or an Indian tribal government official; or

(8) A member of a State, local, or Indian tribal law enforcement or emergency response organization.

b. The person is other than a U.S. citizen, and is one of the following:

(1) A Federal Government employee or a member of the U.S. Armed Forces.

(2) An employee of a Federal Government contractor or subcontractor; or

(3) A Federal Government consultant or DoD advisory committee member.

c. The person may be other than a U.S. citizen who is not otherwise eligible for routine access to DoD UCNI under paragraph C. 2.b of this appendix, but who requires routine access to specific DoD UCNI in conjunction with one of the following:

(1) An international nuclear cooperative activity approved by the Federal Government.

(2) U.S. diplomatic dealings with foreign government officials; or

(3) Provisions of treaties, mutual defense acts, or Government contracts or subcontracts.

3. A person not authorized routine access to DoD UCNI under paragraph C.2. of this appendix, may submit a request for special access to DoD UCNI to Heads of DoD Components, or their designated representative, as appropriate. A special access request must include the following information:

a. The name, current residence or business address, birthplace, birth date, and country of citizenship of the person submitting the request.

b. A description of the DoD UCNI for which special access is being requested.

c. A description of the purpose for which the DoD UCNI is needed; and

d. Certification by the requester of his or her understanding of, and willingness to abide by, the requirements for the protection of DoD UCNI contained in this part.

4. Heads of DoD Components, or their designated representative, shall base his or her decision to grant special access to DoD UCNI on an evaluation of the following criteria:

a. The sensitivity of the DoD UCNI for which special access is being requested (i.e., the worst-case, adverse effect on the health and safety of the public or the common defense and security which would result from unauthorized use of the DoD UCNI).

b. The purpose for which the DoD UCNI is needed (e.g., the DoD UCNI will be used for commercial or other private purposes, or will be used for public benefit to fulfill statutory or regulatory responsibilities).

c. The likelihood of an unauthorized dissemination by the requester of the DoD UCNI; and

d. The likelihood of the requester using the DoD UCNI for illegal purposes.

5. Heads of DoD Components, or their designated representative, shall attempt to notify a person who requests special access to DoD UCNI within 30 days of receipt of the request as to whether or not special access to the requested DoD UCNI is granted. If a final determination on the request cannot be made within 30 days of receipt of the request, Heads of DoD Components, or their designated representative, shall notify the requester, within 30 days of the request, as to when the final determination on the request may be made.

6. A person granted special access to specific UCNI is not an Authorized Individual and shall not further disseminate the DoD UCNI to which special access has been granted.

7. An Authorized Individual granting routine access to specific DoD UCNI to another person shall notify each person granted access (other than when the person being granted such access is a Federal Government employee, a member of the U.S. Armed Forces, or an employee of a Federal Government contractor or subcontractor) of applicable regulations concerning the protection of DoD UCNI and of any special dissemination limitations that the Authorized Individual determines to apply for the specific DoD UCNI to which routine access is being granted.

8. Heads of DoD Components, or their designated representative, shall notify each person granted special access to DoD UCNI of applicable regulations concerning the protection of DoD UCNI prior to dissemination of the DoD UCNI to the person.

9. The requirement to notify persons granted routine access or special access to specific DoD UCNI may be met by attachment of an appropriate cover sheet to the front of each document or material containing DoD UCNI prior to its transmittal to the person granted access.

D. Markings

1. An unclassified document with DoD UCNI shall be marked "DoD Unclassified Controlled Nuclear Information" at the bottom on the outside of the front cover, if any, and on the outside of the back cover, if any.

2. In an unclassified document, an individual page that has DoD UCNI shall be marked to show which of its portions contain DoD UCNI information. In marking sections, parts, paragraphs, or similar portions, the parenthetical term "(DoD UCNI)" shall be used and placed at the beginning of those portions with DoD UCNI.

3. In a classified document, an individual page that has both DoD UCNI and classified

information shall be marked at the top and bottom of the page with the highest security classification of information appearing on that page. In marking sections, parts, paragraphs, or similar portions, the parenthetical term "(DoD UCNI)" shall be used and placed at the beginning of those portions with DoD UCNI. In a classified document, an individual page that has DoD UCNI, but no classified information, shall be marked "DoD Unclassified Controlled Information" at the bottom of the page. The DoD UCNI marking may be combined with other markings, if all relevant statutory and regulatory citations are included.

4. Other material (e.g., photographs, films, tapes, or slides) shall be marked "DoD Unclassified Controlled Nuclear Information" to ensure that a recipient or viewer is aware of the status of the information.

E. Dissemination and Transmission

1. DoD UCNI may be disseminated in the DoD Components, the NATO, and among the DoD contractors, consultants, and grantees on a need-to-know basis to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means to preclude unauthorized disclosure or dissemination. Contracts that shall require access to DoD UCNI shall require compliance with this part and the DoD Component regulations and have the requirements for the marking, handling, and safeguarding of DoD UCNI.

2. DoD holders of DoD UCNI are authorized to convey such information to officials in other Departments or Agencies on a need-to-know basis to fulfill a Government function. Transmittal documents shall call attention to the presence of DoD UCNI attachments using an appropriate statement in the text, or marking at the bottom of the transmittal document, that "The attached document contains DoD Unclassified Controlled Nuclear Information (DoD UCNI)." Similarly, documents transmitted shall be marked, as prescribed in section D. of this appendix.

3. DoD UCNI transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the DoD UCNI marking. That may be accomplished by typing or stamping the following statement on the document before transfer:

DEPARTMENT OF DEFENSE
UNCLASSIFIED CONTROLLED NUCLEAR
INFORMATION
EXEMPT FROM MANDATORY
DISCLOSURE

(5 U.S.C. 552(b)(3), as authorized by 10 U.S.C. 128)

4. When not commingled with classified information, DoD UCNI may be sent by first-class mail in a single, opaque envelope or wrapping.

5. DoD UCNI may only be discussed or transmitted over an unprotected telephone or telecommunications circuit (to include facsimile transmissions) in an emergency.

6. Each part of electronically transmitted messages with DoD UCNI shall be marked appropriately. Unclassified messages with DoD UCNI shall have the abbreviation "DoD UCNI" before the beginning of the text.

7. DoD UCNI may be processed, stored, or produced on stand-alone personal computers, or shared-logic work processing systems, if protection from unauthorized disclosure or dissemination, in accordance with the procedures in section F. of this appendix, can be ensured.

8. A document marked as having DoD UCNI may be reproduced minimally without permission of the originator and consistent with the need to carry out official business.

F. Safeguarding DoD UCNI

1. During normal working hours, documents determined to have DoD UCNI shall be placed in an out-of-sight location, or otherwise controlled, if the work area is accessible to unescorted personnel.

2. At the close of business, DoD UCNI material shall be stored so to preclude disclosure. Storage of such material with other unclassified documents in unlocked receptacles; i.e., file cabinets, desks, or bookcases, is adequate, when normal Government or Government-contractor internal building security is provided during nonduty hours. When such internal building security is not provided, locked rooms or buildings normally provide adequate after-hours protection. If such protection is not considered adequate, DoD UCNI material shall be stored in locked receptacles; i.e., file cabinets, desks, or bookcases.

3. Nonrecord copies of DoD UCNI materials must be destroyed by tearing each copy into pieces to reasonably preclude reconstruction and placing the pieces in regular trash containers. If the sensitivity or volume of the information justifies it, DoD UCNI material may be destroyed in the same manner as classified material rather than by tearing. Record copies of DoD UCNI documents shall be disposed of, in accordance with the DoD Components' record management regulations. DoD UCNI on magnetic storage media shall be disposed of by overwriting to preclude its reconstruction.

4. The unauthorized disclosure of DoD UCNI material does not constitute disclosure of DoD information that is classified for security purposes. Such disclosure of DoD UCNI justifies investigative and administrative actions to determine cause, assess impact, and fix responsibility. The DoD Compo-

nent that originated the DoD UCNI information shall be informed of its unauthorized disclosure and the outcome of the investigative and administrative actions.

G. Retirement of Document of Material

1. Any unclassified document or material which is not marked as containing DoD UCNI but which may contain DoD UCNI shall be marked upon retirement in accordance with the DoD Components' record management regulations.

2. A document or material marked as containing DoD UCNI is not required to be reviewed by a Reviewing Official upon or subsequent to retirement. A Reviewing Official shall review any retired document or material upon a request for its release made under 5 U.S.C. 552.

H. Requests for Public Release of DoD UCNI

DoD 5400.7-R applies. Information that qualifies as DoD UCNI, under 10 U.S.C. 128, is exempt from mandatory disclosure under 5 U.S.C. 552. Consequently, requests for the public release of DoD UCNI shall be denied under 5 U.S.C. 552(b)(3), citing 10 U.S.C. 128 as authority.

I. Reports

The Assistant Secretary of Defense for Command, Control, Communications, and Intelligence shall prepare and maintain the quarterly reports required by 10 U.S.C. 128. The Heads of the DoD Components shall advise the ASD(C3I) when information not in the guidelines in appendix B to this part is determined to be DoD UCNI. Those reports shall have the following information:

1. Identification of the information to be controlled as DoD UCNI. It is not necessary to report each document or numbers of documents.

2. Justification for identifying the type of information to be controlled as DoD UCNI.

3. Certification that only the minimal information necessary to protect the health and safety of the public or the common defense and security is being controlled as DoD UCNI.

APPENDIX B TO PART 223—GUIDELINES FOR THE DETERMINATION OF DoD UCNI

A. Use of Determination of DoD UCNI Guidelines

1. These guidelines for determining DoD UCNI are the bases for determining what unclassified information about the physical protection of DoD SNM, equipment or facilities in a given technical or programmatic subject area is DoD UCNI.

2. The decision to protect unclassified information as DoD UCNI shall be based on a

determination that the unauthorized dissemination of such information could reasonably be expected to have an adverse effect on the health and safety of the public or the common defense and security by increasing significantly the likelihood of the illegal production of nuclear weapons or the theft, diversion, or sabotage of SNM, equipment, or facilities.

B. General

1. The policy for protecting unclassified information about the physical protection of DoD SNM, equipment, or facilities is to protect the public's interest by controlling certain unclassified Government information so to prevent the adverse effects described in section D. of this appendix and in appendix A to this part, without restricting public availability of information that would not result in those adverse effects.

2. In controlling DoD SNM information, only the minimum restrictions needed to protect the health and safety of the public or the common defense and security shall be applied to prohibit the disclosure and dissemination of DoD UCNI.

3. Any material that has been, or is, widely and irretrievably disseminated into the public domain and whose dissemination was not, or is not, under Government control is exempt from control under these guidelines. However, the fact that information is in the public domain is not a sufficient basis for determining that similar or updated Government-owned and -controlled information in another document or material is not, or is no longer, DoD UCNI; case-by-case determinations are required.

C. Topical Guidance

The following elements of information shall be considered by the DoD Components during the preparation of unclassified information about the physical protection of DoD SNM to determine if it qualifies for control as DoD UCNI:

1. VULNERABILITY ASSESSMENTS

a. General vulnerabilities that could be associated with specific DoD SNM, equipment, or facility locations.

b. The fact that DoD SNM facility security-related projects or upgrades are planned or in progress.

c. Identification and description of security system components intended to mitigate the consequences of an accident or act of sabotage at a DoD SNM facility.

2. MATERIAL CONTROL AND ACCOUNTABILITY

a. Total quantity or categories of DoD SNM at a facility.

b. Control and accountability plans or procedures.

c. Receipts that, cumulatively, would reveal quantities and categories of DoD SNM of potential interest to an adversary.

d. Measured discards, decay losses, or losses due to fission and transmutation for a reporting period.

e. Frequency and schedule of DoD SNM inventories.

3. FACILITY DESCRIPTION

a. Maps, conceptual design, and construction drawings of a DoD SNM facility showing construction characteristics of building and associated electrical systems, barriers, and back-up power systems not observable from a public area.

b. Maps, plans, photographs, or drawings of man-made or natural features in a DoD SNM facility not observable from a public area; i.e., tunnels, storm or waste sewers, water intake and discharge conduits, or other features having the potential for concealing surreptitious movement.

4. INTRUSION DETECTION AND SECURITY ALARM SYSTEMS

a. Information on the layout or design of security and alarm systems at a specific DoD SNM facility, if the information is not observable from a public area.

b. The fact that a particular system make or model has been installed at a specific DoD SNM facility, if the information is not observable from a public area.

c. Performance characteristics of installed systems.

5. KEYS, LOCKS, COMBINATIONS, AND TAMPER-INDICATING DEVICES

a. Types and models of keys, locks, and combinations of locks used in DoD SNM facilities and during shipment.

b. Method of application of tamper-indicating devices.

c. Vulnerability information available from unclassified vendor specifications.

6. THREAT RESPONSE CAPABILITY AND PROCEDURES

a. Information about arrangements with local, State, and Federal law enforcement Agencies of potential interest to an adversary.

b. Information in "nonhostile" contingency plans of potential value to an adversary to defeat a security measure; i.e., fire, safety, nuclear accident, radiological release, or other administrative plans.

c. Required response time of security forces.

7. PHYSICAL SECURITY EVALUATIONS

a. Method of evaluating physical security measures not observable from public areas.

b. Procedures for inspecting and testing communications and security systems.

8. IN-TRANSIT SECURITY

- a. Fact that a shipment is going to take place.
- b. Specific means of protecting shipments.
- c. Number and size of packages.
- d. Mobile operating and communications procedures that could be exploited by an adversary.
- e. Information on mode, routing, protection, communications, and operations that must be shared with law enforcement or other civil agencies, but not visible to the public.
- f. Description and specifications of transport vehicle compartments or security systems not visible to the public.

9. INFORMATION ON NUCLEAR WEAPON STOCKPILE AND STORAGE REQUIREMENT, NUCLEAR WEAPON DESTRUCTION AND DISABLEMENT SYSTEMS, AND NUCLEAR WEAPONS PHYSICAL CHARACTERISTICS

Refer to CG-W-5 for guidance about the physical protection of information on nuclear weapon stockpile and storage requirements, nuclear weapon destruction and disablement systems, and nuclear weapon physical characteristics that may, under certain circumstances, be unclassified. Such information meets the adverse effects test shall be protected as DoD UCNI.

PART 224—DoD COMMITTEE MANAGEMENT PROGRAM

Sec.

- 224.1 Purpose.
- 224.2 Applicability.
- 224.3 Definitions.
- 224.4 Policy.
- 224.5 Responsibilities.

AUTHORITY: 10 U.S.C. 137.

SOURCE: 55 FR 5002, Feb. 13, 1990, unless otherwise noted.

§224.1 Purpose.

This part:

- (a) Revises 32 CFR part 224 and updates the policy, procedures, and responsibilities for the Department of Defense (DoD) Committee Management Program.
- (b) Excludes Federal advisory committees from coverage under this part. They shall be established and administered in accordance with the provisions of DoD Directive 5105.4.¹

¹Copies may be obtained, at cost, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

§224.2 Applicability.

This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Joint Chiefs of Staff (JCS) and Joint Staff, the Unified and Specified Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as “DoD Components”).

§224.3 Definitions.

(a) *Heads of OSD Organizations.* The Under Secretaries of Defense; Assistant Secretaries of Defense; Director of Defense Research and Engineering; DoD Comptroller; DoD General Counsel; DoD Inspector General; Director, Operational Test and Evaluation; Assistants to the Secretary of Defense; and, the Director, Administration and Management.

(b) *Committee.* A body of persons with a collective responsibility appointed to consider, investigate, advise, take action, and report on specific problems or subject areas. The prime characteristics of committees are their corporate and collective responsibility, and their permanent or ongoing (versus ad hoc) nature. The term “committee” applies to any committee, board, commission, council, conference, panel, task force, or other similar group or any sub-committee or sub-group thereof that is composed of officials of the U.S. or a foreign government, and is established by the direction of the DoD Component Head.

(1) *Operational Committee.* One whose primary functions and responsibilities are operational, rather than advisory.

(2) *Interagency Committee.* Any committee composed wholly of representatives from two or more U.S. Government agencies.

(3) *International Committee.* Any committee established by formal agreement between the United States and the government of another country or countries or by an international body in which the United States participates.

(4) *Intra-Component Committee.* Any committee composed wholly of representatives from one DoD Component.

(5) *Joint DoD Committee.* Any committee composed wholly of DoD representatives from two or more DoD Components.