

**Subpart D—For Official Use Only**

## GENERAL PROVISIONS

**§ 518.38 General.**

Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked "For Official Use Only" (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

**§ 518.39 Prior FOUO application.**

The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption or exemptions apply or applies, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

**§ 518.40 Historical papers.**

Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA (reference (a)).

**§ 518.41 Time to mark records.**

The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

**§ 518.42 Distribution statement.**

Information in a technical document that requires a distribution statement

pursuant to DoD Directive 5230.24 (reference (m)), shall bear that statement and may be marked FOUO as appropriate.

**§ 518.43 Location of markings.**

(a) An unclassified document containing FOUO information shall be marked "For Official Use Only" in bold letters at least  $\frac{3}{16}$  of an inch high at the bottom on the outside of the front cover (if any), one each page containing FOUO information, and on the outside of the back cover (if any).

(b) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(c) Within a classified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page. The paragraphs containing the "For Official Use Only" information should also be marked with the initials FOUO.

(d) Other records, such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein. Markings on microform will conform to the requirements of paragraphs (b) and (c) of this section. As a minimum, each frame of a microform containing FOUO information will be marked "FOR OFFICIAL USE ONLY" at the bottom center of the appropriate page or frame. Classified or protective markings placed by a software program at both top and bottom of a page or frame of a computer-generated report are acceptable. Storage media (disk packs or magnetic tapes) containing personal information subject to the Privacy Act will be labeled "FOR OFFICIAL USE ONLY-Privacy Act Information."

(e) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer: "This document contains

information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemptions \* \* \* apply.”

(f) Permanently bound volumes need to be marked only on the outside of the front and back covers, title page, and first and last pages. Volumes stapled by office-type hand or electric staples are not considered permanently bound.

#### DISSEMINATION AND TRANSMISSION

##### **§ 518.44 Release and transmission procedures.**

Until FOUO status is terminated, the release and transmission instructions that follow apply:

(a) FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees 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 that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(b) DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked “For Official Use Only,” and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(c) Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4 (reference (n)). Army implementing instructions are in § 518.52 and in AR 1-20. Release to the GAO is governed by DoD Directive 7650.1 (reference (o)). Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may

be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

##### **§ 518.45 Transporting FOUO information.**

Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail. When material marked FOUO is removed from storage, attach DA Label 87 (For Official Use Only Cover Sheet).

##### **§ 518.46 Electrically transmitted messages.**

Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation “FOUO” before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in ACP[EN]121 (U.S. Supp 1) (reference (p)) for FOUO information. Army follows the procedures in AR 25-11.

##### **§ 518.47 Telephone usage.**

(a) FOUO information may be discussed over the telephone lines with DoD, other Government agencies, and Government support contractors for official purposes.

(b) Facsimile communications marked FOUO may be transmitted by nonsecure terminals with the FOUO markings intact between U.S. DoD, other U.S. Government agencies, and U.S. Government support contractors for official purposes.

#### SAFEGUARDING FOUO INFORMATION

##### **§ 518.48 During duty hours.**

During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-governmental personnel. When material