

## APPENDIX H

### TRANSMISSION TO FOREIGN GOVERNMENTS

Classified information or material approved for release to a foreign government shall be transferred between authorized representatives of each government in compliance with the provisions of this Appendix. Each contract, agreement, or other arrangement that involves the release of classified material as freight to foreign entities **shall** either contain detailed transmission instructions or require that a separate transportation plan be approved by the appropriate DoD security and transportation officials and the recipient government before release of the material. Transportation plan requirements are outlined in paragraph e., below. (See DoD TS-5105.2I-M-3 for guidance regarding **SCI**.)

a. Classified information or 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 to sign for and assume custody and responsibility on behalf of the government (hereinafter referred to as the designated government representative). This written designation shall contain assurances that such person has a security clearance at the appropriate level and that the person shall assume full security responsibility for the material on behalf of the foreign government. The recipient shall be required to execute a receipt for the material, regardless of the level of classification.

b. Classified material that is suitable for transfer by courier or postal service in accordance with this Regulation, and that cannot be transferred directly to a foreign government's designated representative shall be transmitted to:

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

(2) A U.S. Embassy or a U.S. military organization in the recipient country or in a third-party country for delivery to a designated representative of the recipient government.

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

(1) DoD officials authorized to approve a

Foreign Military Sales (**FMS**) transaction that involves the delivery of U.S. classified material to a foreign purchaser shall, at the outset of negotiation or consideration of a proposal, consult with DoD transportation authorities (Military Traffic Management Command, Military Sealift Command, Air Mobility 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 shall use the Defense Transportation System (**DTS**) to deliver classified material to the recipient government. A transportation plan shall be developed by the DoD Component that prepares the Letter of Offer in coordination with the purchasing government. Security **officials** of the DoD Component that prepares the Letter of Offer shall evaluate the adequacy of the transportation plan.

(2) Classified shipments resulting from direct commercial sales must comply with the same security standards that apply to FMS shipments. To develop and obtain approval of the required transportation plan, defense contractors shall consult with the purchasing government and the DIS Regional Security Office before consummation of a commercial contract that will result in the shipment of classified material.

(3) Delivery of classified material to a foreign government at a point within the United States, its territories, or its possessions, shall be accomplished at:

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

(b) The 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 assure that the recipient is aware of secure means of onward movement of the classified material to its final destination, consistent with the approved transportation plan.

(c) A military or commercial port of embarkation (POE) that is recognized point of departure from the United States, its territories, or possessions, for on-loading aboard a ship, aircraft, or other carrier. 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 near the POE. A DoD official authorized to transfer custody is to supervise or observe the on-loading of FMS material being transported when 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, segregated and placed under constant surveillance of a duly cleared U.S. security force at the POE; or held in the secure storage facility designated in the transportation plan.

(d) An appropriately cleared freight forwarder facility identified by the recipient government as its designated government representative. In these cases, a person identified as a designated government representative must be present to accept delivery of the classified material and receipt for it, to include full acceptance of security responsibility.

(4) Delivery outside the United States, its territories, or possessions:

(a) 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) 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 deliver it to the recipient government's designated representative.

#### (5) Overseas Shipments

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 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 Regulation and in DoD 5220.22-R and DoD 5220.22-M.

(6) 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 related security documents, 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 classified material, and is not required to perform security related functions, need not be cleared.

d. Foreign governments may return classified material to a U.S. contractor for repair, modification, or maintenance. At the time the material is initially released to the foreign government, the approved methods of return shipment shall be specified in the Letter of Offer and Acceptance (LOA) for FMS, the security requirements section of a direct commercial sales contract or in the original transportation plan. The contractor, upon notification of a return shipment, shall give advance notice of arrival to the applicable User Agency or Defense Investigative Service and arrange for secure inland shipment within the United States if such shipment has not been prearranged.

e. Transportation plan requirements:

(1) Preparation and coordination:

(a) **Foreign Military Sales**. U.S. classified material to be furnished to a foreign government or international organization under Foreign Military Sales (**FMS**) transactions shall normally be shipped via the Defense Transportation System (**DTS**) and delivered to the foreign government within its own territory. The U.S. Government may permit other arrangements for such shipments when it determines that the recipient foreign government has its own secure facilities and means of shipment from the point of receipt to ultimate destination. In any FMS case, the DoD Component having security cognizance over the classified material involved is responsible, in coordination with the foreign recipient, for developing a transportation plan. When the point of origin is a U.S. contractor facility,

the contractor and Defense Investigative Service will be provided a copy of the plan by the DoD Component.

(b) Commercial Transactions. The contractor shall prepare a transportation plan for each commercial contract, subcontract, or other legally binding arrangement providing for the transfer of classified freight to foreign governments, to be moved by truck, rail, aircraft, or ship. The requirement for a transportation plan applies to U.S. and foreign classified contracts. The Defense Investigative Service will approve transportation plans that support commercial arrangements or foreign classified contracts.

(c) The transportation plan shall describe arrangements for secure shipment of the material from the point of origin to the ultimate destination. It must identify recognized points of embarkation from the United States, its territories, or possessions for transfer to a specified ship, aircraft, or other authorized carrier. It must identify a government or commercial secure facility in the vicinity of the points of embarkation and debarkation that can be used for storage if transfer or onward movement cannot take place immediately. Except as described in subparagraph e(1)(d) below, a U.S. Government official authorized to transfer custody and control must supervise the on-loading of classified material when the material has yet to be officially transferred. The plan must provide for security arrangements in the event custody cannot be transferred promptly.

(d) Upon transfer of title to the purchasing foreign government, classified material may be delivered to a freight forwarder that is designated, in writing, by the foreign government as its representative for that shipment and is cleared to the level of the classified material to be received. The freight forwarder shall be provided a copy of the transportation plan and agree to comply.

(2) The transportation plan shall, as a **minimum**, include:

(a) A description of the material to be shipped and a brief narrative describing where and under what circumstances transfer of custody will occur.

(b) Identification, by name and title, of the designated government representative (or alternate) of the recipient government or international organization who will receipt for and assume security

responsibility for the classified material.

(c) Identification and specific location(s) of delivery point(s) and security arrangements while the material is located at the delivery points.

(d) Identification of commercial carriers and freight forwarders or transportation agents who will be involved in the shipping process, the extent of their involvement, and their clearance.

(e) Identification of any storage or processing facilities and transfer points to be used; certification that such facilities are authorized by competent government authority to receive, store, or process the level of classified material to be shipped; and a description of security arrangements while the material is located at the facilities.

(f) Routes and, if applicable, security arrangements for overnight stops or delays enroute.

(g) **Arrangements** for dealing with port security and customs officials.

(h) The identification, by name or title, of couriers, escorts, or other responsible officials (e.g. Captain or Crew Chief) to be used, including social security, government identification, or passport number, security clearance, and details concerning their responsibilities.

(i) Description of the shipping methods to be used and the identification of the foreign or domestic carriers.

(j) Description of packaging requirements, seals and storage during shipment.

(k) A requirement for the recipient government or international organization to examine shipping documents upon receipt of the classified material in its own territory and notify DIS or the DoD Component having security cognizance over the classified material if the material has been transferred enroute to any carrier not authorized by the transportation plan.

(1) Requirement for the recipient government or international organization to inform DIS or the DoD Component having security cognizance over the classified material promptly and fully of any known or suspected compromise of classified material.

(m) Arrangements for return shipments if necessary for repair, modification or maintenance.