Department of Homeland Security
Management Directive System
MD Number: 11042.1

SAFEGUARDING SENSITIVE BUT UNCLASSIFIED (FOR OFFICIAL USE ONLY) INFORMATION

1.6.2005

1. Purpose

This directive establishes Department of Homeland Security (DHS) policy regarding the identification and safeguarding of sensitive but unclassified information originated within DHS. It also applies to other sensitive but unclassified information received by DHS from other government and non-governmental activities.

2. Scope

This directive is applicable to all DHS Headquarters, components, organizational elements, detailees, contractors, consultants, and others to whom access to information covered by this directive is granted.

3. Authorities

Homeland Security Act of 2002.

4. Definitions

Access: The ability or opportunity to gain knowledge of information.

For Official Use Only (FOUO): The term used within DHS to identify unclassified information of a sensitive nature, not otherwise categorized by statute or regulation, the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national interest. Information impacting the National Security of the United States and classified Confidential, Secret, or Top Secret under Executive Order 12958, "Classified National Security Information," as amended, or its predecessor or successor orders, is not to be considered FOUO. FOUO is not to be considered classified information.

Need-to-know: The determination made by an authorized holder of information that a prospective recipient requires access to specific information in order to

perform or assist in a lawful and authorized governmental function, i.e., access is required for the performance of official duties.

Organizational Element: As used in this directive, organizational element is as defined in DHS MD Number 0010.1, Management Directive System and DHS Announcements.

Protected Critical Infrastructure Information (PCII): Critical infrastructure information (CII) is defined in 6 U.S.C. 131(3) (Section 212(3) of the Homeland Security Act). Critical infrastructure information means information not customarily in the public domain and related to the security of critical infrastructure or protected systems. Protected Critical Infrastructure Information is a subset of CII that is voluntarily submitted to the Federal Government and for which protection is requested under the PCII program by the requestor.

Sensitive Security Information (SSI): Sensitive security information (SSI) is defined in 49 C.F.R. Part 1520. SSI is a specific category of information that requires protection against disclosure. 49 U.S.C. 40119 limits the disclosure of information obtained or developed in carrying out certain security or research and development activities to the extent that it has been determined that disclosure of the information would be an unwarranted invasion of personal privacy; reveal a trade secret or privileged or confidential commercial or financial information; or be detrimental to the safety of passengers in transportation.

5. Responsibilities

A. The DHS Office of Security will:

1. Be responsible for practical application of all aspects of the program to protect FOUO.

2. Promulgate Department-wide policy guidance.

3. Develop and implement an education and awareness program for the safeguarding of FOUO and other sensitive but unclassified information.

B. Heads of DHS Organizational Elements will:

1. Ensure compliance with the standards for safeguarding FOUO and other sensitive but unclassified information as cited in this directive.

2. Designate an official to serve as a Security Officer or Security Liaison.

C. The organizational element's Security Officer/Security Liaison will:

Be responsible for implementation and oversight of the FOUO information protection program and will serve as liaison between the DHS Office of Security and other organizational security officers.

D. DHS employees, detailees, contractors, consultants and others to whom access is granted will:

1. Be aware of and comply with the safeguarding requirements for FOUO information as outlined in this directive.

2. Participate in formal classroom or computer based training sessions presented to communicate the requirements for safeguarding FOUO and other sensitive but unclassified information.

3. Be aware that divulging information without proper authority could result in administrative or disciplinary action.

E. Contractors and Consultants shall:

Execute a DHS Form 11000-6, Sensitive But Unclassified Information Non-Disclosure Agreement (NDA), as a condition of access to such information. Other individuals not assigned to or contractually obligated to DHS, but to whom access to information will be granted, may be requested to execute an NDA as determined by the applicable program manager. Execution of the NDA shall be effective upon publication of this directive and not applied retroactively.

F. Supervisors and managers will:

1. Ensure that an adequate level of education and awareness is established and maintained that serves to emphasize safeguarding and prevent unauthorized disclosure of FOUO information.

2. Take appropriate corrective actions, to include administrative or disciplinary action as appropriate, when violations occur.

6. Policy and Procedures

A. General

1. The Computer Security Act of 1987, Public Law 100-235, defines "sensitive information" as "any information, the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under Section 552a of Title 5, United States Code (the Privacy Act) but which has not been specifically authorized under criteria established by an executive

order or an act of Congress to be kept secret in the interest of national defense or foreign policy." However, with the exception of certain types of information protected by statute, specific, standard criteria and terminology defining the types of information warranting designation as "sensitive information" does not exist within the Federal government. Such designations are left to the discretion of each individual agency.

2. Within the "sensitive but unclassified" arena, in addition to the various categories of information specifically described and protected by statute or regulation, e.g., Tax Return Information, Privacy Act Information, Sensitive Security Information (SSI), Critical Infrastructure Information (CII), Grand Jury Information, etc. There are numerous additional caveats used by various agencies to identify unclassified information as sensitive, e.g., For Official Use Only; Law Enforcement Sensitive; Official Use Only; Limited Official Use; etc. Regardless of the caveat used to identify it, however, the reason for the designation does not change. Information is designated as sensitive to control and restrict access to certain information, the release of which could cause harm to a person's privacy or welfare, adversely impact economic or industrial institutions, or compromise programs or operations essential to the safeguarding of our national interests.

3. Information shall not be designated as FOUO in order to conceal government negligence, ineptitude, illegalities, or other disreputable circumstances embarrassing to a government agency.

4. Information designated as FOUO is not automatically exempt from disclosure under the provisions of the Freedom of Information Act, 5 U.S.C. 552, (FOIA). Information requested by the public under a FOIA request must still be reviewed on a case-by-case basis.

B. For Official Use Only

Within DHS, the caveat "FOR OFFICIAL USE ONLY" will be used to identify sensitive but unclassified information within the DHS community that is not otherwise specifically described and governed by statute or regulation. The use of these and other approved caveats will be governed by the statutes and regulations issued for the applicable category of information.

C. Information Designated as FOUO

1. The following types of information will be treated as FOUO information. Where information cited below also meets the standards for designation pursuant to other existing statutes or regulations, the applicable statutory or regulatory guidance will take precedence. For example, should information meet the standards for designation as Sensitive Security Information (SSI), then SSI guidance for marking, handling, and safeguarding will take precedence.

(a) Information of the type that may be exempt from disclosure per 5 U.S.C. 552, Freedom of Information Act, and its amendments. Designation of information as FOUO does not imply that the information is already exempt from disclosure under FOIA. Requests under FOIA, for information designated as FOUO, will be reviewed and processed in the same manner as any other FOIA request.

(b) Information exempt from disclosure per 5 U.S.C. 552a, Privacy Act.

(c) Information within the international and domestic banking and financial communities protected by statute, treaty, or other agreements.

(d) Other international and domestic information protected by statute, treaty, regulation or other agreements.

(e) Information that could be sold for profit.

(f) Information that could result in physical risk to personnel.

(g) DHS information technology (IT) internal systems data revealing infrastructure used for servers, desktops, and networks; applications name, version and release; switching, router, and gateway information; interconnections and access methods; mission or business use/need. Examples of information are systems inventories and enterprise architecture models. Information pertaining to national security systems and eligible for classification under Executive Order 12958, as amended, will be classified as appropriate.

(h) Systems security data revealing the security posture of the system. For example, threat assessments, system security plans, contingency plans, risk management plans, Business Impact Analysis studies, and Certification and Accreditation documentation.

(i) Reviews or reports illustrating or disclosing facility infrastructure or security vulnerabilities, whether to persons, systems, or facilities, not otherwise eligible for classification under Executive Order 12958, as amended.

(j) Information that could constitute an indicator of U.S. government intentions, capabilities, operations, or activities or otherwise threaten operations security.

(k) Developing or current technology, the release of which could hinder the objectives of DHS, compromise a technological advantage or countermeasure, cause a denial of service, or provide an adversary with

sufficient information to clone, counterfeit, or circumvent a process or system.

2. Other government agencies and international organizations may use different terminology to identify sensitive information, such as "Limited Official Use (LOU)," and "Official Use Only (OUO)." In most instances the safeguarding requirements for this type of information are equivalent to FOUO. However, other agencies and international organizations may have additional requirements concerning the safeguarding of sensitive information. Follow the safeguarding guidance provided by the other agency or organization. Should there be no such guidance, the information will be safeguarded in accordance with the requirements for FOUO as provided in this manual. Should the additional guidance be less restrictive than in this directive, the information will be safeguarded in accordance with this directive.

D. Designation Authority

Any DHS employee, detailee, or contractor can designate information falling within one or more of the categories cited in section 6, paragraph C, as FOUO. Officials occupying supervisory or managerial positions are authorized to designate other information, not listed above and originating under their jurisdiction, as FOUO.

E. Duration of Designation

Information designated as FOUO will retain its designation until determined otherwise by the originator or a supervisory or management official having program management responsibility over the originator and/or the information.

F. Marking

1. Information designated as FOUO will be sufficiently marked so that persons having access to it are aware of its sensitivity and protection requirements. The lack of FOUO markings on materials does not relieve the holder from safeguarding responsibilities. Where the FOUO marking is not present on materials known by the holder to be FOUO, the holder of the material will protect it as FOUO. Other sensitive information protected by statute or regulation, e.g., PCII and SSI, etc., will be marked in accordance with the applicable guidance for that type of information. Information marked in accordance with the guidance provided for the type of information need not be additionally marked FOUO.

(a) Prominently mark the bottom of the front cover, first page, title page, back cover and each individual page containing FOUO information with the caveat "FOR OFFICIAL USE ONLY."

(b) Materials containing specific types of FOUO may be further marked with the applicable caveat, e.g., "LAW ENFORCEMENT SENSITIVE," in order to alert the reader of the type of information conveyed. Where the sensitivity of the information warrants additional access and dissemination restrictions, the originator may cite additional access and dissemination restrictions. For example:

WARNING: *This document is FOR OFFICIAL USE ONLY (FOUO). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information. This information shall not be distributed beyond the original addressees without prior authorization of the originator.*

(c) Materials being transmitted to recipients outside of DHS, for example, other federal agencies, state or local officials, etc. who may not be aware of what the FOUO caveat represents, shall include the following additional notice:

WARNING: *This document is FOR OFFICIAL USE ONLY (FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official.*

(d) Computer storage media, i.e., disks, tapes, removable drives, etc., containing FOUO information will be marked "FOR OFFICIAL USE ONLY."

(e) Portions of a classified document, i.e., subjects, titles, paragraphs, and subparagraphs that contain only FOUO information will be marked with the abbreviation (FOUO).

(f) Individual portion markings on a document that contains no other designation are not required.

(g) Designator or originator information and markings, downgrading instructions, and date/event markings are not required.

G. General Handling Procedures

Although FOUO is the DHS standard caveat for identifying sensitive unclassified information, some types of FOUO information may be more sensitive than others

and thus warrant additional safeguarding measures beyond the minimum requirements established in this manual. For example, certain types of information may be considered extremely sensitive based on the repercussions that could result should the information be released or compromised. Such repercussions could be the loss of life or compromise of an informant or operation. Additional control requirements may be added as necessary to afford appropriate protection to the information. DHS employees, contractors, and detailees must use sound judgment coupled with an evaluation of the risks, vulnerabilities, and the potential damage to personnel or property as the basis for determining the need for safeguards in excess of the minimum requirements and protect the information accordingly.

1. When removed from an authorized storage location (see section 6.I) and persons without a need-to-know are present, or where casual observation would reveal FOUO information to unauthorized persons, a "FOR OFFICIAL USE ONLY" cover sheet (Enclosure 1) will be used to prevent unauthorized or inadvertent disclosure.

2. When forwarding FOUO information, a FOUO cover sheet should be placed on top of the transmittal letter, memorandum or document.

3. When receiving FOUO equivalent information from another government agency, handle in accordance with the guidance provided by the other government agency. Where no guidance is provided, handle in accordance with the requirements of this directive.

H. Dissemination and Access

1. FOUO information will not be disseminated in any manner - orally, visually, or electronically - to unauthorized personnel.

2. Access to FOUO information is based on "need-to-know" as determined by the holder of the information. Where there is uncertainty as to a person's need-to-know, the holder of the information will request dissemination instructions from their next-level supervisor or the information's originator.

3. The holder of the information will comply with any access and dissemination restrictions.

4. A security clearance is not required for access to FOUO information.

5. When discussing or transferring FOUO information to another individual(s), ensure that the individual with whom the discussion is to be held or the information is to be transferred has a valid need-to-know, and that precautions are taken to prevent unauthorized individuals from overhearing the conversation, observing the materials, or otherwise obtaining the information.

6. FOUO information may be shared with other agencies, federal, state, tribal, or local government and law enforcement officials, provided a specific need-to-know has been established and the information is shared in furtherance of a coordinated and official governmental activity. Where FOUO information is requested by an official of another agency and there is no coordinated or other official governmental activity, a written request will be made from the requesting agency to the applicable DHS program office providing the name(s) of personnel for whom access is requested, the specific information to which access is requested, and basis for need-to-know. The DHS program office shall then determine if it is appropriate to release the information to the other agency official. (see section 6.F for marking requirements)

7. Other sensitive information protected by statute or regulation, i.e., Privacy Act, CII, SSI, Grand Jury, etc., will be controlled and disseminated in accordance with the applicable guidance for that type of information.

8. If the information requested or to be discussed belongs to another agency or organization, comply with that agency's policy concerning third party discussion and dissemination.

9. When discussing FOUO information over a telephone, the use of a STU III (Secure Telephone Unit), or Secure Telephone Equipment (STE), is encouraged, but not required.

I. Storage

1. When unattended, FOUO materials will, at a minimum, be stored in a locked file cabinet, locked desk drawer, a locked overhead storage compartment such as a systems furniture credenza, or similar locked compartment. Materials can also be stored in a room or area that has sufficient physical access control measures to afford adequate protection and prevent unauthorized access by members of the public, visitors, or other persons without a need-to-know, such as a locked room, or an area where access is controlled by a guard, cipher lock, or card reader.

2. FOUO information will not be stored in the same container used for the storage of classified information unless there is a correlation between the information. When FOUO materials are stored in the same container used for the storage of classified materials, they will be segregated from the classified materials to the extent possible, i.e. separate folders, separate drawers, etc.

3. IT systems that store FOUO information will be certified and accredited for operation in accordance with federal and DHS standards. Consult the DHS Information Technology Security Program Handbook for Sensitive Systems, Publication 4300A, for more detailed information.

4. Laptop computers and other media containing FOUO information will be stored and protected to prevent loss, theft, unauthorized access and unauthorized disclosure. Storage and control will be in accordance with DHS Information Technology Security Program Handbook for Sensitive Systems, Publication 4300A.

J. Transmission

1. Transmission of hard copy FOUO within the U.S. and its Territories:

(a) Material will be placed in a single opaque envelope or container and sufficiently sealed to prevent inadvertent opening and to show evidence of tampering. The envelope or container will bear the complete name and address of the sender and addressee, to include program office and the name of the intended recipient (if known).

(b) FOUO materials may be mailed by U.S. Postal Service First Class Mail or an accountable commercial delivery service such as Federal Express or United Parcel Service.

(c) FOUO materials may be entered into an inter-office mail system provided it is afforded sufficient protection to prevent unauthorized access, e.g., sealed envelope.

2. Transmission to Overseas Offices: When an overseas office is serviced by a military postal facility, i.e., APO/FPO, FOUO may be transmitted directly to the office. Where the overseas office is not serviced by a military postal facility, the materials will be sent through the Department of State, Diplomatic Courier.

3. Electronic Transmission.

(a) Transmittal via Fax. Unless otherwise restricted by the originator, FOUO information may be sent via nonsecure fax. However, the use of a secure fax machine is highly encouraged. Where a nonsecure fax is used, the sender will coordinate with the recipient to ensure that the materials faxed will not be left unattended or subjected to possible unauthorized disclosure on the receiving end. The holder of the material will comply with any access, dissemination, and transmittal restrictions cited on the material or verbally communicated by the originator.

(b) Transmittal via E-Mail

(i) FOUO information transmitted via email should be protected by encryption or transmitted within secure communications systems. When this is impractical or unavailable, FOUO may be transmitted over regular email channels. For added security, when

transmitting FOUO over a regular email channel, the information can be included as a password protected attachment with the password provided under separate cover. Recipients of FOUO information will comply with any email restrictions imposed by the originator.

(ii) Per DHS MD 4300, DHS Sensitive Systems Handbook, due to inherent vulnerabilities, FOUO information shall not be sent to personal email accounts.

(c) DHS Internet/Intranet

(i) FOUO information will not be posted on a DHS or any other internet (public) website.

(ii) FOUO information may be posted on the DHS intranet or other government controlled or sponsored protected encrypted data networks, such as the Homeland Security Information Network (HSIN). However, the official authorized to post the information should be aware that access to the information is open to all personnel who have been granted access to that particular intranet site. The official must determine the nature of the information is such that need-to-know applies to all personnel; the benefits of posting the information outweigh the risk of potential compromise; the information posted is prominently marked as FOR OFFICIAL USE ONLY; and information posted does not violate any provisions of the Privacy Act.

K. Destruction

1. FOUO material will be destroyed when no longer needed. Destruction may be accomplished by:

(a) "Hard Copy" materials will be destroyed by shredding, burning, pulping, pulverizing, such as to assure destruction beyond recognition and reconstruction. After destruction, materials may be disposed of with normal waste.

(b) Electronic storage media shall be sanitized appropriately by overwriting or degaussing. Contact local IT security personnel for additional guidance.

(c) Paper products containing FOUO information will not be disposed of in regular trash or recycling receptacles unless the materials have first been destroyed as specified above.

L. Incident Reporting

1. The loss, compromise, suspected compromise, or unauthorized disclosure of FOUO information will be reported. Incidents involving FOUO in DHS IT systems will be reported to the organizational element Computer Security Incident Response Center in accordance with IT incident reporting requirements.

2. Suspicious or inappropriate requests for information by any means, e.g., email or verbal, shall be report to the DHS Office of Security.

3. Employees or contractors who observe or become aware of the loss, compromise, suspected compromise, or unauthorized disclosure of FOUO information will report it immediately, but not later than the next duty day, to the originator and the local Security Official.

4. Additional notifications to appropriate DHS management personnel will be made without delay when the disclosure or compromise could result in physical harm to an individual(s) or the compromise of a planned or on-going operation.

5. At the request of the originator, an inquiry will be conducted by the local security official or other designee to determine the cause and affect of the incident and the appropriateness of administrative or disciplinary action against the offender.

Dated: 1/6/05

J.M. Loy, ADM
Deputy Secretary of Homeland Security

Department of Homeland Security

FOR OFFICIAL USE ONLY

THE ATTACHED MATERIALS CONTAIN DEPARTMENT OF HOMELAND SECURITY INFORMATION THAT IS "FOR OFFICIAL USE ONLY," OR OTHER TYPES OF SENSITIVE BUT UNCLASSIFIED INFORMATION REQUIRING PROTECTION AGAINST UNAUTHORIZED DISCLOSURE. THE ATTACHED MATERIALS WILL BE HANDLED AND SAFEGUARDED IN ACCORDANCE WITH DHS MANAGEMENT DIRECTIVES GOVERNING PROTECTION AND DISSEMINATION OF SUCH INFORMATION.

AT A MINIMUM, THE ATTACHED MATERIALS WILL BE DISSEMINATED ONLY ON A "NEED-TO-KNOW" BASIS AND WHEN UNATTENDED, WILL BE STORED IN A LOCKED CONTAINER OR AREA OFFERING SUFFICIENT PROTECTION AGAINST THEFT, COMPROMISE, INADVERTENT ACCESS AND UNAUTHORIZED DISCLOSURE.