

§ 17.18

28 CFR Ch. I (7-1-05 Edition)

cooperation of the court and, where appropriate, opposing counsel in safeguarding and retrieving the information pursuant to the provisions of this regulation.

(b) The Classified Information Procedures Act (CIPA), Pub. L. 96-456, 94 Stat. 2025, 18 U.S.C. App., and the "Security Procedures Established Pursuant to Pub. L. 96-456, 94 Stat. 2025, by the Chief Justice of the United States for the Protection of Classified Information" may be used in Federal criminal cases involving classified information. (Available from the Security and Emergency Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530.)

(c) In judicial proceedings other than Federal criminal cases where CIPA is used, the Department, through its attorneys, shall seek appropriate security safeguards to protect classified information from unauthorized disclosure, including, but not limited to, consideration of the following:

(1) A determination by the court of the relevance and materiality of the classified information in question;

(2) An order that classified information shall not be disclosed or introduced into evidence at a proceeding without the prior approval of either the originating agency, the Attorney General, or the President;

(3) A limitation on attendance at any proceeding where classified information is to be disclosed to those persons with appropriate authorization to access classified information whose duties require knowledge or possession of the classified information to be disclosed;

(4) A court facility that provides appropriate safeguarding for the classified information as determined by the Department Security Officer;

(5) Dissemination and accountability controls for all classified information offered for identification or introduced into evidence at such proceedings;

(6) Appropriate marking to indicate classified portions of any and any the maintenance of any classified under seal;

(7) Handling and storage of all classified information including classified portions of any transcript in a manner consistent with the provisions of this

regulation and Department implementing directives;

(8) Return at the conclusion of the proceeding of all classified information to the Department or the originating agency, or placing the classified information under court seal;

(9) Retrieval by Department employees of appropriate notes, drafts, or any other documents generated during the course of the proceedings that contain classified information and immediate transfer to the Department for safeguarding and destruction as appropriate; and

(10) Full and complete advice to all persons to whom classified information is disclosed during such proceedings as to the classification level of such information, all pertinent safeguarding and storage requirements, and their liability in the event of unauthorized disclosure.

(d) Access to classified information by individuals involved in judicial proceedings other than employees of the Department is governed by § 17.46(c).

§ 17.18 Prepublication review.

(a) All individuals with authorized access to Sensitive Compartmented Information shall be required to sign nondisclosure agreements containing a provision for prepublication review to assure deletion of Sensitive Compartmented Information and other classified information. Sensitive Compartmented Information is information that not only is classified for national security reasons as Top Secret, Secret, or Confidential, but also is subject to special access and handling requirements because it involves or derives from particularly sensitive intelligence sources and methods. The prepublication review provision will require Department of Justice employees and other individuals who are authorized to have access to Sensitive Compartmented Information to submit certain material, described further in the agreement, to the Department prior to its publication to provide an opportunity for determining whether an unauthorized disclosure of Sensitive Compartmented Information or other classified information would occur as a consequence of its publication.

(b) Persons subject to these requirements are invited to discuss their plans for public disclosures of information that may be subject to these obligations with authorized Department representatives at an early stage, or as soon as circumstances indicate these policies must be considered. Except as provided in paragraph (j) of this section for FBI personnel, all questions concerning these obligations should be addressed to the Counsel for Intelligence Policy, Department of Justice, 10th & Constitution Avenue, NW., Washington, DC 20530. The official views of the Department on whether specific materials require prepublication review may be expressed only by the Counsel for Intelligence Policy and persons should not act in reliance upon the views of other Department personnel.

(c) Prepublication review is required only as expressly provided for in a nondisclosure agreement. However, all persons who have had access to classified information have an obligation to avoid unauthorized disclosures of such information. Therefore, persons who have such access but are not otherwise required to submit to prepublication review under the terms of an employment or other nondisclosure agreement are encouraged to submit material for prepublication review voluntarily if they believe that such material may contain classified information.

(d) The nature and extent of the material that is required to be submitted for prepublication review under nondisclosure agreements is expressly provided for in those agreements. It should be clear, however, that such requirements do not extend to any materials that exclusively contain information lawfully obtained at a time when the author has no employment, contract, or other relationship with the United States Government or that contain information exclusively acquired outside the scope of employment.

(e) A person's obligation to submit material for prepublication review remains identical whether such person prepares the materials or causes or assists another person (such as a ghost writer, spouse, friend, or editor) in preparing the material. Material covered by a nondisclosure agreement requiring

prepublication review must be submitted prior to discussing it with or showing it to a publisher, co-author, or any other person who is not authorized to have access to it. In this regard, it should be noted that a failure to submit such material for prepublication review constitutes a breach of the obligation and exposes the author to remedial action even in cases where the published material does not actually contain Sensitive Compartmented Information or classified information. See *Snepp v. United States*, 444 U.S. 507 (1980).

(f) The requirement to submit material for prepublication review is not limited to any particular type of material or disclosure or methods of production. Written materials include not only book manuscripts but all other forms of written materials intended for public disclosure, such as (but not limited to) newspaper columns, magazine articles, letters to the editor, book reviews, pamphlets, scholarly papers, and fictional material.

(g) Oral statements are also within the scope of a prepublication review requirement when based upon written materials, such as an outline of the statements to be made. There is no requirement to prepare written materials for review, however, unless there is reason to believe in advance that oral statements may contain Sensitive Compartmented Information or other information required to be submitted for review under the terms of the nondisclosure agreement. Thus, a person may participate in an oral presentation where there is no opportunity for prior preparation (e.g., news interview, panel discussion) without violating the provisions of this paragraph.

(h) Material submitted for republication review will be reviewed solely for the purpose of identifying and preventing the disclosure of Sensitive Compartmented Information and other classified information. This review will be conducted in an impartial manner without regard to whether the material is critical of or favorable to the Department. No effort will be made to delete embarrassing or critical statements that are unclassified. Materials submitted for review will be disseminated to other persons or agencies only

§ 17.21

28 CFR Ch. I (7–1–05 Edition)

to the extent necessary to identify classified information.

(i) The Counsel for Intelligence Policy (or, in the case of FBI employees, the FBI's Office of Congressional and Public Affairs) will respond substantively to prepublication review requests within 30 working days of receipt of the submission. Priority shall be given to reviewing speeches, newspaper articles, and other materials that the author seeks to publish on an expedited basis. The Counsel's decisions may be appealed to the Deputy Attorney General, who will process appeals within 15 days of receipt of the appeal. The Deputy Attorney General's decision is final and not subject to further administrative appeal. Persons who are dissatisfied with the final administrative decision may obtain judicial review either by filing an action for declaratory relief or giving the Department notice of their intention to proceed despite the Department's request for deletions of classified information, and a reasonable opportunity (30 working days) to file a civil action seeking a court order prohibiting disclosure. Employees and other affected individuals remain obligated not to disclose or publish information determined by the Government to be classified until any civil action is resolved.

(j) The obligations of Department of Justice employees described in this subpart apply with equal force to employees of the FBI with following exceptions and provisos:

(1) Nothing in this subpart shall supersede or alter obligations assumed under the basic FBI employment agreement.

(2) FBI employees required to sign nondisclosure agreements containing a provision for prepublication review pursuant to this subpart shall submit materials for review to the Assistant Director, Office of Congressional and Public Affairs. Such individuals shall also submit questions as to whether specific materials require prepublication review under such agreements to that Office for resolution. Where such questions raise policy questions or concern significant issues of interpretation under such an agreement, the Assistant Director, Office of Congressional and Public Affairs, shall consult

with the Counsel for Intelligence Policy prior to responding to the inquiry.

(3) Decisions of the Assistant Director, Office of Congressional and Public Affairs, concerning the deletion of classified information, may be appealed to the Director, FBI, who will process appeals within 15 working days of receipt. Persons who are dissatisfied with the Director's decision may, at their option, appeal further to the Deputy Attorney General as provided in paragraph (i) of this section. Judicial review, as set forth in that paragraph, is available following final agency action in the form of a decision by the Director or, if the appeal process in paragraph (i) of this section is pursued, the Deputy Attorney General.

Subpart B—Classified Information

§ 17.21 Classification and declassification authority.

(a) Top Secret original classification authority may only be exercised by the Attorney General, the Assistant Attorney General for Administration, and officials to whom such authority is delegated in writing by the Attorney General. No official who is delegated Top Secret classification authority pursuant to this paragraph may redelegate such authority.

(b) The Assistant Attorney General for Administration may delegate original Secret and Confidential classification authority to subordinate officials determined to have frequent need to exercise such authority. No official who is delegated original classification authority pursuant to this paragraph may redelegate such authority.

(c) Officials authorized to classify information at a specified level are also authorized to classify information at a lower level. In the absence of an official authorized to exercise classification authority pursuant to this section, the person designated to act in lieu of such official may exercise the official's classification authority.

§ 17.22 Classification of information; limitations.

(a) Information may be originally classified only if all of the following standards are met: