

Department of Energy

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risk of a safeguards and security vulnerability) according to the degree of risk involved.

(b) In writing, the person must:

(1) Identify the specific requirement for which the deviation is being requested;

(2) Explain why the deviation is needed; and,

(3) If appropriate, describe the alternate or equivalent means for meeting the requirement.

(c) DOE employees must submit such requests according to internal directives. DOE contractors must submit such requests according to directives incorporated into their contracts. Other individuals must submit such requests to the Office of Classification, Office of Health, Safety and Security, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585-1290. The Office of Classification's decision must be made within 30 days.

Subpart B—Initially Determining What Information Is Unclassified Controlled Nuclear Information

§ 1017.6 Authority.

The Secretary, or his or her designee, determines whether information is UCNI. These determinations are incorporated into guidance that each Reviewing Official and Denying Official consults in his or her review of a document or material to decide whether the document or material contains UCNI.

§ 1017.7 Criteria.

To be identified as UCNI, the information must meet each of the following criteria:

(a) The information must be Government information as defined in § 1017.4;

(b) The information must concern atomic energy defense programs as defined in § 1017.4;

(c) The information must fall within the scope of at least one of the three subject areas eligible to be UCNI in § 1017.8;

(d) The information must meet the adverse effect test described in § 1017.10; and

(e) The information must not be exempt from being UCNI under § 1017.11.

§ 1017.8 Subject areas eligible to be Unclassified Controlled Nuclear Information.

To be eligible for identification as UCNI, information must concern at least one of the following categories:

(a) The design of production or utilization facilities as defined in this part;

(b) Security measures (including security plans, procedures, and equipment) for the physical protection of production or utilization facilities or nuclear material, regardless of its physical state or form, contained in these facilities or in transit; or

(c) The design, manufacture, or utilization of nuclear weapons or components that were once classified as Restricted Data, as defined in section 11y. of the Atomic Energy Act.

§ 1017.9 Nuclear material determinations.

(a) The Secretary may determine that a material other than special nuclear material, byproduct material, or source material as defined by the Atomic Energy Act is included within the scope of the term “nuclear material” if it meets the following criteria:

(1) The material is used in the production, testing, utilization, or assembly of nuclear weapons or components of nuclear weapons; and

(2) Unauthorized acquisition of the material could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security because the specific material:

(i) Could be used as a hazardous radioactive environmental contaminant; or

(ii) Could be of significant assistance in the illegal production of a nuclear weapon.

(b) Designation of a material as a nuclear material under paragraph (a) of this section does not make all information about the material UCNI. Specific information about the material must still meet each of the criteria in § 1017.7 prior to its being identified and controlled as UCNI.

§ 1017.10 Adverse effect test.

In order for information to be identified as UCNI, it must be determined that the unauthorized dissemination of

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the information under review could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of:

- (a) Illegal production of a nuclear weapon; or
- (b) Theft, diversion, or sabotage of nuclear material, equipment, or facilities.

§ 1017.11 Information exempt from being Unclassified Controlled Nuclear Information.

Information exempt from this part includes:

- (a) Information protected from disclosure under section 147 of the Atomic Energy Act (42 U.S.C. 2167) that is identified as Safeguards Information and controlled by the United States Nuclear Regulatory Commission;
- (b) Basic scientific information (i.e., information resulting from research directed toward increasing fundamental scientific knowledge or understanding rather than any practical application of that knowledge);
- (c) Radiation exposure data and all other personal health information; and,
- (d) Information concerning the transportation of low level radioactive waste.

§ 1017.12 Prohibitions on identifying Unclassified Controlled Nuclear Information.

Information, documents, and material must not be identified as being or containing UCNI in order to:

- (a) Conceal violations of law, inefficiency, or administrative error;
- (b) Prevent embarrassment to a person or organization;
- (c) Restrain competition; or,
- (d) Prevent or delay the release of any information that does not properly qualify as UCNI.

§ 1017.13 Report concerning determinations.

The Office of Classification or successor office shall issue a report by the end of each quarter that identifies any new information that has been determined for the first time to be UCNI during the previous quarter, explains how each such determination meets the criteria in § 1017.7, and explains

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why each such determination protects from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security. A copy of the report may be obtained by writing to the Office of Classification, Office of Health, Safety and Security, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290.

Subpart C—Review of a Document or Material for Unclassified Controlled Nuclear Information

§ 1017.14 Designated officials.

(a) *Reviewing Official*—(1) *Authority*. A Reviewing Official with cognizance over the information contained in a document or material is authorized to determine whether the document or material contains UCNI based on applicable guidance. A Reviewing Official marks or authorizes the marking of the document or material as specified in § 1017.16.

(2) *Request for designation*. Procedures for requesting that a DOE Federal or contractor employee be designated as a Reviewing Official are contained in Departmental directives issued by the Secretary. DOE may also designate other Government agency employees, contractors, or other individuals granted routine access under § 1017.20 as Reviewing Officials.

(3) *Designation*. Prior to being designated as a Reviewing Official, each employee must receive training approved by DOE that covers the requirements in these regulations and be tested on his or her proficiency in using applicable UCNI guidance. Upon successful completion of the training and test, he or she is designated as a Reviewing Official only while serving in his or her current position for a maximum of 3 years. The employee does not automatically retain the authority when he or she leaves his or her current position. The employee cannot delegate this authority to anyone else, and the authority may not be assumed by another employee acting in the employee's position. At the end of 3 years, if the position still requires the authority, the employee must be retested and