

§ 1045.1

- 1045.36 Reviews of agencies with access to restricted data and formerly restricted data.
- 1045.37 Classification guides.
- 1045.38 Automatic declassification prohibition.
- 1045.39 Challenging classification and declassification determinations.
- 1045.40 Marking requirements.
- 1045.41 Use of classified addendums.
- 1045.42 Mandatory and Freedom of Information Act reviews for declassification of restricted data and formerly restricted data documents.
- 1045.43 Systematic review for declassification.
- 1045.44 Classification review prior to public release.
- 1045.45 Review of unmarked documents with potential restricted data or formerly restricted data.
- 1045.46 Classification by association or compilation.

Subpart D—Executive Order 12958: “Classified National Security Information” Requirements Affecting the Public

- 1045.50 Purpose and scope.
- 1045.51 Applicability.
- 1045.52 Mandatory declassification review requests.
- 1045.53 Appeal of denial of mandatory declassification review requests.

AUTHORITY: 42 U.S.C. 2011; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333; E.O. 13292, 68 FR 15315, 3 CFR 2004 Comp., p. 196.

SOURCE: 62 FR 68509, Dec. 31, 1997, unless otherwise noted.

Subpart A—Program Management of the Restricted Data and Formerly Restricted Data Classification System

§ 1045.1 Purpose and scope.

This subpart establishes responsibilities associated with this part, describes the Openness Advisory Panel, defines key terms, describes sanctions related to violation of the policies and procedures in this part, and describes how to submit suggestions or complaints concerning the Restricted Data classification and declassification program, and how to request procedural exceptions.

§ 1045.2 Applicability.

This subpart applies to—

- (a) Any person with authorized access to RD or FRD;

10 CFR Ch. X (1–1–13 Edition)

- (b) Any agency with access to RD or FRD; and

- (c) Any person who might generate information determined to be RD or FRD.

§ 1045.3 Definitions.

As used in this part:

Agency means any “Executive Agency” as defined in 5 U.S.C. 105; any “Military Department” as defined in 5 U.S.C. 102; and any other entity within the executive branch that comes into possession of RD or FRD information or documents.

Atomic Energy Act means the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.).

Authorized Holder means a person with the appropriate security clearance required to have access to classified information and the need to know the information in the performance of Government-approved activities.

Automatic Declassification means the declassification of information or documents based solely upon:

- (1) The occurrence of a specific date or event as determined by the classifier; or

- (2) The expiration of a maximum time frame for duration of classification established under Executive Order 12958.

Chief Health, Safety and Security officer means the Department of Energy Chief Health, Safety and Security Officer, or any person to whom the Chief’s duties are delegated.

Classification means the act or process by which information is determined to be classified information.

Classification Guide means a written record of detailed instructions as to whether specific information is classified, usually concerning a system, plan, project, or program. It identifies information to be classified and specifies the level (and duration for NSI only) of classification assigned to such information. Classification guides are the primary basis for reviewing documents to determine whether they contain classified information.

Classification Level means one of three designators:

- (1) *Top Secret* is applied to information (RD, FRD, or NSI), the unauthorized disclosure of which reasonably

Department of Energy

§ 1045.3

could be expected to cause exceptionally grave damage to the national security that the appropriate official is able to identify or describe.

(2) *Secret* is applied to information (RD, FRD, or NSI), the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the appropriate official is able to identify or describe.

(3) *Confidential*. (i) For NSI, Confidential is applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the appropriate official is able to identify or describe.

(ii) For RD and FRD, Confidential is applied to information, the unauthorized disclosure of which could reasonably be expected to cause undue risk to the common defense and security that the appropriate official is able to identify or describe.

Classified Information means:

(1) Information classified as RD or FRD under the Atomic Energy Act; or

(2) Information determined to require protection against unauthorized disclosure under Executive Order (E.O.) 12958 or prior Executive Orders (also identified as National Security Information or NSI).

Contractor means any industrial, educational, commercial or other entity, grantee or licensee at all tiers, including an individual, that has executed an agreement with the Federal Government for the purpose of performing under a contract, license or other agreement.

Declassification means a determination by appropriate authority that information or documents no longer require protection, as classified information, against unauthorized disclosure in the interests of national security.

Department or DOE means Department of Energy.

Director of Classification means the Department of Energy Director, Office of Classification, or any person to whom the Director's duties are delegated. The Director of Classification is subordinate to the Chief Health, Safety and Security Officer.

Document means the physical medium on or in which information is re-

corded, or a product or substance which contains or reveals information, regardless of its physical form or characteristics.

Formerly Restricted Data (FRD) means classified information jointly determined by DOE and the DoD to be related primarily to the military utilization of nuclear weapons and removed (by transclassification) from the RD category pursuant to section 142(d) of the Atomic Energy Act.

Government means the executive branch of the Federal Government of the United States.

Government Information means information that is owned by, produced by or for, or is under the control of the U.S. Government.

Information means facts, data, or knowledge itself, as opposed to the medium in which it is contained.

Interagency Security Classification Appeals Panel (ISCAP) means a panel created pursuant to Executive Order 12958 to perform functions specified in that order with respect to National Security Information.

National Security means the national defense or foreign relations of the United States.

National Security Information (NSI) means information that has been determined pursuant to Executive Order 12958 or prior Executive Orders to require protection against unauthorized disclosure and is marked to indicate its classification status when in document form. NSI is referred to as "defense information" in the Atomic Energy Act.

Nuclear weapon means atomic weapon.

Person means:

(1) Any individual, contractor, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency, any State, or any political subdivision thereof, or any political entity within a State; and

(2) Any legal successor, representative, agent, or agency of the foregoing.

Portion Marking means the application of certain classification markings to individual words, phrases, sentences, paragraphs, or sections of a document to indicate their specific classification level and category.

§ 1045.4

10 CFR Ch. X (1–1–13 Edition)

Restricted Data (RD) means a kind of classified information that consists of all data concerning the following, but not including data declassified or removed from the RD category pursuant to section 142 of the Atomic Energy Act:

- (1) Design, manufacture, or utilization of atomic weapons;
- (2) Production of special nuclear material; or
- (3) Use of special nuclear material in the production of energy.

Restricted Data Classifier means an individual who derivatively classifies RD or FRD documents. Within the DoD, RD classifiers may also declassify FRD documents.

Restricted Data Management Official means an individual appointed by any agency with access to RD and FRD who is responsible for managing the implementation of this part within that agency or any person to whom these duties are delegated. This person may be the senior agency official required by E.O. 12958.

Secretary means the Secretary of Energy.

Source Document means a classified document, other than a classification guide, from which information is extracted for inclusion in another document. The classification of the information extracted is determined by the classification markings shown in the source document.

Special Nuclear Material means plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Secretary determines to be special nuclear material pursuant to the Atomic Energy Act.

[62 FR 68509, Dec. 31, 1997, as amended at 71 FR 68736, Nov. 28, 2006]

§ 1045.4 Responsibilities.

(a) The Director of Classification shall:

- (1) Manage the Government-wide system for the classification and declassification of RD and FRD in accordance with the Atomic Energy Act;
- (2) In coordination with the DoD, develop regulations to implement the RD and FRD classification system;
- (3) Determine whether nuclear-related information is RD;

(4) Oversee agency implementation of the RD and FRD classification system to ensure compliance with this part;

(5) Review agency implementing policies and conduct on-site reviews of each agency's program established under this part;

(6) Prepare and distribute classification guides concerning RD and FRD and review such guides developed by any agency;

(7) Consider and take action on complaints and suggestions from any person with respect to administration of this program; and

(8) Periodically meet with interested members of the public to solicit input for the classification and declassification program.

(b) The Chief Health, Safety and Security Officer shall:

(1) Declassify RD which may be published without undue risk to the common defense and security;

(2) Jointly with the DoD, determine which information in the RD category relating primarily to the military utilization of nuclear weapons may be declassified or placed into the FRD category; and

(3) Jointly with the DoD, declassify FRD which may be published without undue risk to the common defense and security.

(c) The DoD jointly with the DOE shall:

(1) Determine which information in the RD category relating primarily to the military utilization of nuclear weapons may be declassified or placed into the FRD category;

(2) Ensure that classification guides for FRD and RD relating primarily to the military utilization of nuclear weapons are prepared; and

(3) Declassify FRD and RD relating primarily to the military utilization of nuclear weapons which may be published without undue risk to the common defense and security.

(d) The Nuclear Regulatory Commission (NRC) shall:

(1) Jointly with the DOE, develop classification guides for programs over which both agencies have cognizance; and

(2) Ensure the review and proper classification of RD by RD classifiers under this part, which is generated by the