

Department of Energy

§ 1017.18

When any document or material containing an UCNI notice is not in use, it must be stored in a secure container (e.g., locked desk or file cabinet) or in a location where access is limited (e.g., locked or guarded office, controlled access facility).

(c) *Reproduction.* A document or material containing an UCNI notice may be reproduced to the minimum extent necessary consistent with the need to carry out official duties without permission of the originator, provided the reproduced document or material is marked and protected in the same manner as the original document or materials.

(d) *Destruction.* A document or material containing an UCNI notice may be disposed of by any method which assures sufficiently complete destruction to prevent its retrieval (providing the disposal is authorized by the Archivist of the United States under 41 CFR 101-11.4 and by agency records disposition schedules).

(e) *Transmission.* (1) A document or material containing an UCNI notice must be packaged to prevent disclosure of the presence of UCNI when transmitted by a means which could allow access to the document or material by a person who is not an Authorized Individual or a person granted special access to UCNI under §1017.6(b). The address and return address must be indicated on the outside of the package.

(2) A document or material containing an UCNI notice may be transmitted by—

(i) U.S. first class, express, certified, or registered mail;

(ii) Any means approved for the transmission of classified documents or material;

(iii) An Authorized Individual or a person granted special access to UCNI under §1017.16(b), when he or she can control access to the document or material being transmitted; or

(iv) Any other means determined by the Assistant Secretary for Defense Programs to be sufficiently secure.

(3) UCNI may be discussed or transmitted over an unprotected telephone or telecommunications circuit when required by operational considerations. More secure means of communication should be utilized whenever possible.

(f) *Automated Data Processing (ADP).* UCNI may be processed or produced on any ADP system which is certified for classified information or which complies with the guidelines of Office of Management and Budget Circular No. A-71, "Security of Federal Automated Information Systems" or which has been approved for such use in accordance with the provisions of applicable DOE directives.

§ 1017.18 Violations.

(a) *Civil penalty.* Any person who violates section 148 of the Atomic Energy Act or any regulation or order of the Secretary issued under section 148 of the Atomic Energy Act, including these regulations, is subject to a civil penalty. The Assistant Secretary for Defense Programs may recommend to the Secretary imposition of this civil penalty, which shall not exceed \$110,000 for each violation.

(1) *Written notification.* (i) Whenever the Assistant Secretary for Defense Programs believes that a person is subject to imposition of a civil penalty under the provisions of section 148b(1) of the Atomic Energy Act, the Assistant Secretary for Defense Programs shall notify the person in writing by certified mail, return receipt requested, of—

(A) The date, facts, and nature of each act or omission with which the person is charged;

(B) The particular provision of section 148 of the Atomic Energy Act or its implementing regulations or orders involved in the violation;

(C) Each penalty which the Assistant Secretary for Defense Programs proposes to recommend the Secretary impose and its amount;

(D) The right of the person to submit to the Assistant Secretary for Defense Programs the person's written reply to each of the allegations in the notification letter. The person shall mail or deliver any reply letter within twenty days of receipt of the notification letter from the Assistant Secretary for Defense Programs.

(E) The right of the person to submit to the Assistant Secretary for Defense Programs a written request for a hearing under paragraph (a)(2) of this section.

(F) The fact that, upon failure of the person to pay any civil penalty imposed by the Secretary, the penalty may be collected by civil action under paragraph (a)(5) of this section.

(ii) The Assistant Secretary for Defense Programs shall respond in writing within ten days of the receipt of a reply or a hearing request letter.

(iii) The Assistant Secretary for Defense Programs, at the request of the person accused of a violation, may extend for a reasonable period the time limit for submitting a reply or a hearing request letter.

(2) *Hearing.* Any person who receives a notification letter under paragraph (a)(1)(i) of this section may request a hearing to answer under oath or affirmation the allegations contained in the notification letter. The person shall mail or deliver any hearing request letter to the Assistant Secretary for Defense Programs within twenty days of receipt of the notification letter. Upon receipt from the person of a written request for a hearing, the Assistant Secretary for Defense Programs shall request that the Secretary appoint a Hearing Officer and, if necessary, a Hearing Counsel.

(i) *The Hearing Counsel.* The Hearing Counsel, if appointed, shall—

- (A) Represent the Department;
- (B) Consult with the person or the person's counsel prior to the hearing; and
- (C) Examine and cross-examine witnesses during the hearing.

(ii) *The Hearing Officer.* The Hearing Officer shall—

- (A) Be responsible for the administrative preparations for the hearing;
- (B) Convene the hearing as soon as is reasonable;
- (C) Conduct the hearing in a manner which is fair and impartial;
- (D) Arrange for the presence of witnesses and physical evidence at the hearing;
- (E) Make a recommendation that violation of section 148 of the Atomic Energy Act or any regulation or order of the Secretary issued under section 148 of the Atomic Energy Act, including these regulations, has occurred only if the DOE proves by the preponderance of the evidence that such a violation occurred; and

(F) Submit his or her recommendation, accompanied by a statement of the findings and reasons supporting them, to the Secretary for the Secretary's final determination on the imposition of a civil penalty.

(iii) *Rights of the person.* The person may—

- (A) Present evidence in his or her own behalf, through witnesses, or by documents;
- (B) Cross-examine witnesses and rebut records or other physical evidence (except as provided in paragraph (a)(2)(iv)(D) of this section);
- (C) Be present during the entire hearing (except as provided in paragraph (a)(2)(iv)(D) of this section);
- (D) Be accompanied, represented, and advised by counsel of his or her own choosing; and
- (E) Testify in his or her own behalf.

(iv) *Conduct of the Hearing.*
 (A) A summarized record of the hearing shall be made.

(B) All relevant and material evidence is admissible (except as provided in paragraph (a)(2)(iv)(D) of this section); however, formal rules of evidence are not applicable.

(C) Witnesses shall testify under oath and are subject to cross-examination (except as provided in paragraph (a)(2)(iv)(D) of this section).

(D) If the Hearing Officer determines that the testimony of a witness or any documentary or physical evidence contains classified information or UCNI, such testimony or evidence will not be considered unless it is material. If it is material, a nonsensitive summary of the testimony or records or description of the physical evidence shall be made available to the person to the maximum extent possible, consistent with the requirements of national security or the public health and safety. In all such cases, the Hearing Officer, in considering such testimony or evidence, shall take into account that the person did not have an opportunity to cross-examine the witness or review the actual document or evidence.

(E) The DOE bears the burden of proving that a violation of section 148 of the Atomic Energy Act or any regulation or order of the Secretary issued under section 148 of the Atomic Energy

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Act, including these regulations, has occurred.

(v) *Failure to request a hearing.* If the person fails to file a written request for a hearing within the specified time period, the person relinquishes his or her right to a hearing. If the person does not request a hearing, the Assistant Secretary for Defense Programs shall transmit his or her recommendation, with any supporting materials, to the Secretary for the Secretary's final determination on the imposition of the civil penalty.

(3) *Final determination.* The Secretary makes the final determination on the disposition of a violation. The Secretary may uphold, compromise or mitigate, or remit any penalty recommended by the Assistant Secretary for Defense Programs.

(4) *Appeal.* A person whom the Secretary has determined violated section 148 of the Atomic Energy Act or any regulations or orders of the Secretary issued under section 148 of the Atomic Energy Act, including these regulations, may appeal the determination of the Secretary to an appropriate United States District Court.

(5) *Collection of Penalty.* (i) The Secretary may request the Attorney General to institute a civil action to collect a penalty imposed by the Secretary under this section.

(ii) The Attorney General has the exclusive power to uphold, compromise or mitigate, or remit any civil penalty imposed by the Secretary under this section and referred to the Attorney General for collection.

(b) *Criminal penalty.* Any person who violates section 148 of the Atomic Energy Act or any regulations or orders of the Secretary issued under section 148 of the Atomic Energy Act, including these regulations may be subject to a criminal penalty under section 223 of the Atomic Energy Act. In such case, the Secretary refers the matter to the Attorney General for investigation and possible prosecution.

[50 FR 15822, Apr. 22, 1985, as amended at 62 FR 46184, Sept. 2, 1997]

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

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CATEGORICAL EXCLUSIONS APPLICABLE TO
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