

§ 1017.8

(6) The purpose for controlling the information is not prohibited under §1017.5.

(7) The information is not exempt from these regulations under §1017.6.

(c) *Procedures.* A Controlling Official shall report each determination to control or decontrol UCNI to the Assistant Secretary for Defense Programs for—

(1) Inclusion in the quarterly report required in §1017.11; and

(2) Incorporation into guidelines which Reviewing Officials consult in their review of documents and material for UCNI.

§ 1017.8 Categories of unclassified controlled nuclear information.

In order for information to be considered for control as UCNI, it must be within the scope of at least one of the following categories and it must meet each of the other criteria in §1017.7(b).

(a) *Category A—Unclassified Controlled Production or Utilization Facility Design Information.* This category includes certain unclassified government information concerning—

(1) The design of production or utilization facilities which are related to atomic energy defense programs; or

(2) Design-related operational information concerning the production, processing, or utilization of nuclear material for atomic energy defense programs.

(b) *Category B—Unclassified Controlled Safeguards and Security Information.* This category includes certain unclassified government information concerning security measures for the protection of—

(1) Production or utilization facilities related to atomic energy defense programs;

(2) Nuclear material to be used for military applications, regardless of its physical state or form, contained in these facilities; or

(3) Nuclear material to be used for military applications, regardless of its physical state or form, that is in transit.

(c) *Category C—Declassified Controlled Nuclear Weapon Information.* This category includes certain declassified government information concerning the design, manufacture, or utilization of nuclear weapons or components of nu-

10 CFR Ch. X (1–1–06 Edition)

clear weapons that was once classified as Restricted Data but which has been declassified or removed from the Restricted Data Category by the Assistant Secretary for Defense Programs (or the head of predecessor agencies of the Department of Energy) under section 142 of the Atomic Energy Act.

§ 1017.9 Adverse effect test.

(a) *Determination.* In order for a Controlling Official to control government information as UCNI, the Controlling Official shall make a determination that the unauthorized dissemination of the government 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—

(1) Illegal production of a nuclear weapon; or

(2) Theft, diversion, or sabotage of nuclear material, equipment, or facilities.

(b) *Other factors.* In making a determination under §1017.9(a), a Controlling Official may consider how the dissemination of government information under review for control as UCNI could assist a potential criminal in—

(1) Selecting a target for an act of theft, diversion, or sabotage of nuclear material, equipment, or facilities (e.g., relative importance of a facility; location, form, and quantity of nuclear material);

(2) Planning and committing an act of theft, diversion, or sabotage of nuclear material, equipment, or facilities (e.g., design of operational and security systems; building plans; methods and procedures for transfer, accountability, and handling of nuclear material; security plans, procedures, and capabilities);

(3) Measuring the success of an act of theft, diversion or sabotage of nuclear material, equipment, or facilities (e.g., actual or hypothetical consequences of the sabotage of specific vital equipment or facilities);

(4) Illegally fabricating, acquiring, or detonating a nuclear explosive device (e.g., unclassified nuclear weapon design information useful in designing a primitive nuclear device; location of

Department of Energy

§ 1017.13

unique nuclear materials needed to fabricate such a device; location of a nuclear weapon); or

(5) Dispersing hazardous nuclear material which could be used as an environmental contaminant (e.g., location, form, and quantity of nuclear material).

§ 1017.10 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—

(1) The material is used in the production, testing, utilization; or assembly of atomic weapons or components of atomic 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 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(b) prior to its being identified and controlled as UCNI.

§ 1017.11 Quarterly report.

The Assistant Secretary for Defense Programs shall prepare a report on a quarterly basis, to be made available upon request to any interested person, detailing the application during the previous quarter of each regulation or order prescribed or issued under section 148 of the Atomic Energy Act, including these regulations. Requests for this report may be sent to the Assistant Secretary for Defense Programs (refer to § 1017.16(b)(1) for the address).

This report must—

(a) Identify types of government information determined to be UCNI by

any Controlling Official during the previous quarter;

(b) Include a justification specifying why the government information is UCNI; and

(c) Include a justification that these regulations have been applied so as to protect from disclosure only the minimum amount of government information necessary to protect the health and safety of the public or the common defense and security.

§ 1017.12 Review and denial of documents or material.

(a) *Reviewing Officials.* A Reviewing Official with cognizance over the information contained in a document or material is authorized to—

(1) Make a determination, based on guidelines which reflect decisions of Controlling Officials, that the document or material contains, does not contain, or no longer contains UCNI; and

(2) Apply or remove UCNI markings to or from the document or material.

(b) *Denying Officials.* A Denying Official with cognizance over the information contained in a document or material is authorized to deny a request made under a statute or Executive order for all or any portion of the document or material that contains UCNI. The Denying Official bases his or her denial on guidelines which reflect decisions of Controlling Officials. The Denying Official insures that the Reviewing Official who determined that the document or material contains UCNI correctly applied and interpreted the guidelines.

(c) *Designation.* Reviewing and Denying Officials are designated in accordance with Departmental directives issued by the Secretary.

§ 1017.13 Retirement of documents or material.

(a) *Unmarked documents or material.* Any document or material which is not marked as containing UCNI but which contains government information within the scope of the categories in § 1017.8 shall be marked with the notice in § 1017.15(a)(2) upon retirement to a repository (e.g., an agency's centralized records storage area, a Federal Records Center, the National Archives of the