

## § 1045.16

(5) Details of the critical steps or components in nuclear material production processes; and

(6) Features of military nuclear reactors, especially naval nuclear propulsion reactors, that are not common to or required for civilian power reactors.

### § 1045.16 Criteria for evaluation of restricted data and formerly restricted data information.

(a) The DOE Director of Declassification shall classify information as RD and the DOE Director of Security Affairs shall maintain the classification of RD (and FRD in coordination with the DoD) only if undue risk of damage to the common defense and security from its unauthorized disclosure can be identified and described.

(b) The DOE Director of Declassification shall not classify information and the DOE Director of Security Affairs shall declassify information if there is significant doubt about the need to classify the information.

(c) The DOE Directors of Declassification and Security Affairs shall consider the presumptions in §1045.15 (d) and (e) before applying the criteria in paragraph (d) of this section.

(d) In determining whether information should be classified or declassified, the DOE Directors of Declassification and Security Affairs shall consider the following:

(1) Whether the information is so widely known or readily apparent to knowledgeable observers that its classification would cast doubt on the credibility of the classification system;

(2) Whether publication of the information would assist in the development of countermeasures or otherwise jeopardize any U.S. weapon or weapon system;

(3) Whether the information would hinder U.S. nonproliferation efforts by significantly assisting potential adversaries to develop or improve a nuclear weapon capability, produce nuclear weapons materials, or make other military use of nuclear energy;

(4) Whether publication of the information would have a detrimental effect on U.S. foreign relations;

(5) Whether publication of the information would benefit the public welfare, taking into account the impor-

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tance of the information to public discussion and education and potential contribution to economic growth; and, 6) Whether publication of the information would benefit the operation of any Government program by reducing operating costs or improving public acceptance.

### § 1045.17 Classification levels.

(a) *Restricted Data.* The DOE Director of Declassification shall assign one of the following classification levels to RD information to reflect the sensitivity of the information to the national security. The greater the damage expected from unauthorized disclosure, the higher the classification level assigned to the information.

(1) *Top Secret.* The DOE Director of Declassification shall classify RD information Top Secret if it is vital to the national security and if its unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the national security. Examples of RD information that warrant Top Secret classification include detailed technical descriptions of critical features of a nuclear explosive design that would enable a proliferant or nuclear power to build or substantially improve a nuclear weapon, information that would make possible the unauthorized use of a U.S. nuclear weapon, or information revealing catastrophic failure or operational vulnerability in a U.S. nuclear weapon.

(2) *Secret.* The DOE Director of Declassification shall classify RD information as Secret if its unauthorized disclosure could reasonably be expected to cause serious damage to the national security, but the RD information is not sufficiently comprehensive to warrant designation as Top Secret. Examples of RD information that warrant Secret classification include designs for specific weapon components (not revealing critical features), key features of uranium enrichment technologies, or specifications of weapon materials.

(3) *Confidential.* The DOE Director of Declassification shall classify RD information as Confidential if it is deemed to be of significant use to a potential adversary or nuclear proliferant and its unauthorized disclosure could

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reasonably be expected to cause undue risk to the common defense and security. Examples of RD information that warrant Confidential classification are the amount of high explosives used in nuclear weapons, gaseous diffusion design information, and design information for Naval reactors.

(b) *Formerly Restricted Data.* The DOE Director of Declassification, jointly with the DoD, shall assign one of the classification levels in paragraph (a) of this section to FRD information to reflect its sensitivity to the national security.

### § 1045.18 Newly generated information in a previously declassified subject area.

(a) The DOE Director of Declassification may evaluate newly generated specific information in a previously declassified subject area using the criteria in section 1045.16 and classify it as RD, if warranted.

(b) The DOE Director of Declassification shall not classify the information in such cases if it is widely disseminated in the public domain.

### § 1045.19 Accountability for classification and declassification determinations.

(a) Whenever a classification or declassification determination concerning RD or FRD information is made, the DOE Directors of Declassification and Security Affairs shall be able to justify the determination. For FRD and RD primarily related to military utilization, the DOE Directors of Declassification and Security Affairs shall coordinate the determination and justification with the DoD. If the determination involves a departure from the presumptions in §1045.15, the justification shall include a rationale for the departure. Often the justification itself will contain RD or FRD information. In such a case, the DOE Directors of Declassification and Security Affairs shall ensure that a separate justification can be prepared which is publicly releasable. The publicly releasable justification shall be made available to any interested person upon request to the DOE Director of Declassification.

(b) The DOE Director of Declassification shall prepare a report on an an-

nual basis on the implementation of this part. This report shall be available to any interested person upon request to the DOE Director of Declassification. Requests may be submitted to the Department of Energy, Director of Declassification, 19901 Germantown Road, Germantown, Maryland 20874-1290.

### § 1045.20 Ongoing call for declassification proposals.

The DOE Director of Security Affairs shall consider proposals from the public or agencies or contractors for declassification of RD and FRD information on an ongoing basis. Declassification proposals for RD and FRD information shall be forwarded to the Department of Energy, Director of Security Affairs, 1000 Independence Avenue SW, Washington, DC 20585. Any proposed action shall include a description of the information concerned and may include a reason for the request. DOE and DoD shall coordinate with one another concerning declassification proposals for FRD information.

### § 1045.21 Privately generated restricted data.

(a) DOE may classify RD which is privately generated by persons not pursuant to Government contracts, in accordance with the Atomic Energy Act.

(b) In order for information privately generated by persons to be classified as RD, the Secretary or Deputy Secretary shall make the determination personally and in writing. This authority shall not be delegated.

(c) DOE shall publish a FEDERAL REGISTER notice when privately generated information is classified as RD, and shall ensure that the content of the notice is consistent with protecting the national security and the interests of the private party.

### § 1045.22 No comment policy.

(a) Authorized holders of RD and FRD shall not confirm or expand upon the classification status or technical accuracy of classified information in the public domain.

(b) Unauthorized disclosure of classified information does not automatically result in the declassification of that information.