

## Department of Energy

## § 1045.43

unless such an acknowledgment would reveal classified information.

(b) When segregation of RD or FRD into an addendum is not practical, document originators are encouraged to prepare separate unclassified versions of documents with significant public interest.

(c) When documents contain environmental, safety or health information and a separate unclassified version cannot be prepared, document originators are encouraged to provide a publicly releasable rationale for the classification of the documents.

### § 1045.42 Mandatory and Freedom of Information Act reviews for declassification of restricted data and formerly restricted data documents.

(a) *General.* (1) Agencies with documents containing RD and FRD shall respond to mandatory review and Freedom of Information Act (FOIA) requests for these documents from the public.

(2) In response to a mandatory review or Freedom of Information Act request, DOE or DoD may refuse to confirm or deny the existence or nonexistence of the requested information whenever the fact of its existence or nonexistence is itself classified as RD or FRD.

(b) *Processing Requests.* (1) Agencies shall forward documents containing RD to DOE for review.

(2) Agencies shall forward documents containing FRD to the DOE or to the DoD for review, depending on which is the originating agency.

(3) The DOE and DoD shall coordinate the review of RD and FRD documents as appropriate.

(4) The review and appeal process is that described in subpart D of this part except for the appeal authority. DOE and DoD shall not forward RD and FRD documents to the Interagency Security Classification Appeals Panel (ISCAP) for appeal review unless those documents also contain NSI. In such cases, the DOE or DoD shall delete the RD and FRD portions prior to forwarding the NSI and unclassified portions to the ISCAP for review.

(5) *Information Declassification Actions resulting from appeal reviews.* (i) Appeal reviews of RD or FRD documents shall be based on existing classification

guidance. However, the Director of Classification shall review the RD and FRD information in the appealed document to determine if it may be a candidate for possible declassification.

(ii) If declassification of the information appears appropriate, the Director of Classification shall initiate a formal declassification action and so advise the requester.

(c) *Denying Official.* (1) The denying official for documents containing RD is the Director of Classification.

(2) The denying official for documents containing FRD is either the Director of Classification or an appropriate DoD official.

(d) *Appeal Authority.* (1) The appeal authority for RD documents is the Chief Health, Safety and Security Officer.

(2) The appeal authority for FRD documents is either the Chief Health, Safety and Security Officer, or an appropriate DoD official.

(e) The denying official and appeal authority for Naval Nuclear Propulsion Information is the Director, Office of Naval Reactors.

(f) RD and FRD information contained in documents shall be withheld from public disclosure under exemption 3 of the FOIA (5 U.S.C. 522 (b)(3)) because such information is exempt under the statutory jurisdiction of the Atomic Energy Act.

[62 FR 68509, Dec. 31, 1997, as amended at 71 FR 68737, Nov. 28, 2006]

### § 1045.43 Systematic review for declassification.

(a) The Secretary shall ensure that RD documents, and the DoD shall ensure that FRD documents, are periodically and systematically reviewed for declassification. The focus of the review shall be based on the degree of public and researcher interest and likelihood of declassification upon review.

(b) Agencies with RD or FRD document holdings shall cooperate with the Director of Classification (and with the DoD for FRD) to ensure the systematic review of RD and FRD documents.

(c) Review of documents in particular areas of public interest shall be considered if sufficient interest is demonstrated. Proposals for systematic document reviews of given collections

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or subject areas should be addressed to the Director, Office of Classification, HS-90/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585-1290.

[62 FR 68509, Dec. 31, 1997, as amended at 71 FR 68737, Nov. 28, 2006]

#### § 1045.44 Classification review prior to public release.

Any person with authorized access to RD or FRD who generates a document intended for public release in an RD or FRD subject area shall ensure that it is reviewed for classification by the appropriate DOE organization (for RD) or the appropriate DOE or DoD organization (for FRD) prior to its release.

#### § 1045.45 Review of unmarked documents with potential restricted data or formerly restricted data.

(a) Individuals reviewing NSI records of permanent historical value under the automatic or systematic review provisions of E.O. 12958 may come upon documents that they suspect may contain RD or FRD, but which are not so marked. Such documents are not subject to automatic declassification.

(b) Such documents shall be reviewed by an RD Classifier as soon as possible to determine their classification status. Assistance may be requested from the Director of Classification.

[62 FR 68509, Dec. 31, 1997, as amended at 71 FR 68737, Nov. 28, 2006]

#### § 1045.46 Classification by association or compilation.

(a) If two pieces of unclassified information reveal classified information when associated, then RD classifiers may classify the document.

(b) RD classifiers may classify a document because a number of pieces of unclassified information considered together contain some added value such as completeness or comprehensiveness of the information which warrants classification.

#### 10 CFR Ch. X (1-1-10 Edition)

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

#### § 1045.50 Purpose and scope.

This subpart describes the procedures to be used by the public in questioning or appealing DOE decisions regarding the classification of NSI under E.O. 12958 and 32 CFR part 2001.

#### § 1045.51 Applicability.

This subpart applies to any person with authorized access to DOE NSI or who desires access to DOE documents containing NSI.

#### § 1045.52 Mandatory declassification review requests.

All DOE information classified as NSI is subject to review for declassification by the DOE if:

(a) The request for a review describes the document containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort;

(b) The information is not exempted from search and review under the Central Intelligence Agency Information Act;

(c) The information has not been reviewed for declassification within the past 2 years; and

(d) The request is sent to the Director, Office of Classification, HS-90/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585-1290.

[62 FR 68509, Dec. 31, 1997, as amended at 71 FR 68737, Nov. 28, 2006]

#### § 1045.53 Appeal of denial of mandatory declassification review requests.

(a) If the Department has reviewed the information within the past 2 years, the request may not be processed. If the information is the subject of pending litigation, the processing of the request may be delayed pending completion of the litigation. The Department shall inform the requester of this fact and of the requester's appeal rights.

(b) When the Director of Classification has denied a request for review of