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Chapter 9.

Special Requirements

Section 1. Restricted Data and Formerly Restricted Data

9-100. General. This Section contains information and the requirements for safeguarding atomic energy information that is designated “Restricted Data” and “Formerly Restricted Data.” Such information is classified under the authority of the Atomic Energy Act of 1954 and is under the jurisdiction and control of the Department of Energy (DOE). For purposes of this Section, a distinction is made between National Security Information and atomic **energy information as explained below.**

9-101. Authority and Responsibilities.

- a. The Atomic Energy Act of 1954, as amended, provides for the development, use, and control of atomic energy. The Act establishes policy for handling atomic energy-related classified information designated as Restricted Data (RD) and Formerly Restricted Data (FRD). The Act provides responsibility to DOE to “control the dissemination and declassification of Restricted Data.” In Section 143 of the Act, the Secretary of Defense has the responsibility to establish personnel and other security procedures and standards that are in reasonable conformity to the standards established by the Department of Energy. This Section is intended to ensure reasonable conformity in policy and procedures used by contractors for the control of RD and FRD.
- b. The Secretary of Energy and the Chairman of the Nuclear Regulatory Commission retain authority over access to information which is under their respective cognizance as directed by the Atomic Energy Act of 1954. The Secretary or the Commission may inspect and monitor contractor programs or facilities that involve access to such information or may enter into written agreement with the DOD to inspect and monitor these programs or facilities,

9-102. Background Information.

- a. The Atomic Energy Act is the basis for classification of atomic energy information as Restricted Data and Formerly Restricted Data. In accordance with the

Atomic Energy Act, **all** atomic energy information is “classified unless a positive action is taken to declassify it. This is directly opposite to procedures used for information classified by E.O. 12356. This is a significant difference that should be clearly understood. By the Act, Congress has decreed that atomic energy information is different -- it is “born classified,” it remains classified until a positive action is taken to declassify it, and it **may** be declassified only by the Department of Energy. No other organization can declassify atomic energy information, and once it is declassified, it cannot be reclassified.

- b. “Restricted Data” (RD) is defined in the Atomic Energy Act as follows:

“The term Restricted Data means all data concerning, (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142.”

- c. “Formerly Restricted Data” (FRD) is information which has been removed from the Restricted Data category after the DOE and the DOD have jointly determined that the information relates primarily to the military utilization of atomic weapons and can be adequately safeguarded as National Security Information in the United States. Such data may not be given to any other nation except under specially approved agreements and with the authorization of DOE. FRD is identified and handled as Restricted Data when sent outside the United States.

9-103. **Unauthorized Disclosures.** Contractors shall report all unauthorized disclosures involving RD and FRD to the DOE or NRC through their CSA.

9-104. **International Requirements.** The Act provides for a program of international cooperation to promote common defense and security and to make available to cooperating nations the benefits of *peaceful* applications

of atomic energy as widely as expanding technology and considerations of the common defense and security will permit. Information controlled by the Act maybe shared with another nation only under the terms of an agreement for cooperation. The disclosure by a contractor of RD and FRD shall not be permitted until an agreement is signed by the United States and participating governments and disclosure guidance and security arrangements are established. RD and FRD shall not be transmitted to a foreign national or regional defense organization unless such action is approved and undertaken pursuant to an agreement for cooperation between the United States and the cooperating entity and supporting statutory determinations as prescribed in the Act.

9-105. Personnel Security Clearances. Only DOE, NRC, DoD, and NASA can grant access to RD and FRD. Contractors of **all** other federal agencies must be processed for PCLS by the DOE. The minimum investigative requirements and standards for access to RD and FRD are set forth below.

- a. Top Secret RD-A favorable Single Scope Background Investigation (SSBI).
- b. Secret RD-A favorable SSBI.(SRD as defined pursuant to the NISPOMSUP).
- c. Confidential RD—A favorable NACC.
- d. Top Secret FRD—A favorable SSBI.
- e. Secret FRD-A favorable NACC.
- f. Confidential FRD-A favorable NACC.

DOE and NRC use the designation Q when a favorable access authorization determination has been conducted based on an SSBI and L when a favorable access authorization determination has been made based on an NACC.

9-106. Classification.

- a. Since RD is born classified, no classification category determination by a person with original classification authority is ever required for RD or FRD; however, an authorized classifier must determine **the** classification level. No date or event for automatic declassification ever applies to RD or FRD.

- b. Only RD Classifiers appointed and trained under Government Agency procedures may derivatively classify material that contains RD. Any contractor employee authorized to derivatively classify NSI material may also derivatively classify FRD material. Such derivative classification determinations shall be based on classification guidance approved by the DOE **or** NRC and not on portion markings in a source document. If such classification guidance is not available and the information in the document meets the definition of RD, then the classifier shall, as an interim measure, mark the document as Confidential RD or, if the sensitivity of the information in the document so warrants, as Secret RD. Such document **shall** be promptly referred to the CSA who shall provide the contractor with the final determination based upon official published classification guidance.

- c. RD and FRD are not limited to U.S. Government information. Contractors who develop RD, FRD, or an invention or discovery useful in the production or utilization of special nuclear material or atomic energy shall file a report with a complete description thereof with the DOE or the Commissioner of Patents as prescribed by the Act. Documents thought to contain RD or FRD shall be marked temporarily as such. Such documents shall be promptly referred to the CSA for a final determination based upon official published classification guidance.

9-107. Declassification. Documents marked as containing RD and FRD remain classified until a positive action by an authorized person is taken to declassify them; no date or event for automatic declassification ever applies to RD and FRD documents. Only the DOE may declassify contractor documents marked as RD. Only the DOE or the DOD may declassify contractor documents marked as FRD. These authorities may be delegated on a case-by-case basis. Contractors shall send any document marked as RD or FRD that must be declassified or sanitized to the appropriate government contracting office.

9-108. Transclassification. Transclassification occurs when information is removed from the RD category by a joint determination of DOE and DOD and placed in the FRD category in accordance with section 142d of the Atomic Energy Act. This information is primarily related to the military utilization of atomic weapons and can be adequately safeguarded as NSI. This authority is

severely restricted and cannot be exercised by RD Classifiers. Contact the DOE for information.

9-109. Marking. In addition to the markings specified in Chapter 4 for NSI, classified material containing RD and FRD shall be marked as indicated below:

- a. Restricted Data. The following notice shall be affixed on material that contains Restricted Data. **This may be abbreviated RD.**

Restricted Data

This material contains Restricted Data as defined in the Atomic Energy Act of 1954. Unauthorized disclosure subject to administrative and criminal sanctions.

Material classified as RD must indicate the classification guide and the authorized **RD** classifier. The following marking shall be applied:

Classified by: _____ (guide) _____

Classifier _____ (name and title) _____

- b. **Formerly Restricted Data.** The following notice shall be affixed on material which contains Formerly Restricted Data. This may be abbreviated **FRD**.

Formerly Restricted Data

Unauthorized disclosure subject to administrative and criminal sanctions. Handle as Restricted Data in foreign dissemination. Section 144b, AEA 1954.

Material classified as FRD must indicate the classification guide. The following marking shall be applied:

Classified by: _____ (guide) _____

- c. Documents shall be marked to indicate CNWDI, Sigmas, and NNPI, as applicable.

9-110. Automated Information Systems. See the **NISPOMSUP** for AIS requirements for **TSRD** and **SRD**.

9-111. Physical Security. See the **NISPOMSUP** for physical security requirements for **TSRD** and **SRD**.

Section 2. DOD Critical Nuclear Weapon Design Information

9-200. General. This Section contains the special requirements for protection of Critical Nuclear Weapon Design Information (CNWDI).

9-201. Background. CNWDI is a DoD category of TOP SECRET Restricted Data or SECRET Restricted Data that reveals the theory of operation or design of the components of a thermonuclear or fission bomb, warhead, demolition munition, or test device. Specifically excluded is information concerning arming, fuzing, and firing systems; limited life components; and total contained quantities of fissionable, fusionable, and high explosive materials by type. Among these excluded items are the components that DoD personnel set, maintain, operate, test or replace. The sensitivity of DoD CNWDI is such that access shall be granted to the absolute minimum number of employees who require it for the accomplishment of assigned responsibilities on a classified contract. Because of the importance of such information, special requirements have been established for its control. (DoD Directive 5210.2 establishes these controls in the DoD).

9-202. **Briefings.** Prior to having access to DoD CNWDI, employees shall be briefed on its sensitivity by the FSO or his or her alternate. (The FSO will be initially briefed by a Government representative.) The briefing shall include the definition of DoD CNWDI, a reminder of the extreme sensitivity of the information, and an explanation of the individual's continuing responsibility for properly safeguarding DoD CNWDI and for ensuring that dissemination is strictly limited to other personnel who have been authorized for access and have a need-to-know for the particular information. The briefing shall also be tailored to cover any special local requirements. Upon termination of access to DoD CNWDI, the employee shall be given an oral debriefing that shall include a statement of a. The purpose of the debriefing; b. The serious nature of the subject matter that requires protection in the national interest; and c. The need for caution and discretion.

9-203. **Markings.** In addition to other markings required by this Manual, CNWDI material shall be clearly marked, "Critical Nuclear Weapon Design Information—DoD Directive 5210.2 Applies." As a minimum, CNWDI documents shall show such markings on the cover or first page. Portions of documents that contain CNWDI shall be marked with an (N) or

(CNWDI) following the classification of the portion. For example, TS(RD)(N) or TS(RD)(CNWDI).

9-204. **Subcontractors.** Contractors shall not disclose CNWDI to subcontractors without the prior written approval of the GCA. This approval may be included in a Contract Security Classification Specification, other contract-related document, or by separate correspondence.

9-205. **Transmission Outside the Facility.** Transmission outside the contractor's facility is authorized only to the GCA, or to a subcontractor as approved by 9-204 above. Any other transmission must be approved by the GCA. Prior to transmission to another cleared facility, the contractor shall verify from the CSA that the facility has been authorized access to CNWDI. When CNWDI is transmitted to another facility, the inner wrapping shall be addressed to the personal attention of the FSO or his or her alternate, and in addition to any other prescribed markings, the inner wrapping shall be marked: "Critical Nuclear Weapon Design Information-DoD Directive 5210.2 Applies." Similarly, transmissions addressed to the GCA or other U.S. Government agency shall bear on the inner wrapper the marking, "Critical Nuclear Weapon Design Information-DoD Directive 5210.2 Applies."

9-206. **Records.** Contractors shall maintain a record of all employees who have been authorized access to CNWDI, and the date of the special briefing(s). These records shall be retained for 2 years following the termination of employment and/or the termination of the individual's clearance or access, as applicable.

9-207. **Weapon Data.** That portion of RD or FRD that concerns the design, manufacture, or utilization (including theory, development, storage, characteristics, performance, and effects) of atomic weapons or atomic weapon components and nuclear explosive devices is called Weapon Data and it has special protection provisions. Weapon Data is divided into eight Sigma categories the protection of which is prescribed by DOE Order 5610.2, CONTROL OF WEAPON DATA. However, certain Weapon Data has been re-categorized as CNWDI and is protected as described in this Section.