

SUBJECT: IDENTIFYING AND PROTECTING OFFICIAL USE ONLY INFORMATION

1. OBJECTIVE. To establish a program within the Department of Energy (DOE), including the National Nuclear Security Administration (NNSA), to identify certain unclassified controlled information as Official Use Only (OUO) and to identify, mark, and protect documents containing such information. This information may be exempt from public release under the Freedom of Information Act (FOIA) and has the potential to damage governmental, commercial, or private interests if disseminated to persons who do not need to know the information to perform their jobs or other DOE-authorized activities.

2. CANCELLATION. None.

3. APPLICABILITY.

a. DOE Elements. This Order applies to all Departmental elements that (1) identify information under their cognizance as OUO and mark documents they generate accordingly or (2) possess documents that are marked as containing OUO information or with equivalent markings from other agencies (see definitions for examples of such markings).

The Administrator of NNSA will assure that NNSA employees and contractors comply with their respective responsibilities under this directive. Nothing in this Order will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106-65 to establish Administration-specific policies, unless disapproved by the Secretary.

b. Contractors.

- (1) The Contractor Requirements Document (CRD), Attachment 1, sets forth requirements of this Order that apply to contractors responsible for the management and operation of the Department-owned facilities (hereafter referred to as site/facility management contractors) whose contracts include the CRD.
- (2) This CRD must be included in site/facility management contracts that involve activities where OUO information and documents will be handled, used, or generated.
- (3) The officials identified in paragraph 5, Responsibilities, are responsible for notifying the contracting officers which site/facility management contracts

are affected. Once notified, the contracting officer is responsible for incorporating the CRD into each affected site/facility management contract via the Laws, Regulations, and Departmental Directives clause of the contract

- (4) As the Laws, Regulations, and Departmental Directives clause of a site/facility management contract states, regardless of the performer of the work, the site/facility management contractor with the CRD incorporated into its contract is responsible for compliance with the requirements of the CRD. An affected site/facility management contractor is responsible for flowing down the requirements of this CRD to subcontracts at any tier to the extent necessary to ensure the site/facility management contractors' compliance with the requirements.

c. Equivalencies/Exemptions for DOE O 471.3.

Exemption. Consistent with the responsibilities and authorities assigned in Executive Order 12344, codified at 50 USC sections 2406 and 2511 and to ensure consistency through the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this Directive for activities under the Director's cognizance, as deemed appropriate.

4. REQUIREMENTS.

- a. To be identified as OUO, information must be unclassified; have the potential to damage governmental, commercial, or private interests if disseminated to persons who do not need to know the information to perform their jobs or other DOE-authorized activities; and fall under at least one of eight Freedom of Information Act (FOIA) exemptions (exemptions 2 through 9; information falling under exemption 1 can never be OUO because it covers information classified by Executive order). (See DOE M 471.3-1, *Manual for Identifying and Protecting Official Use Only Information*, dated 4-9-03, for additional details.)
- b. An unclassified document originated within a program element must be evaluated to determine whether it contains OUO information. An unclassified document that is produced by or for DOE/NNSA or is under the control of DOE/NNSA may be evaluated to determine whether it contains OUO information. (NOTE: Documents maintained in restricted access files do not need to be reviewed while in these files or when retrieved from the files for reference, inventory, or similar purposes as long as the documents will be returned to the files and are not accessible by individuals who are not authorized access to the OUO information. See DOE M 471.3-1, Chapter 1, for additional details.)
- c. A document determined to contain OUO information must be marked as described in DOE M 471.3-1. (NOTE: Documents maintained in restricted

access files do not need to be marked while in these files or when retrieved from the files for reference, inventory, or similar purposes as long as the documents will be returned to the files and are not accessible by individuals who are not authorized access to the OUO information. See DOE M 471.3-1, Chapter I, paragraph 4e.)

- d. A document determined to no longer warrant protection as OUO must have its markings removed as described in DOE M 471.3-1.
- e. Access to (1) documents marked as containing OUO information or (2) OUO information from such documents must only be provided to those persons who need to know the information to perform their jobs or other DOE-authorized activities.
- f. Documents marked as containing OUO information and other-Agency documents with equivalent markings must be protected as described in DOE M 471.3-1.
- g. An administrative penalty as prescribed in DOE 3750.1, *Work Force Discipline*, dated 3-23-83, is imposed if an employee (1) intentionally releases OUO information from a document marked as containing OUO information to a person who does not need to know the information to perform his or her job or other DOE-authorized activities, (2) intentionally or negligently releases a document marked as containing OUO information to a person who does not need to know the information to perform his or her job or other DOE-authorized activities, (3) intentionally does not mark a document that is known to contain OUO information, or (4) intentionally marks a document that is known not to contain OUO information.
- h. If a document marked as containing OUO information is requested under FOIA, the document is not automatically exempt from public release, but must be reviewed and processed under 10 CFR Part 1004.
- i. Except for Unclassified Controlled Nuclear Information, which is identified, marked, and protected under 10 CFR Part 1017, Identification and Protection of Unclassified Controlled Nuclear Information, and DOE O 471.1B, *Identification and Protection of Unclassified Controlled Nuclear Information*, dated 3-1-2010, and Naval Nuclear Propulsion Information, which is controlled under 32 CFR Part 250, OUO markings are the only markings to be used within DOE to designate documents containing unclassified controlled information. Additional markings that are based on law, regulation, or other DOE directives that convey additional advice on handling or access restrictions (e.g., “Source Selection Information—See FAR 2-101 and 3.104”; “Protected CRADA Information”; “Export Controlled Information”) are allowed.

5. RESPONSIBILITIES.a. Secretarial Officers.

- (1) Review procurement requests for new site/facility management contracts and, if appropriate, ensure that the requirements of the CRD of this directive are included in the contracts.
- (2) Ensure that requirements contained in paragraph 4 of this Order are implemented by employees within their respective organizations.
- (3) May develop and approve guidance to be used by all employees to identify documents containing OUO information under their cognizance and forward such guidance to the Deputy Chief for Operations, Office of Health, Safety and Security, for issuance.
- (4) May develop, approve, and issue guidance to be used only by employees within their respective organizations to identify documents containing OUO information. Such guidance must be consistent with guidance issued under paragraphs 5a(3) and 5b(2).

b. Deputy Chief for Operations, Office of Health, Safety and Security.

- (1) Develops and issues policies and procedures to identify OUO information and to identify and mark documents containing such information.
- (2) Develops and issues guidance, with the concurrence of the program office with cognizance over the information, to assist individuals in determining whether a document contains OUO information. Issues guidance for use by all DOE employees that was developed and approved by Secretarial officers under paragraph 5a(3).
- (3) Develops and issues protection requirements for OUO information.
- (4) Develops and disseminates training material and conducts training sessions to assist individuals in identifying documents containing OUO information and marking such documents.

c. Freedom of Information Officers. Coordinate requests for documents under FOIA.d. Contracting Officers.

- (1) After notification by the appropriate program official, incorporate the CRD into the affected site/facility management contract in accordance with the Laws, Regulations, and DOE Directives clause of the contracts.

- (2) Assist originators of procurement requests who want to incorporate the requirements of the CRD of this Order in new non site/facility management contracts, as appropriate.

6. DEVIATIONS FROM REQUIREMENTS. A Secretarial Officer may propose a variance (i.e., an alternate or equivalent means of meeting a requirement) or request a waiver from a specific requirement in this Order or in DOE M 471.3-1. This proposal must (a) identify the Order or Manual requirement for which a variance or waiver is being requested; (b) explain why a variance or waiver is needed; and (c) if requesting a variance, describe the alternate or equivalent means for meeting the requirement. The proposal must be submitted to the Deputy Chief for Operations, Office of Health, Safety and Security, for approval. The Deputy Chief's decision must be made within 30 days. The Office of Health, Safety and Security will review each approved variance or waiver periodically to ensure it is still needed.

7. REFERENCES.

- a. 10 CFR Part 1004, Freedom of Information.
- b. DOE M 471.3-1, *Manual for Identifying and Protecting Official Use Only Information*, dated 4-9-03.
- c. DOE 3750.1, *Work Force Discipline*, dated 3-23-83.

8. DEFINITIONS.

- a. Document. Recorded information regardless of its medium or characteristics.
- b. Equivalent markings. Other-Agency information control markings that are equivalent to DOE Official Use Only (OUO) include but are not limited to the following: "For Official Use Only" (FOUO) from the Department of Defense and many other agencies, "Sensitive But Unclassified" (SBU) from the Department of State, and "Limited Official Use" (LOU) from the Department of Justice.
- c. Information. Facts, data, or knowledge itself regardless of the medium of its conveyance. (Documents are deemed to convey or contain information and are not considered to be information per se.)
- d. Official Use Only (OUO) information. Certain unclassified information that may be exempt from public release under the Freedom of Information Act and has the potential to damage governmental, commercial, or private interests if disseminated to persons who do not need to know the information to perform their jobs or other DOE authorized activities.

9. CONTACT. Questions concerning this Order should be addressed to the Office of Classification at 301-903-7567.

BY ORDER OF THE SECRETARY OF ENERGY:



KYLE E. McSLARROW
Deputy Secretary

CONTRACTOR REQUIREMENTS DOCUMENT
DOE O 471.3, *Identifying Official Use Only Information*

Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this Contractor Requirements Document (CRD). The contractor is responsible for flowing down the requirements of this CRD to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements. The contractor shall:

1. Determine whether unclassified documents created and/or handled in the performance of this contract contain Official Use Only (OUO) information. (See Chapter I, paragraphs 2a and 2b, of the CRD for DOE M 471.3-1, *Manual for Identifying and Protecting Official Use Only Information*, dated 4-9-03.)
2. Ensure that documents determined to contain OUO information are marked appropriately. (See Chapter I, paragraph 4, of the CRD for DOE M 471.3-1.) Except for Unclassified Controlled Nuclear Information (UCNI) and Naval Nuclear Propulsion Information (NNPI), OUO markings are the only markings to be used to designate documents containing unclassified controlled information. Additional markings that are based on law, regulation, or other DOE CRD that convey additional advice on handling or access restrictions (e.g., "Protected CRADA Information," "Export Controlled Information") are allowed.
3. Ensure that documents determined to no longer warrant protection as OUO have their markings removed. [See Chapter I, paragraphs 4g(1) and 4g(2) of the CRD for DOE M 471.3-1.]
4. Ensure that access to (a) documents marked as containing OUO information or (b) OUO information from such documents is only provided to those persons who need to know the information to perform their jobs or other DOE-authorized activities.
5. Ensure that documents marked as containing OUO information and other-Agency documents with equivalent markings [e.g., "For Official Use Only" (FOUO) from the Department of Defense; "Sensitive But Unclassified" (SBU) from the Department of State; "Limited Official Use" (LOU) from the Department of Justice] are protected. (See Chapter II, paragraph 2, of the CRD for DOE M 471.3-1.)
6. Ensure that a request for a variance (i.e., an alternate or equivalent means of meeting a requirement) or waiver from any requirements in the CRD for DOE O 471.3 or DOE M 471.3-1 are provided to the appropriate Secretarial Officer. Such request must (a) identify the requirement for which a variance or waiver is being requested; (b) explain why the variance or waiver is needed; and (c) if requesting a variance, describe the alternate or equivalent means for meeting the requirement.

7. Impose an administrative penalty, as appropriate, if (a) OOU information from a document marked as containing OOU information is intentionally released to a person who does not need to know the information to perform his or her job or other DOE-authorized activities, (b) a document marked as containing OOU information is intentionally or negligently released to a person who does not need to know the information to perform his or her job or other DOE-authorized activities, (c) a document that is known to contain OOU information is intentionally not marked, or (d) a document that is known to not contain OOU information is intentionally marked as containing such information.