Office of Classification

Classification

Training

Institute

HSS
Office of Health, Safety and Security

Office of Classification

This briefing provides information on the Department of Energy's Official Use Only program.

Classification Training Institute

April 2012

The Department of Energy's Official Use Only Program

OUO

Official Use Only Information

- Even if information is not classified, it may be sensitive and, therefore, be controlled within DOE
- Such information is identified and protected according to DOE directives
- Control ensures
  - The information is not shared with persons who do not have a need to know and
  - An appropriate review is conducted prior to public release

What is OUO information?

Certain unclassified information that meets the following two criteria

- Damage: In the opinion of the person making the determination, has the potential to damage Governmental, commercial, or private interests if released to persons who don't need it to do their jobs or other DOE-authorized activity

AND

- Potentially Falls under a FOIA Exemption: In the opinion of the person making the determination, may fall under at least one of the FOIA exemptions (3-9)

Why do we use Official Use Only?

- OUO identified information whose handling and protection requirements are not covered by other DOE directives (e.g., Export Controlled Information, Protected Cooperative Research and Development Information, Applied Technology, drafts, predecisional documents, proprietary documents)
- Provides consistent handling and protection throughout the complex
- Alerts employees that information must not be released through informal methods (posted on a website or sent to a person without a need to know the information)

What information is OUO?

Applied Technology

Draft Documents

Attorney-Work Product

Patent Information

Export Controlled Information

Personally Identifiable Information

Privacy Act Information

Attorney-Client

Sensitive Nuclear Technology

Source Selection Information

Business Confidential

Intellectual Property

Proprietary Information

Who has responsibility for OUO?

- The Office of Classification (HS-60) develops DOE's overall policy and guidelines for identifying and protecting OUO
- The Chief Information Officer (CIO) issues guidance regarding the protection of OUO on DOE information systems
- The Chief Privacy Officer manages the DOE Privacy Program
- The Office of Classification, in coordination with Programs, determines information in classified subject areas that is OUO
- For OUO not in classified subject areas (i.e., not in classification guidance), Program Offices determine the specific information within their purview that is OUO

When must a document be reviewed for OUO?

- "An unclassified document originated within a program element must be evaluated to determine whether it contains OUO information."*
  - If the originator believes the document contains sensitive information, it should be reviewed prior to being finalized, released by the originator outside of the activity or office, or filed
  - Documents originated prior to April 9, 2003 (when the OUO program was established), <u>must</u> be reviewed if they are going to be publicly released if the possessor believes there is a potential for the document to contain sensitive information

* DOE Order 471.3, Admin Change 1, Identifying and Protecting Official Use Only Information

Who has authority to identify OUO?

- Any employee, Federal or contractor, from an office with cognizance over the information, may make OUO determinations for unclassified documents
  - originated within his/her office,
  - produced for his/her office, or
  - under the control of his/her office
- No special authority or designation is required
- Training is not required, but is highly recommended (training via PowerPoint is available from HS-61)
- Some Program Offices may have additional requirements (training, specific personnel to make determinations, etc.)

What is the criteria for information to be designated OUO?

Certain unclassified information that meets the following two criteria

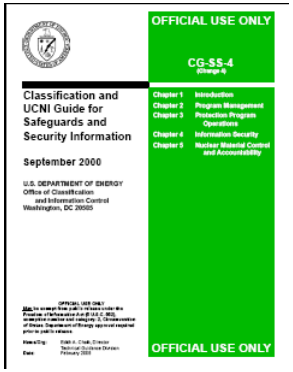
- Damage: In the opinion of the person making the determination, has the potential to damage governmental, commercial, or private interests if released to persons who don't need it to do their jobs or other DOE-authorized activity

AND

- Potentially falls under a FOIA Exemption: In the opinion of the person making the determination, may fall under at least one of the FOIA exemptions (3-9)

What is the basis for determining if a document contains OUO?

1. Guidance
   - Approved by HS-60
   - Issued by HS-60, a program office, or a DOE/NNSA contractor


OFFICIAL USE ONLY

CG-SS-4

Classification and UCNI Guide for Safeguards and Security Information

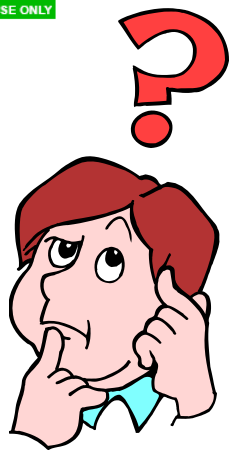
September 2000

U.S. DEPARTMENT OF ENERGY
Office of Classification and Information Control
Washington, DC 20585

Chapter 1 Introduction
Chapter 2 Program Management
Chapter 3 Protection Program Operations
Chapter 4 Information Security
Chapter 5 Nuclear Material Control and Accountability

OFFICIAL USE ONLY

2. Not based on guidance, individual determines if
   - Release could cause damage
   - May fall under a FOIA exemption



How do you make an OUO determination?

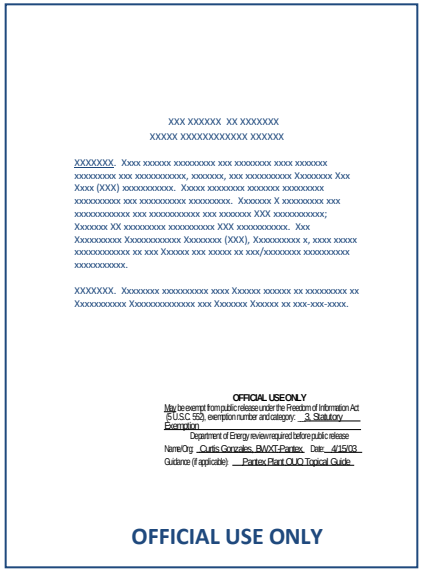
1

Is the information OUO by a classification guide topic?

YES

The document is OUO

Mark and protect the document per OUO Directives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OFFICIAL USE ONLY
May be exempt from public release under the Freedom of Information Act (5 U.S.C. 552), exemption number and category: 3, Statutory Exemption
Department of Energy review required before public release
Name/Org: Curtis Gonzales, BWXT-Pantex Date: 4/15/03
Guidance (if applicable): Pantex Plant OUO Topical Guide

OFFICIAL USE ONLY

NO
see next slide

How do you make an OUO determination?

If the information is <u>not</u> covered in a classification guide

2

Could release cause harm to governmental, commercial, or private interests if given to someone who doesn't need it to perform his or her job or other DOE-authorized activity?

NO

The document is NOT OUO

YES

The document could be OUO

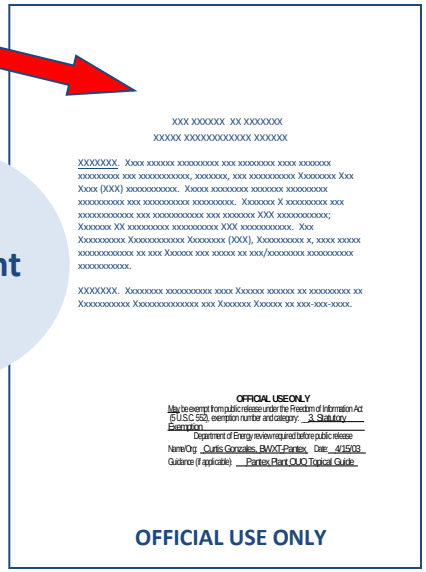
3

Does the information potentially fall under a FOIA exemption?

YES

The document is OUO

Mark and protect the document per OUO Directives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Department of Energy review required before public release
Name/Org: Curtis Gonzales, BWXT-Pantex Date: 4/15/03
Guidance (if applicable): Pantex Plant OUO Topical Guide

OFFICIAL USE ONLY

NO

The document is NOT OUO

What are inappropriate uses of OUO?

- OUO must not be used to
  - Conceal violations of law, inefficiency, or administrative error
  - Prevent embarrassment to an organization or agency
  - Prevent or delay the release of information that does not meet the criteria to be designated as OUO

OUO and the FOIA exemptions

The basis for OUO determinations

Does OUO mean the information is exempt from release under the FOIA?

- OUO is not a determination that information is FOIA exempt
- OUO is a determination that the information may be FOIA exempt
  - OUO markings ensure a document is not publicly released without an appropriate review
  - If an OUO document is requested under the FOIA, a FOIA Authorizing Official must determine whether the information must be released
  - Only a FOIA Official may determine that information is FOIA exempt
- The threshold for withholding information under the FOIA is higher and requires in-depth knowledge of the FOIA

OUO ≠ FOIA Exempt

OUO and the FOIA Exemptions

Exemption 1 – National Security Information

- Information classified by Executive order
- Identification and protection is <u>governed by Executive order, regulation, and directives</u>, so it is

NEVER OUO

OUO and the FOIA Exemptions

~~Exemption 2 – Circumvention of Statute~~

In March 2011, the Supreme Court changed the scope of Exemption 2 so that it no longer applies to information that could assist in the circumvention of a statute. Therefore,

Exemption 2 no longer applies to OUO

Under DOE Order 471.3, the only use of Exemption 2 as the basis for an OUO determination was "Circumvention of Statute." Since that is no longer valid, Exemption 2 cannot be used as the basis for OUO determinations.

For information that was previously OUO based on Exemption 2, Circumvention of Statute, another appropriate exemption must be determined.

OUO and FOIA Exemptions

Exemption 3 – Statutory Exemption

- Disclosure of information is prohibited by statute
- Not OUO if information is otherwise classified or controlled (e.g., RD, FRD, TFNI, UCNI)

NOTE: The determination must be based on statute, but the statute does not have to be identified on the front marking.

OUO and FOIA Exemptions

Exemption 3 Examples

- Federal Technology Transfer Act – Protected CRADA information
- Procurement Integrity Act – Source selection information
- Internal Revenue Code – Taxpayer identification numbers
- Patent Act – Applications for patents
- Arms Export Control Act – Certain information concerning export license applications
- Export Administration Act – information pertaining to license applications under the Act
- National Security Act of 1947 – Intelligence sources and methods
- Espionage Act – Information pertaining to communication intelligence and cryptographic devices

OUO and the FOIA Exemptions

Exemption 4 – Commercial/Proprietary

- Trade secrets
- Commercial or financial information whose release would
  - Impair the Government's ability to obtain information in the future,
  - Cause competitive harm, or
  - Affect program effectiveness

OUO Based on Exemption 4

Exemption 4 Examples

- Trade secret information (e.g., Coca Cola formula)
- Financial information, such as income, profits, losses, costs
- Contract proposal, solicited or unsolicited
- Customer/supplier lists
- Government credit card numbers
- Security measures for commercial entities performing work for the Government

OUO and the FOIA Exemptions

Exemption 5 – Privileged Information

- Three primary privileges
  - Deliberative process (a.k.a. “predecisional”)
  - Attorney-Work Product
  - Attorney-Client

OUO Based on Exemption 5

Exemption 5 – Privileged Information

- Why deliberative process information is not released
  - To encourage open, frank discussions on matters of policy between subordinates and superiors
  - To protect against premature disclosure of proposed policies before they are adopted
  - To protect against public confusion that might result from disclosure of reasons and rationales that were not the grounds for an agency's action
- Not just any deliberative process document; must have the potential for damage based on one of the above reasons

OUO Based on Exemption 5

Exemption 5 Examples

- Documents concerning budget cuts
- Documents concerning cancellation of a program
- Documents concerning DOE property purchases

OUO and the FOIA Exemptions

Exemption 6 – Personal Privacy

- Constitutes a “clearly unwarranted invasion of personal privacy”

Personal information that might cause distress or embarrassment or risk identity theft

OUO Based on Exemption 6

Personally Identifiable Information (PII) is OUO

- Examples (when associated with an individual)
  - Social Security Number (even when not associated with an individual)
  - Place of birth, date of birth
  - Mother's maiden name
  - Medical history
  - Financial data

Not OUO Based on Exemption 6

Information usually <u>not</u> OUO under Exemption 6

- Federal employee's name, title, grade, position description, and duty station

Note: May be OUO if release of information would pose a risk to person's safety or interfere with intelligence or law enforcement programs

OUO and the FOIA Exemptions

Exemption 7 – Law Enforcement

- Includes (but is not limited to)
  - Release could reasonably be expected to endanger the life or physical safety of any individual or
  - Information would disclose techniques and procedures for law enforcement investigations or prosecutions

Exemption 7

- Compiled for law enforcement purposes
  - Compiled =
    - Created for law enforcement purposes or
    - If not originally intended for law enforcement purposes, may be assembled later for law enforcement purposes
  - Law = civil, administrative, or criminal
  - Enforcement = may be used for "preventive law enforcement and security"
- Does not have to be "solely" for law enforcement – law enforcement a "significant" purpose

OUO Based on Exemption 7

Exemption 7 – Examples

- Investigative information
  - Civil, criminal investigations
  - Personnel investigations
  - National security/terrorism investigations
- Security measures to protect Federal officials
- Security measures for Federal buildings
- Security manuals
- Classification guides

Covers much information previously determined to be OUO under Exemption 2

OUO and the FOIA Exemptions

Exemption 8 – Financial Institutions

- Evaluations of a financial institution's stability prepared by, on behalf of, or for use of an agency responsible for regulation of financial institutions (FDIC, etc.)

NOT DOE Information

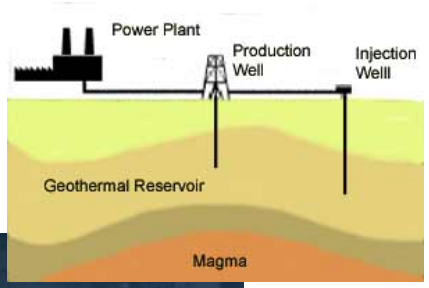
OUO and the FOIA Exemptions

Exemption 9 – Wells

- Technical and scientific information about any type of well

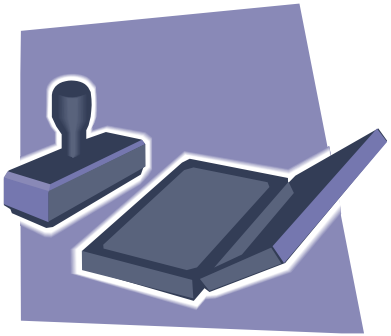
Exemption 9 Examples

- Geothermal well BTU production
- Ground water inventories and well yields in gallons per minute
- Natural gas reserves

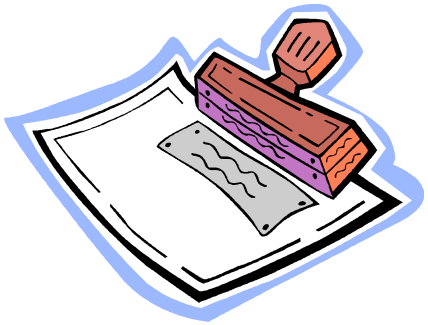


OUO Determinations - Summary

- If guidance states information is OUO, it <u>must</u> be identified as OUO
- If there is no guidance, a person may make an OUO determination, if, in the opinion of the person
  - Release of the information could cause damage <u>and</u>
  - The information may fall under FOIA exemptions 3-9
- Many determinations are discretionary
  - Assessment may vary among program offices/employees
  - What is sensitive for one agency/employee may not be for another
- YOU decide when to use the tool



How is OUO marked?



Markings are Important!

- Various markings (other than OUO) used to indicate sensitive information cause confusion
  - Not certain if document needs protection
  - Not certain how to protect document
  - No mandated protection
  - May have to call to determine intent
- When identified as OUO ensures proper handling

xxxxx xx x xxxxxx xxx
xx xxxxxxxxxx xxxx xxx
xxxxxxxxx.

DRAFT

xxxxxxxxxx xxxxxxxx
xxxxxxxxx.

BUSINESS CONFIDENTIAL

xx x xxxxxx xxx
xx xxxxxxxxxx xxxxxxxx
xxxxxxxxx.

PROPRIETARY

xxxxxxxxxx xxxxxxxx
xxxxxxxxx.

PRE-DECISIONAL

How are OUO documents marked?

Front Marking – Determination based on Guidance (Classification/Control Guides)

Exemption Number

Exemption Name

Name AND Organization

OFFICIAL USE ONLY

May be exempt from public release under the Freedom of Information Act (5 U.S.C. 552), exemption number and category: 7, Law Enforcement

Department of Energy review required before public release

Name/Org: John Smithson, NA-121 Date: 4/11/07

Guidance (if applicable): CG-SS-4

Date of Determination

Short Name of Guide

Markings are for example purposes only

How are OUO Documents Marked?

Front Marking – Determination based on Individual's Evaluation

Exemption Number

Exemption Name

Name AND Organization

OFFICIAL USE ONLY

May be exempt from public release under the Freedom of Information Act (5 U.S.C. 552), exemption number and category: 5, Privileged Information

Department of Energy review required before public release

Name/Org: John Smithson, NA-121 Date: 4/11/07

Guidance (if applicable): **N/A**

Date of Determination

Suggest N/A if guidance is not used

Markings are for example purposes only

Requirements – Front Marking

Exemption	Category Name
3	Statutory Exemption
4	Commercial/Proprietary
5	Privileged Information
6	Personal Privacy
7	Law Enforcement
9	Wells

How are OUO Documents Marked?

Page Marking

OFFICIAL USE ONLY

- On bottom of <u>all</u> pages

OR

- On bottom of only those pages containing OUO information

XXXXX XX X XXXXXX XXX
XX XXXXXXXXXX XXXXXXXX
XXXXXXXXX.

XX XXXXXXX XXXXX XXXX
XXXXXXXXX XX XXXXXX. XX
XXXX XXXXXXX X XXXXX
XXXXXX XXXX XXXX.

OFFICIAL USE ONLY

Markings are for example purposes only

How are OUO Documents Marked?

Mandatory Supplemental Markings

- Markings required by law, regulation, or other DOE directives that convey additional advice on handling or access restrictions
- Used in addition to, not in place of, OUO markings (both types of markings must appear on the document)
- OUO markings ensure consistent protection and handling throughout DOE
- Examples of information with supplemental markings
  - Protected Cooperative Research and Development Agreement (CRADA) Information
  - Export Controlled Information (ECI)
  - Applied Technology information (AT)
  - Source Selection Information

Sample of OUO Document
with Supplemental Marking (CRADA)

XXX XXXXXX XX XXXXXXX
XXXXX XXXXXXXXXXXX XXXXXX

XXXXXXX. Xxxx xxxxxx xxxxxxxxx xxx xxxxxxxx xxxx xxxxxxx xxxxxxxxx xxx xxxxxxxxxxx, xxxxxxx, xxx xxxxxxxxxx Xxxxxxxx Xxx Xxxx (XXX) xxxxxxxxxx. Xxxxx xxxxxxxx xxxxxxx xxxxxxxxx xxxxxxxxxx xxx xxxxxxxxxx xxxxxxxx. Xxxxxxx X xxxxxxxxx xxx xxxxxxxxxxx xxx xxxxxxxxxxx xxx xxxxxxx XXX xxxxxxxxxx; Xxxxxxx XX xxxxxxxxx xxxxxxxxx XXX xxxxxxxxxx. Xxx Xxxxxxxxx Xxxxxxxxxxx Xxxxxxx (XXX), Xxxxxxxxx x, xxxx xxxxx xxxxxxxxxxx xx xxx Xxxxxx xxx xxxxx xx xxx/xxxxxxx xxxxxxxxx xxxxxxxxxx.

XXXXXXX. Xxxxxxx xxxxxxxxx xxxx Xxxxxx xxxxxx xx xxxxxxxxx xx Xxxxxxxxxx Xxxxxxxxxxxx xxx Xxxxxx Xxxxxx xx xxx-xxx-xxxx.

Protected CRADA Information
This product contains Protected CRADA Information which was produced on 11/6/06 under CRADA No. 12345 and is not to be further disclosed for a period of five years from the date it was produced except as expressly provided for in the CRADA.

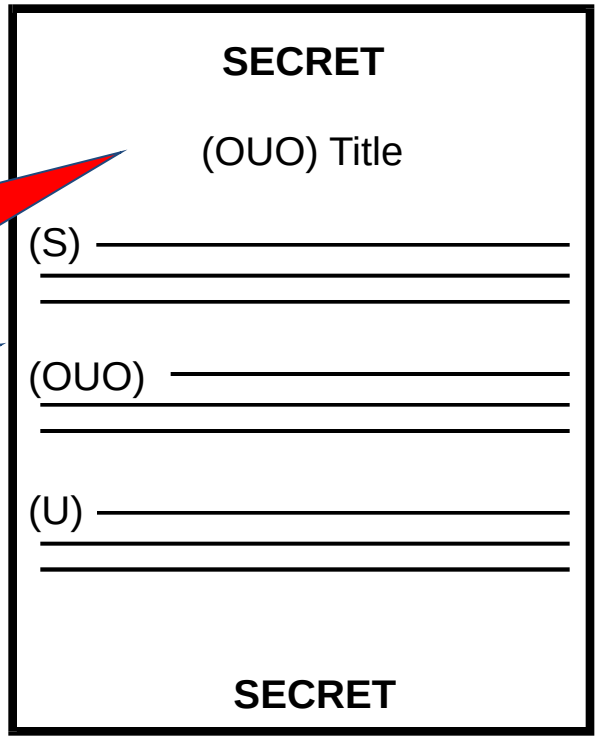
OFFICIAL USE ONLY
May be exempt from public release under the Freedom of Information Act (5 U.S.C. 552), exemption number and category: 3, Statutory Exemption
Department of Energy review required before public release
Name/Org: Curtis Gonzales, BWXT-Pantex Date: 4/15/03
Guidance (if applicable): Pantex Plant OUO Topical Guide

OFFICIAL USE ONLY

Markings are for example purposes only

How is document containing OUO and National Security Information marked?

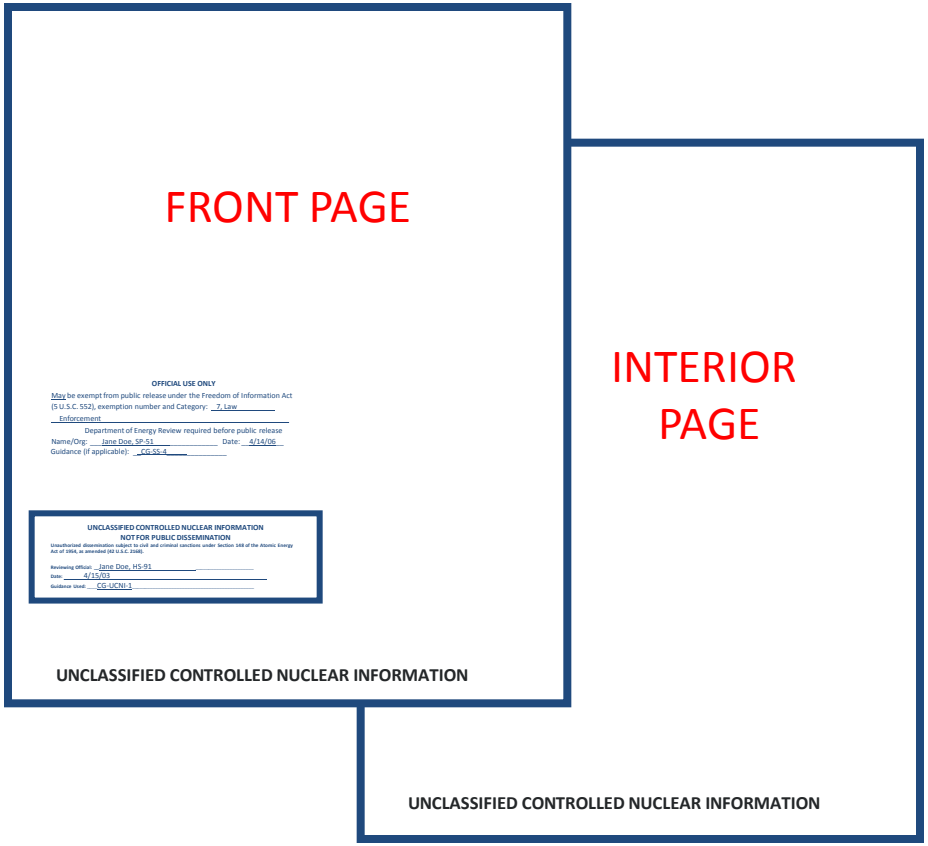
- Do <u>not</u> apply OUO front and page markings
- <u>Do</u> apply
  - title marking
  - portion marking



Markings are for example purposes only

How is a document Containing OUO and UCNI marked?

- Apply OUO front marking to a document containing both OUO and UCNI to alert holder to the presence of OUO information
- For interior pages may use only highest category of information (UCNI) on each page or the category (UCNI or OUO) found on each page



Markings are for example purposes only

Who has authority to remove OUO markings?

- If markings applied based on guidance
  - Any person authorized to use guidance when guidance specifies information is no longer OUO
  - FOIA Authorizing Official who approves release of document requested under the FOIA

Who has authority to remove OUO markings?

- If markings applied based on an individual's evaluation
  - Employee who initially applied markings
  - That employee's supervisor
  - FOIA Authorizing Official who approves release of document requested under FOIA

How are OUO markings removed?

- Person making the determination
  - Crosses out OUO front, page, and any supplemental markings
  - Places following marking on front of document:

DOES NOT CONTAIN
OFFICIAL USE ONLY INFORMATION
Name/Org: Michael Kieszkowski, IM-40 Date: 4/30/03

How is a document transmitting OUO marked?

- Required if transmittal document itself does not contain classified or controlled information
- Calls attention to presence of OUO information in attachment

Document transmitted
contains OUO information

Markings are for example purposes only

Sample Marking of Document Transmitting OUO

Attachment contains OUO, transmitting document <u>does not</u> contain OUO

XXX XXXXXX XX XXXXXXX
XXXXX XXXXXXXXXXXX XXXXXX

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Document transmitted contains OUO Information

Markings are for example purposes only

How is an OUO document that transmits a classified document marked?

SECRET

Xxxx xxxxxx xxxxxxxxx xxx xxxxxxxx xxxx xxxxxxx xxxxxxxxx xxx xxxxxxxxxxx, xxxxxxx, xxx xxxxxxxxxx Xxxxxxxx Xxx Xxxx (XXX) xxxxxxxxxxx. Xxxxx xxxxxxx xxxxxxx xxxxxxxxx xxxxxxxxxx xxx xxxxxxxxxx xxxxxxxxx. Xxxxxxx X xxxxxxxxx xxx xxxxxxxxxxxx xxx xxxxxxxxxxx xxx xxxxxxx XXX xxxxxxxxxxx; Xxxxxxx XX xxxxxxxxx xxxxxxxxxx XXX xxxxxxxxxxx. Xxx Xxxxxxxxx Xxxxxxxxxxx Xxxxxxxx (XXX), Xxxxxxxxxx x, xxxx xxxxx xxxxxxxxxxx xx xxx Xxxxxx xxx xxxxx xx xxx/xxxxxxxx xxxxxxxxx xxxxxxxxxx.

XXXXXXX. Xxxxxxx xxxxxxxxx xxxx Xxxxxx xxxxxx xx xxxxxxxxx xx Xxxxxxxxxx Xxxxxxxxxxxx xxx Xxxxxxx Xxxxxx xx xxx-xxx-xxxx.

Document transmitted herewith contains Secret/Restricted Data

When separated from enclosures, handle this document as OUO

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Department of Energy review required before public release
Name/Org: Curtis Gonzales, BWXT-Pantex Date: 4/15/03
Guidance (if applicable): Pantex Plant OUO Topical Guide

SECRET

Markings are for example purposes only

How is an E-mail containing OUO marked?

- First line of message
  - Insert “OUO” before text
- If attachment to message is OUO
  - Message must so indicate
  - Attachment must be marked correctly

Are there marking exceptions?

Restricted Access Files

Centralized records storage locations or systems where access is limited to only those specific individuals with a need to know the information in the records, such as central personnel files

- Do not need to be reviewed and marked while in these files or when retrieved from these files if
  - they will be returned to the files and
  - they are not accessible by unauthorized personnel

- If the document is not to be returned to files, it must be reviewed for OUO and, if appropriate, marked

Are there marking exceptions?

Document Generated Before Issuance of DOE M 471.3-1

- No requirement to review unless document is to be publicly released
  - OUO determination may be made by anyone in organization that currently has cognizance over information in document
  - Must use current markings if contains OUO

How is OUO protected?

Who may have access to OUO?

- Anyone needing the information to perform his/her job or other DOE-authorized activity
  - No security clearance required
  - Not limited to DOE employees
  - No requirement for U.S. citizenship
- Some OUO may have additional access restrictions (Export Controlled Information, Source Selection Information, etc.)
- Determination made by <u>person possessing</u> document – <u>not person wanting</u> the document

How is OUO protected?

- In Use
  - Take reasonable precautions to prevent access by persons who don't need the information to do their jobs
  - For example, don't read an OUO document in a public place (in the cafeteria, on public transportation)

How is OUO protected?

- Storing
  - With internal building security during non-duty hours - Unlocked file cabinet, desk, briefcase, etc.

  - No internal building security during non-duty hours - Locked room or locked file cabinet, desk, briefcase, etc.

How is OUO protected?

- Copying
  - No permission from originator needed
  - Make minimum number of copies
  - Make sure copies are marked and protected

How is OUO protected?

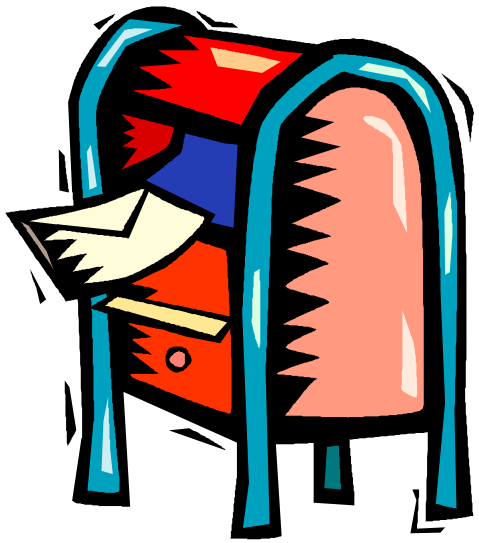
- Destruction
  - Strip-cut shredder with strips no more than ¼” wide
  - May also use any method approved for classified (not required)
  - Any other method approved by local security office

How is OUO transmitted?

- Transmitting by mail – inside facility
  - Place in sealed, opaque envelope or wrapping with recipient's address and
  - "TO BE OPENED BY ADDRESSEE ONLY" on outside

How is OUO transmitted?

- Transmitting by mail – outside facility
  - Place in sealed, opaque envelope or wrapping with recipient's address, **return address**, and "TO BE OPENED BY ADDRESSEE ONLY" on outside (same requirements as inside facility, but must include return address)
  - U.S. mail – First Class, Express, Certified, Registered
  - Any commercial carrier



How is OUO transmitted?

- Transmitting by hand between facilities or within a facility
  - May be hand-carried
  - Must control access to document

Cyber Security of OUO

- Cyber Security includes (but is not limited to)
  - Encryption
  - Storage on network
  - OUO on DOE intranet sites
- Determined by local Designated Accrediting Authority (DAA)
- Requirements may be unique to site depending on network architecture
- Some programs/elements may require encryption in transmission, HS-60 recommends

Contact your DAA, if questions

How is OUO transmitted by phone?

- Transmitting over voice circuits
  - Use encryption whenever possible
  - If unavailable and other encrypted means not a feasible alternative, regular voice circuits allowed

What about unclassified documents from other-Agency markings that are marked as sensitive?

- Usually handle as OUO
- Several exceptions – governed by regulations with <u>special marking and handling</u> requirements
  - Examples:
    - Safeguards Information (SGI) - Nuclear Regulatory Commission
    - Sensitive Security Information (SSI) – DHS
- If not certain OUO is equivalent protection, contact originating agency

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How do you mark documents that contain other-Agency sensitive information?

- **If you use this information in DOE documents**
  - Apply OUO markings to documents that incorporate other-Agency CUI information
  - Portion mark as OUO

Are there penalties for the misuse of OUO?

- May be imposed if person
  - Intentionally releases OUO information from document marked “OUO”
  - Intentionally or negligently releases an OUO document
  - Intentionally does not mark a document known to contain OUO information
  - Intentionally marks a document “OUO” known not to contain OUO information

What penalties are possible?

- Examples of penalties (DOE Order 3750.1)
  - Verbal admonishment
  - Written reprimand
  - Suspension
  - Termination

Where can I find more information about OUO?

DOE Directives (https://www.directives.doe.gov/directives)

DOE Order 471.3, Administrative Change 1
Requirements and responsibilities

DOE Manual 471.3-1, Administrative Change 1
Detailed instructions for implementing requirements

Office of Classification OUO Web page
http://www.hss.energy.gov/Classification/QualityMgt/ouo.html

Point of Contact

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