U.S. Department of Energy
Washington, D.C.

August 31, 2011

CLASSIFICATION BULLETIN

GEN-16 Revision: "NO COMMENT" POLICY ON CLASSIFIED INFORMATION IN THE PUBLIC DOMAIN

I. PURPOSE. To provide guidance to DOE Federal and contractor employees with access to classified information on appropriate actions when classified information (i.e., Restricted Data (RD), Formerly Restricted Data (FRD), Transclassified Foreign Nuclear Information (TFNI), National Security Information (NSI)) appears in the public domain and to clarify the circumstances that constitute comment.

II. CANCELLATION. This bulletin supersedes GEN-16, "NO COMMENT POLICY FOR CLASSIFIED AREAS," dated October 1, 1986.

III. RATIONALE. Commenting on classified information in the public domain can cause risk of greater damage to the national security by confirming its location, classified nature, or technical accuracy.

IV. NATIONAL POLICY.

a. 10 CFR 1045.22 No Comment Policy.

(1) 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.

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

(3) If the disclosure of classified information is sufficiently authoritative or credible, the DOE Deputy Chief for Operations, Office of Health, Safety and Security, shall examine the possibility of declassification.

b. Executive Order 13526, Classified National Security Information, Part I, Section 1.1(c). Classified information shall not be declassified automatically as a result of any unauthorized disclosure of identical or similar information.

c. Guidance.

(1) General Guidance. A comment by cleared personnel is defined as any activity that would allow an unauthorized person to locate the information or confirm the classified nature or technical accuracy of the information. In today's information environment, it is unavoidable for cleared personnel to see or read classified information in the public domain. The following activities are not defined as providing a comment and are permitted by DOE cleared personnel:

(a) Reading Open Source Publications or Internet Web Pages. Merely reading documents or publications available in the open literature that contain classified information is not a comment unless specified instructions to the contrary are issued by the U.S. Government regarding a specific compromise.

(b) Collecting Publications or Internet Web Pages in a General Subject Area of Interest. Collecting open source publications or web pages in a given subject area or lists of open source publications, assuming the title of that subject is not classified, is not a comment. Collections of topical news stories, favorite or bookmarked web sites, or listing of references do not by themselves constitute a comment. Basic summaries of collections of news articles may or may not constitute a comment depending on the content of the summary. Cleared DOE personnel must ensure that DOE classified information is not included within any summary of an open source document. Cleared personnel may collect open literature documents on such subjects as nuclear weapons, uranium centrifuges, etc., given that a variety of sources are widely available to the general public or to any informed uncleared researcher in the field, but they must not limit such collections to only open source documents that contain classified information.

(2) Classification Status. A person authorized access to classified information must not comment, either verbally or in writing, to a person without authorized access to classified information on the classification status (including the fact that a document is being reviewed for classification or the results of such a review) of any classified information in the public domain.

(3) Technical Accuracy. A person authorized access to classified information must not comment, either verbally or in writing, to a person without authorized access to classified information about

the technical accuracy of classified information in the public domain.

(4) Unclassified Discussions of a Classified Subject Area. When a person authorized access to classified information is required as part of his or her official capacity to hold discussions in a classified subject area (e.g., press conference, town hall meeting, unclassified presentation, etc.), the employee may comment if the employee knows that the specific information is unclassified.

WARNING: Selective use of "No Comment" may result in confirming classified information. Therefore, a person authorized access to classified information should avoid commenting in such a manner that the use of "No Comment" would implicitly reveal that the information is classified. Employees should consider responding with a statement similar to "We do not comment on this type of information." for any questions concerning classified subject areas (e.g. yields, stockpile locations).

(5) Use of Public Domain Sources Containing Classified Information.

(a) Possession of Public Domain Sources. The mere possession, storage, or distribution of material from the public domain (e.g., books, news articles, links to Internet sites) that may contain classified information does not by itself add credibility to such material or constitute comment. Any annotation of such documents which implies in any way that the source contains classified information constitutes comment, and the annotated material must be reviewed by a Derivative Classifier and marked and protected at the level and category of the information as indicated in classification guidance.

(b) Citation of Public Domain Sources. Cleared personnel may cite (e.g., in footnotes and bibliographies) well-known, open literature sources that contain classified information if the vast majority of the open source document or publication does not contain classified information and the specific reference does not point to the classified information in the document. Authors must consult with their local classification officer for guidance on acceptable citations.

(c) Annotation of Public Domain Sources. Cleared personnel should not annotate public domain sources to indicate in any way that the source contains classified information or that the section containing classified information is technically accurate. If cleared personnel annotate a public

domain source in a manner that does so, the annotated document must be reviewed by a Derivative Classifier and marked and protected at the level and category of the information as indicated in classification guidance.

NOTE: Per DOE Order 475.2A, Identifying Classified Information, Attachment 4, 1(a)(1), newly generated documents or material in a classified subject area and that potentially contain classified information must receive a classification review by a Derivative Classifier. This rule applies even if information contained in the document is taken from the Internet or another public domain source.

V. ADVISORIES. Advisories may be issued when an incident is particularly noteworthy or significant concerns regarding release of the classified information arise. It is not possible or advisable to distribute an Advisory in all instances when classified information appears in the public domain. Whether or not an Advisory is released, the "No Comment" policy should be followed whenever classified information appears in the public domain.

VI. EXCEPTIONS. Due to safety, environmental, public health, or other concerns, it may be necessary for the DOE to comment on documents in the public domain that contain classified information. Any such release is handled in accordance with DOE Order 471.6, *Information Security,* or NAP 70.4, *Information Security,* for the National Nuclear Security Administration.

VII. VIOLATIONS. Any person authorized access to classified information who intentionally verifies the classification status of any information or the technical accuracy of classified information in the public domain is subject to appropriate sanctions. Sanctions may range from administrative, civil, or criminal penalties, depending on the nature and severity of the action as determined by appropriate authority in accordance with applicable laws.

VIII. CONTACT. Contact the Director, Office of Classification (301-903-3526), with any questions or comments concerning this bulletin.

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Director
Office of Classification
Office of Health, Safety and Security