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

September 23, 2014

CLASSIFICATION BULLETIN

GEN-16 Revision 2: "NO COMMENT" POLICY ON CLASSIFIED INFORMATION IN THE OPEN LITERATURE

I. PURPOSE. To provide guidance to DOE Federal and contractor employees authorized access to classified information (e.g., authorized person) on appropriate actions when unmarked documents, publications, or verbal comments containing classified information (i.e., Restricted Data (RD), Formerly Restricted Data (FRD), Transclassified Foreign Nuclear Information (TFNI), National Security Information (NSI)) or documents that are marked as containing classified information appear in the open literature and to clarify the circumstances that constitute comment.

II. CANCELLATION. This bulletin supersedes GEN-16, Rev "'NO COMMENT' POLICY ON CLASSIFIED INFORMATION IN THE PUBLIC DOMAIN," dated August 31, 2011.

III. RATIONALE. In today's information environment, it is likely that persons who are authorized access to classified information will encounter such information especially online in the open literature. DOE's goal is to avoid comment in order to minimize the damage to national security. Commenting on classified information in the open literature can cause risk of greater damage to the national security by confirming its location, classified nature, or technical accuracy. This bulletin establishes DOE standards for what constitutes a comment in regard to classified information.

Classified information can appear in the open literature in documents marked as classified that are generated by the Government. Classified information can also appear in the open literature in documents that are not generated by the Government and do not have any indication of the classification status of the information. Classification markings or the lack of classification markings do not always accurately reflect the classification status of information in the document. In order to maintain effective policies in an increasingly challenging information technology environment and for consistency with cybersecurity practice, this bulletin addresses classified information in the open literature contained in unmarked documents, as well as documents with classification markings.

IV. NATIONAL POLICY.

a. "No Comment" Policy. 10 CFR § 1045.22

(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 Associate Under Secretary for Environment, 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."

V. PRINCIPLES.

a. Comment. A comment is any activity that would allow a person who is not authorized access to classified information to locate the information or confirm the classified nature or technical accuracy of the information.

b. Classification Status. An authorized person must not comment, either verbally or in writing, to a person who is not authorized access to classified information on the classification status of any classified information in the open literature (including the fact that a document is being reviewed for classification or the results of such a review, which may be disclosed only to the person who submitted the document for review).

c. Technical Accuracy. An authorized person must not comment, either verbally or in writing, to a person who is not authorized access to classified information about the technical accuracy of classified information in the open literature.

VI. GUIDANCE.

a. Guidance for Documents in the Open Literature that are Marked as Classified. Marked documents may appear in the open literature for several reasons. For example, they may have been leaked or they may have been appropriately declassified and released. In many cases, classification markings do not accurately convey the classification status of the document.

The markings may not be current and, unless the document is marked to indicate the document has been declassified, only an appropriate authority from the originating agency may determine the current classification status of the document. In cases where the classification status of marked documents in the open literature is ambiguous or unknown (e.g., declassification markings are not evident), the source must be treated as classified and the following guidance must be adhered to:

(1) Viewing. Inadvertent viewing of such documents is not a comment unless instructions to the contrary are issued by the U.S. Government regarding a specific compromise.

(2) Links. Links to such documents must not be forwarded via e-mail to any other person.

(3) Printing. Such documents may only be printed on a printer that has volatile memory. When printed, the documents must be protected, as required.

(4) Saving or Sending. The source itself must not be saved on an unclassified system or sent via e-mail to another person.

b. Guidance for Documents Containing Classified Information in the Open Literature that are Not Marked. The following guidance provides clarification as to the activities that are or are not considered comment:

(1) Viewing. Merely reading unmarked and unannotated documents or publications available in the open literature that contain classified information is not a comment unless instructions to the contrary are issued by the U.S. Government regarding a specific compromise.

(2) Collecting Publications or Internet Web Pages in a General Subject Area of Interest. Collecting unmarked and unannotated open literature publications or web pages in a given subject area or lists of open literature publications, assuming the title of that publication 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. Authorized persons must ensure that DOE classified information is not included within any summary of an open literature document. Authorized persons 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 researcher not authorized access to classified information, but they must not limit such

collections only to open literature publications that contain classified information.

(3) Possessing, Printing, Saving, or Sending. The mere possession, printing, storage, or distribution of material from the open literature (e.g., books, news articles, links to Internet sites) that may contain classified information and are not marked as classified does not by itself add credibility to such material or constitute comment.

(4) Citing. Authorized persons may cite (e.g., in footnotes and bibliographies) well-known, unmarked open literature sources that contain classified information if the vast majority of the open literature 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.

(5) Annotating. Authorized persons must not annotate unmarked open literature material (including email containing such material or links to such material) to indicate in any way that the source contains classified information or that the section containing classified information is technically accurate. If authorized persons annotate an open literature 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.

c. Unclassified Presentations and Discussions of a Classified Subject Area. When an authorized person is required as part of his or her official capacity to give presentations or hold discussions (e.g., press conference, town hall meeting, unclassified presentation, dialog with a technical expert who is not authorized access to classified information, etc.) in a classified subject area, 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, an authorized person 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, etc.).

d. Reporting. An employee encountering DOE classified information in the open literature must report the information following DOE policies and local instructions.

e. Review of Documents that Potentially Contain Classified Information. Per DOE Order 475.2A, Identifying Classified Information, Attachment 4, 1(a)(1), "Newly generated documents or material in a classified subject area that potentially contain classified information must receive a classification review by a Derivative Classifier." This requirement applies even if information contained in the document is taken from the Internet or another open literature source.

VII. 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 open literature. Whether or not an advisory is released, the "No Comment" policy should be followed whenever classified information appears in the open literature.

VIII. EXCEPTIONS. Due to safety, environmental, public health, or other concerns, it may be necessary for the DOE to discuss documents in the open literature that contain classified information. Any official confirmation on the classification status or technical accuracy of information in the open literature is handled in accordance with DOE Order 471.6, Admin Chg. 1, *Information Security*, DOE Order 470.4B, Admin Chg. 1, *Safeguards and Security Program,* and any other applicable law, regulation, or policy.

IX. VIOLATIONS. Any authorized person who intentionally verifies the classification status of any information or the technical accuracy of classified information in the open literature to a person not authorized access to classified information 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.

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

Andrew P. Weston-Dawkes
Director
Office of Classification
Office of Environment, Health,
Safety and Security