

Union Calendar No. 524

110TH CONGRESS
2D SESSION

H. R. 6576

[Report No. 110–810]

To require the Archivist of the United States to promulgate regulations regarding the use of information control designations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 2008

Mr. WAXMAN (for himself and Mr. TOM DAVIS of Virginia) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

JULY 30, 2008

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To require the Archivist of the United States to promulgate regulations regarding the use of information control designations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Reducing Information
5 Control Designations Act”.

1 **SEC. 2. PURPOSE.**

2 The purpose of this Act is to increase Government-
3 wide information sharing and the availability of informa-
4 tion to the public by standardizing and limiting the use
5 of information control designations.

6 **SEC. 3. REGULATIONS RELATING TO INFORMATION CON-**
7 **TROL DESIGNATIONS WITHIN THE FEDERAL**
8 **GOVERNMENT.**

9 (a) **REQUIREMENT TO REDUCE AND MINIMIZE IN-**
10 **FORMATION CONTROL DESIGNATIONS.**—Each Federal
11 agency shall reduce and minimize its use of information
12 control designations on information that is not classified.

13 (b) **ARCHIVIST RESPONSIBILITIES.**—

14 (1) **REGULATIONS.**—The Archivist of the
15 United States shall promulgate regulations regard-
16 ing the use of information control designations.

17 (2) **REQUIREMENTS.**—The regulations under
18 this subsection shall address, at a minimum, the fol-
19 lowing:

20 (A) Standards for utilizing the information
21 control designations in a manner that is nar-
22 rowly tailored to maximize public access to in-
23 formation.

24 (B) The duration of the information con-
25 trol designations and the process by which they
26 will be removed.

1 (C) Procedures for identifying, marking,
2 dating, and tracking information assigned the
3 information control designations, including the
4 identity of officials making the designations.

5 (D) Provisions to ensure that the use of in-
6 formation control designations is minimized and
7 cannot be used on information—

8 (i) to conceal violations of law, ineffi-
9 ciency, or administrative error;

10 (ii) to prevent embarrassment to Fed-
11 eral, State, local, tribal, or territorial gov-
12 ernments or any official, agency, or organi-
13 zation thereof; any agency; or any organi-
14 zation;

15 (iii) to improperly or unlawfully inter-
16 fere with competition in the private sector;

17 (iv) to prevent or delay the release of
18 information that does not require such pro-
19 tection;

20 (v) if it is required to be made avail-
21 able to the public; or

22 (vi) if it has already been released to
23 the public under proper authority.

1 (E) Methods to ensure that compliance
2 with this Act protects national security and pri-
3 vacy rights.

4 (F) The establishment of requirements
5 that Federal agencies, subject to chapter 71 of
6 title 5, United States Code, implement the fol-
7 lowing:

8 (i) A process whereby employees may
9 challenge without retribution the use of in-
10 formation control designations by agency
11 employees or contractors and be rewarded
12 with specific incentives for successful chal-
13 lenges resulting in—

14 (I) the removal of improper infor-
15 mation control designations; or

16 (II) the correct application of ap-
17 propriate information control designa-
18 tions.

19 (ii) A method for informing employees
20 and contractors that repeated failure to
21 comply with the policies, procedures, and
22 programs established under this section
23 could subject them to a series of penalties.

24 (iii) Penalties for employees and con-
25 tractors who repeatedly fail to comply with

1 the policies, procedures, and programs es-
2 tablished under this section after having
3 received both notice of their noncompliance
4 and appropriate training or re-training to
5 address such noncompliance.

6 (G) Procedures for members of the public
7 to challenge the use of the information control
8 designations.

9 (3) CONSULTATION.—In promulgating the reg-
10 ulations, the Archivist shall consult with the heads
11 of Federal agencies and with representatives of
12 State, local, tribal, and territorial governments; law
13 enforcement entities; organizations with expertise in
14 civil rights, employee and labor rights, civil liberties,
15 and government oversight; and the private sector, as
16 appropriate.

17 (c) AGENCY RESPONSIBILITIES.—The head of each
18 Federal agency shall implement the regulations promul-
19 gated by the Archivist under subsection (b) in the agency
20 in a manner that ensures that—

21 (1) information can be shared within the agen-
22 cy, with other agencies, and with State, local, tribal,
23 and territorial governments, the private sector, and
24 the public, as appropriate;

1 (2) all policies and standards for utilizing infor-
2 mation control designations are consistent with such
3 regulations;

4 (3) the number of agency employees and con-
5 tractors with authority to utilize information control
6 designations is limited; and

7 (4) information control designations may be
8 placed only on the portion of information that re-
9 quires control and not on the entire material.

10 **SEC. 4. ENFORCEMENT OF INFORMATION CONTROL DES-**
11 **IGNATION REGULATIONS WITHIN THE FED-**
12 **ERAL GOVERNMENT.**

13 (a) INSPECTOR GENERAL RESPONSIBILITIES.—The
14 Inspector General of each Federal agency, in consultation
15 with the Archivist, shall randomly audit unclassified infor-
16 mation with information control designations. In con-
17 ducting any such audit, the Inspector General shall—

18 (1) assess, on an individualized basis, whether
19 applicable policies, procedures, rules, and regulations
20 have been followed;

21 (2) describe any problems with the administra-
22 tion of the applicable policies, procedures, rules and
23 regulations, including specific non-compliance issues;

24 (3) recommend improvements in awareness and
25 training to address them; and

1 (4) report to the Committee on Oversight and
2 Government Reform of the House of Representa-
3 tives, the Committee on Homeland Security and
4 Governmental Affairs of the Senate, the Archivist,
5 and the public on the findings of the Inspector Gen-
6 eral's audits under this section.

7 (b) PERSONAL IDENTIFIERS.—

8 (1) IN GENERAL.—For purposes described in
9 paragraph (2), the Archivist of the United States
10 shall require that, at the time of marking of infor-
11 mation, the following shall appear on the informa-
12 tion:

13 (A) The name or personal identifier of the
14 employee or contractor marking the informa-
15 tion.

16 (B) The agency, office, and position of the
17 employee or contractor.

18 (2) PURPOSES.—The purposes described in this
19 paragraph are as follows:

20 (A) To identify and address misuse of in-
21 formation control designations, including the
22 misapplication of information control designa-
23 tions to information that does not merit such
24 markings.

1 (B) To assess the information sharing im-
2 pact of any such problems or misuse.

3 (c) TRAINING.—The Archivist, subject to chapter 71
4 of title 5, United States Code, and in coordination with
5 the heads of Federal agencies, shall—

6 (1) require training as needed for each em-
7 ployee or contractor of a Federal agency who is re-
8 sponsible for analyzing, disseminating, preparing,
9 producing, receiving, publishing, or otherwise com-
10 municating information with an information control
11 designation. Such training shall educate each em-
12 ployee and contractor about—

13 (A) the standards for using information
14 control designations;

15 (B) the proper use of information control
16 designations, including portion markings; and

17 (C) the consequences of repeated improper
18 use of information control designations, includ-
19 ing the misapplication of information control
20 designations to information that does not merit
21 such markings, and of failing to comply with
22 the policies and procedures established under or
23 pursuant to this section; and

24 (2) ensure that such program is conducted effi-
25 ciently, in conjunction with any other security, intel-

1 ligence, or other training programs required by the
2 agency to reduce the costs and administrative bur-
3 dens associated with the additional training required
4 by this section.

5 (d) DETAILEE PROGRAM.—

6 (1) REQUIREMENT FOR PROGRAM.—The Archi-
7 vist, subject to chapter 71 of title 5, United States
8 Code, shall implement a detailee program to detail
9 Federal agency personnel, on a nonreimbursable
10 basis, to the National Archives and Records Admin-
11 istration, for the purpose of—

12 (A) training and educational benefit for
13 agency personnel assigned so that they may
14 better understand the policies, procedures, and
15 laws governing information control designa-
16 tions;

17 (B) bolstering the ability of the National
18 Archives and Records Administration to con-
19 duct its oversight authorities over agencies; and

20 (C) ensuring that the policies and proce-
21 dures established by the agencies remain con-
22 sistent with those established by the Archivist
23 of the United States.

1 (2) SUNSET OF DETAILEE PROGRAM.—Except
2 as otherwise provided by law, this subsection shall
3 cease to have effect on December 31, 2012.

4 **SEC. 5. RELEASING INFORMATION PURSUANT TO THE**
5 **FREEDOM OF INFORMATION ACT.**

6 (a) AGENCY RESPONSIBILITIES.—The head of each
7 Federal agency shall ensure that—

8 (1) information control designations are not a
9 determinant of public disclosure pursuant to section
10 552 of title 5, United States Code (commonly re-
11 ferred to as the “Freedom of Information Act”); and

12 (2) all information in the agency’s possession
13 that is releasable pursuant to an appropriate request
14 under section 552 of title 5, United States Code
15 (commonly referred to as the ‘Freedom of Informa-
16 tion Act’), is made available to members of the pub-
17 lic.

18 (b) RULE OF CONSTRUCTION.—Nothing in this Act
19 shall be construed to prevent or discourage any Federal
20 agency from voluntarily releasing to the public any unclas-
21 sified information that is not exempt from disclosure
22 under section 552 of title 5, United States Code (com-
23 monly referred to as the “Freedom of Information Act”).

24 **SEC. 6. DEFINITIONS.**

25 In this Act:

1 (1) INFORMATION CONTROL DESIGNATIONS.—
2 The term “information control designations” means
3 information dissemination controls, not defined by
4 Federal statute or by an Executive order relating to
5 the classification of national security information,
6 that are used to manage, direct, or route informa-
7 tion, or control the accessibility of information, re-
8 gardless of its form or format. The term includes
9 the designations of “controlled unclassified informa-
10 tion”, “sensitive but unclassified”, and “for official
11 use only”.

12 (2) INFORMATION.—The term “information”
13 means any communicable knowledge or documentary
14 material, regardless of its physical form or charac-
15 teristics, that is owned by, is produced by or for, or
16 is under the control of the Federal Government.

17 (3) FEDERAL AGENCY.—The term “Federal
18 agency” means—

19 (A) any Executive agency, as that term is
20 defined in section 105 of title 5, United States
21 Code;

22 (B) any military department, as that term
23 is defined in section 102 of such title; and

1 (C) any other entity within the executive
2 branch that comes into the possession of classi-
3 fied information.

4 **SEC. 7. DEADLINE FOR REGULATIONS AND IMPLEMENTA-**
5 **TION.**

6 Regulations shall be promulgated in final form under
7 this Act, and implementation of the requirements of this
8 Act shall begin, not later than 18 months after the date
9 of the enactment of this Act.

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