

111TH CONGRESS
1ST SESSION

H. R. 1323

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

MARCH 5, 2009

Mr. DRIEHAUS (for himself and Mr. TOWNS) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

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”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to increase Government-
8 wide information sharing and the availability of informa-
9 tion to the public by standardizing and limiting the use
10 of information control designations.

1 **SEC. 3. REGULATIONS RELATING TO INFORMATION CON-**
2 **TROL DESIGNATIONS WITHIN THE FEDERAL**
3 **GOVERNMENT.**

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

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

9 (1) **REGULATIONS.**—The Archivist of the
10 United States shall promulgate regulations regard-
11 ing the use of information control designations.

12 (2) **REQUIREMENTS.**—The regulations under
13 this subsection shall address, at a minimum, the fol-
14 lowing:

15 (A) Standards for utilizing the information
16 control designations in a manner that is nar-
17 rowly tailored to maximize public access to in-
18 formation.

19 (B) The process by which information con-
20 trol designations will be removed.

21 (C) Procedures for identifying, marking,
22 dating, and tracking information assigned the
23 information control designations, including the
24 identity of officials making the designations.

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

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

6 (ii) to prevent embarrassment to Fed-
7 eral, State, local, tribal, or territorial gov-
8 ernments or any official, agency, or organi-
9 zation thereof; any agency; or any organi-
10 zation;

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

13 (iv) to prevent or delay the release of
14 information that does not require such pro-
15 tection;

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

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

20 (E) Provisions to ensure that the presump-
21 tion shall be that information control designa-
22 tions are not necessary.

23 (F) Methods to ensure that compliance
24 with this Act protects national security and pri-
25 vacy rights.

1 (G) The establishment of requirements
2 that Federal agencies, subject to chapter 71 of
3 title 5, United States Code, implement the fol-
4 lowing:

5 (i) A process whereby an individual
6 may challenge without retribution the ap-
7 plication of information control designa-
8 tions by another individual and be re-
9 warded with specific incentives for success-
10 ful challenges resulting in—

11 (I) the removal of improper infor-
12 mation control designations; or

13 (II) the correct application of ap-
14 propriate information control designa-
15 tions.

16 (ii) A method for informing individ-
17 uals that repeated failure to comply with
18 the policies, procedures, and programs es-
19 tablished under this section could subject
20 them to a series of penalties.

21 (iii) Penalties for individuals who re-
22 peatedly fail to comply with the policies,
23 procedures, and programs established
24 under this section after having received
25 both notice of their noncompliance and ap-

1 appropriate training or re-training to address
2 such noncompliance.

3 (H) Procedures for members of the public
4 to be heard regarding improper applications of
5 information control designations.

6 (I) A procedure to ensure that all agency
7 policies and standards for utilizing information
8 control designations that are issued pursuant to
9 subsection (c) be provided to the Archivist and
10 that such policies and standards are made pub-
11 licly available on the website of the National
12 Archives and Records Administration.

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

21 (c) AGENCY RESPONSIBILITIES.—The head of each
22 Federal agency shall implement the regulations promul-
23 gated by the Archivist under subsection (b) in the agency
24 in a manner that ensures that—

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

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

8 (3) the number of individuals with authority to
9 apply information control designations is limited;
10 and

11 (4) information control designations may be
12 placed only on the portion of information that re-
13 quires control and not on the entire material.

14 **SEC. 4. ENFORCEMENT OF INFORMATION CONTROL DES-**
15 **IGNATION REGULATIONS WITHIN THE FED-**
16 **ERAL GOVERNMENT.**

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

22 (1) assess whether applicable policies, proce-
23 dures, rules, and regulations have been followed;

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

4 (3) recommend improvements in awareness and
5 training to address any problems identified under
6 paragraph (2); and

7 (4) report to the Committee on Oversight and
8 Government Reform of the House of Representa-
9 tives, the Committee on Homeland Security and
10 Governmental Affairs of the Senate, the Archivist,
11 and the public on the findings of the Inspector Gen-
12 eral's audits under this section.

13 (b) PERSONAL IDENTIFIERS.—

14 (1) IN GENERAL.—For purposes described in
15 paragraph (2), the Archivist of the United States
16 shall require that, at the time of designation of in-
17 formation, the following shall appear on the informa-
18 tion:

19 (A) The name or personal identifier of the
20 individual applying information control designa-
21 tions to the information.

22 (B) The agency, office, and position of the
23 individual.

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

1 (A) To enable the agency to identify and
2 address misuse of information control designa-
3 tions, including the misapplication of informa-
4 tion control designations to information that
5 does not merit such markings.

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

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

11 (1) require training as needed for each indi-
12 vidual who applies information control designations,
13 including—

14 (A) instruction on the prevention of the
15 overuse of information control designations;

16 (B) the standards for applying information
17 control designations;

18 (C) the proper application of information
19 control designations, including portion mark-
20 ings;

21 (D) the consequences of repeated improper
22 application of information control designations,
23 including the misapplication of information con-
24 trol designations to information that does not
25 merit such markings, and of failing to comply

1 with the policies and procedures established
2 under or pursuant to this section; and

3 (E) information relating to lessons learned
4 about improper application of information con-
5 trol designations, including lessons learned pur-
6 suant to the regulations and Inspector General
7 audits required under this Act and any internal
8 agency audits; and

9 (2) ensure that such program is conducted effi-
10 ciently, in conjunction with any other security, intel-
11 ligence, or other training programs required by the
12 agency to reduce the costs and administrative bur-
13 dens associated with the additional training required
14 by this section.

15 (d) DETAILEE PROGRAM.—

16 (1) REQUIREMENT FOR PROGRAM.—The Archi-
17 vist, subject to chapter 71 of title 5, United States
18 Code, shall implement a detailee program to detail
19 Federal agency personnel, on a nonreimbursable
20 basis, to the National Archives and Records Admin-
21 istration, for the purpose of—

22 (A) training and educational benefit for
23 agency personnel assigned so that they may
24 better understand the policies, procedures, and

1 laws governing information control designa-
2 tions;

3 (B) bolstering the ability of the National
4 Archives and Records Administration to con-
5 duct its oversight authorities over agencies; and

6 (C) ensuring that the policies and proce-
7 dures established by the agencies remain con-
8 sistent with those established by the Archivist
9 of the United States.

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

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

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

17 (1) information control designations are not a
18 determinant of public disclosure pursuant to section
19 552 of title 5, United States Code (commonly re-
20 ferred to as the “Freedom of Information Act”); and

21 (2) all information in the agency’s possession
22 that is releasable is made available to members of
23 the public pursuant to an appropriate request under
24 such section 552.

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

7 **SEC. 6. DEFINITIONS.**

8 In this Act:

9 (1) INFORMATION CONTROL DESIGNATIONS.—

10 The term “information control designations” means
11 information dissemination controls, not defined by
12 Federal statute or by an Executive order relating to
13 the classification of national security information,
14 that are used to manage, direct, or route informa-
15 tion, or control the accessibility of information, re-
16 gardless of its form or format. The term includes,
17 but is not limited to, the designations of “controlled
18 unclassified information”, “sensitive but unclassi-
19 fied”, and “for official use only”.

20 (2) INFORMATION.—The term “information”
21 means any communicable knowledge or documentary
22 material, regardless of its physical form or charac-
23 teristics, that is owned by, is produced by or for, or
24 is under the control of the Federal Government.

1 (3) FEDERAL AGENCY.—The term “Federal
2 agency” means—

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

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

8 (C) any other entity within the executive
9 branch that comes into the possession of classi-
10 fied information.

11 **SEC. 7. DEADLINE FOR REGULATIONS AND IMPLEMENTA-**
12 **TION.**

13 Regulations shall be promulgated in final form under
14 this Act, and implementation of the requirements of this
15 Act shall begin, not later than 24 months after the date
16 of the enactment of this Act.

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