H. R. 6576

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

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 
4 SECTION 1. SHORT TITLE.
5 This Act may be cited as the “Reducing Information
6 Control Designations Act”.
7 
8 SEC. 2. PURPOSE.
9 The purpose of this Act is to increase Government-
10 wide information sharing and the availability of informa-
tion to the public by standardizing and limiting the use
of information control designations.

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

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

(b) ARCHIVIST RESPONSIBILITIES.—

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

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

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

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

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

(D) Provisions to ensure that the use of information control designations is minimized and cannot be used on information—

(i) to conceal violations of law, inefficiency, or administrative error;

(ii) to prevent embarrassment to Federal, State, local, tribal, or territorial governments or any official, agency, or organization thereof; any agency; or any organization;

(iii) to improperly or unlawfully interfere with competition in the private sector;

(iv) to prevent or delay the release of information that does not require such protection;

(v) if it is required to be made available to the public; or

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

(E) Methods to ensure that compliance with this Act protects national security and privacy rights.
(F) The establishment of requirements that Federal agencies, subject to chapter 71 of title 5, United States Code, implement the following:

(i) A process whereby employees may challenge without retribution the use of information control designations by agency employees or contractors and be rewarded with specific incentives for successful challenges resulting in—

(II) the removal of improper information control designations; or

(II) the correct application of appropriate information control designations.

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

(iii) Penalties for employees and contractors who repeatedly fail to comply with the policies, procedures, and programs established under this section after having received both notice of their noncompliance
and appropriate training or re-training to
address such noncompliance.

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

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

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

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

(2) all policies and standards for utilizing infor-
mation control designations are consistent with such
regulations;
(3) the number of agency employees and contractors with authority to utilize information control designations is limited; and

(4) information control designations may be placed only on the portion of information that requires control and not on the entire material.

SEC. 4. ENFORCEMENT OF INFORMATION CONTROL DESIGNATION REGULATIONS WITHIN THE FEDERAL GOVERNMENT.

(a) INSPECTOR GENERAL RESPONSIBILITIES.—The Inspector General of each Federal agency, in consultation with the Archivist, shall randomly audit unclassified information with information control designations. In conducting any such audit, the Inspector General shall—

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

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

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

(4) report to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and
Governmental Affairs of the Senate, the Archivist, and the public on the findings of the Inspector General’s audits under this section.

(b) **Personal Identifiers.**—

(1) **In General.**—For purposes described in paragraph (2), the Archivist of the United States shall require that, at the time of marking of information, the following shall appear on the information:

(A) The name or personal identifier of the employee or contractor marking the information.

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

(2) **Purposes.**—The purposes described in this paragraph are as follows:

(A) To identify and address misuse of information control designations, including the misapplication of information control designations to information that does not merit such markings.

(B) To assess the information sharing impact of any such problems or misuse.
(c) TRAINING.—The Archivist, subject to chapter 71 of title 5, United States Code, and in coordination with the heads of Federal agencies, shall—

(1) require training as needed for each employee or contractor of a Federal agency who is responsible for analyzing, disseminating, preparing, producing, receiving, publishing, or otherwise communicating information with an information control designation. Such training shall educate each employee and contractor about—

(A) the standards for using information control designations;

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

(C) the consequences of repeated improper use of information control designations, including the misapplication of information control designations to information that does not merit such markings, and of failing to comply with the policies and procedures established under or pursuant to this section; and

(2) ensure that such program is conducted efficiently, in conjunction with any other security, intelligence, or other training programs required by the agency to reduce the costs and administrative bur-
dens associated with the additional training required
by this section.

(d) DETAILEE PROGRAM.—

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

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

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

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

(2) SUNSET OF DETAILEE PROGRAM.—Except
as otherwise provided by law, this subsection shall
cease to have effect on December 31, 2012.
SEC. 5. RELEASING INFORMATION PURSUANT TO THE
FREEDOM OF INFORMATION ACT.

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

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

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

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

SEC. 6. DEFINITIONS.

In this Act:

(1) INFORMATION CONTROL DESIGNATIONS.—
The term “information control designations” means
information dissemination controls, not defined by
Federal statute or by an Executive order relating to
the classification of national security information, that are used to manage, direct, or route information, or control the accessibility of information, regardless of its form or format. The term includes the designations of “controlled unclassified information”, “sensitive but unclassified”, and “for official use only”.

(2) INFORMATION.—The term “information” means any communicable knowledge or documentary material, regardless of its physical form or characteristics, that is owned by, is produced by or for, or is under the control of the Federal Government.

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

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

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

(C) any other entity within the executive branch that comes into the possession of classified information.
SEC. 7. DEADLINE FOR REGULATIONS AND IMPLEMENTATION.

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