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OFFICE OF CLASSIFICATION

CommuniQué

From the Director's Office

This year, like other years, brings with it new challenges and the continuation of some "old favorites." Although it is impossible to cover everything that we hope to accomplish in the classification arena, I would like to identify some of the major projects that you can expect to hear about in the coming year.

Although DOE M 475.1-1A, *Identifying Classified Information*, shows an expiration date of March 3, 2006, current directives now remain in effect until revised. Despite the fact that we do not face an imminent deadline, our most important priority is revision of the order and manual for identifying classified information. The revised order and manual will include a section that will accurately reflect organizational changes in the DOE and NNSA and the relationship and division of responsibilities between the two. The new order and manual will also fully implement the requirements of Executive Order (E.O.) 12958, *National Security Information*. Codifying the manner in which derivative classifiers must annotate their stamps to record automatic declassification instructions for documents that contain only National Security Information will be one of the updates of particular importance to all derivative classifiers. The revisions will also incorporate all current practices and policies.

The National Nuclear Security Administration's (NNSA) Associate Administrator for Defense Nuclear Security, in coordination with the Office of Security and Safety Performance Assurance, has been developing a Functions, Responsibilities and Authorities Manual (FRAM) to clearly define the relationship between the DOE and NNSA classification offices and fix responsibilities for certain functions. Since the final FRAM has not been signed by NNSA, I will not go into specifics. However, when issued, the FRAM will outline responsibilities for DOE Headquarters (HQ), NNSA HQ, the NNSA Service Center, and all NNSA site offices for the following functional areas: overall policy, program management, classification and control guidance, document reviews, training, testing and appointment of classification authorities, and oversight responsibilities. You can expect fundamental changes on how we do business in all of these areas. Ensuring a rapid and seamless transition to the new responsibilities outlined in the FRAM is another important challenge that the DOE and NSNA must meet. We hope to outline many of these changes in the next CommuniQué.

A recent Government Accounting Office (GAO) review of the unclassified controlled information programs of several government agencies will have an effect on the DOE. The GAO's report

Director *(Continued on page 7)*

"Born Classified" The Phrase that Won't Die

The term "born classified" has its roots in the Atomic Energy Act, which defines Restricted Data (RD) as "all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142." This was interpreted to mean that information meeting the definition was classified from the moment of its inception, regardless of whether it was created by the Government or private industry. This implies that no action is necessary to classify RD information; if it meets the above definition, it is automatically classified, thus, "born classified."

Born Classified *(Continued on page 3)*

Inside this issue:

Special points of interest:

- *What are the new chapters in CG-HR-3? — See Page 2.*
- *Who is authorized to approve TSDC authority? — See Page 4.*
- *What classification/UCNI guides are being developed/revised — See Page 5.*
- *How are OUO determinations related to the FOIA? — See Page 6.*

Frequently Asked Questions

Who Can Review a Top Secret Document for Declassification?

The fact that classifiers are limited in the classification level to which they can classify a document [i.e., Confidential, Secret, and Top Secret (TS) derivative classifiers (DCs)] and derivative declassifiers are not, has led to some confusion. To clarify these authorities, here are some of the questions we have received and the responses. If you have any further questions regarding TS document reviews, contact your local classification officer (CO).

Can any derivative declassifier (DD) review a document that is marked TS for declassification if he/she has DD authority in the subject areas covered by the document?

Yes. When the Department of Energy/National Nuclear Security Administration grants DD authority, there are no limits placed on the level of the documents the DD can review. If the local CO wants only certain DDs to review TS documents, he or she can place internal restrictions (e.g., access limitations or work assignments) on DDs.

Can an individual who has Secret DC authority, but does not have DD authority, be the first reviewer for a TS document being reviewed for downgrading or declassification (assuming the DC has authority in the areas covered in the document)?

Yes. One of the reasons for controlling TS classification authority is to limit the number of TS documents generated. In reviewing a document that is already marked TS, the Secret DC is not generating a TS document, but recommending to a DD that the document be downgraded to a lower level or declassified. Even though downgrading only requires one review, a DD must conduct a second review since the DC doesn't have the authority to downgrade the document.

If we have a document that is marked TS Formerly Restricted Data (FRD) and we determine that it is really Secret Restricted Data (SRD) under current guidance, would going from TSFRD to SRD be considered a downgrade or an upgrade? Going from TS to S is clearly a downgrade, but going from FRD to RD is an upgrade.

Going from TSFRD to SRD requires downgrading the level and upgrading the category. If the DC and DD consider the highest level and category of information in the document to be SRD, then the DD has the authority to downgrade the level (within his or her authority area), but a DC (or a DD who also has DC authority) is required to upgrade the category to RD.

Look at it from an information point of view. The document doesn't contain any TSRD, so it will never be a TSRD document. Consequently, TS DC authority is not needed.

In the unlikely event you have an SRD document that the DC or DD determines should be TSRD, TSFRD, or TS National Security Information (NSI); TSDC authority would be required to upgrade the level, and only a DD could downgrade the category to FRD or to NSI. Likewise, going from TSNSI to TSRD or TSFRD would constitute an upgrade and require TSDC authority.

CG-HR-3: Historical Records Declassification Guide

The Department of Energy (DOE) *Historical Records Declassification Guide*, CG-HR-2, used to be the only guide available to derivative classifiers and derivative declassifiers to determine if historical records containing National Security Information (NSI) are declassified or retain their classification. Now Headquarters guides that were updated to comply with the amendment to Executive Order 12958 and contain NSI topics may also be used. However, CG-HR-2 remained the primary source for making classification determinations for NSI documents in collections that have permanent historical value. We now have a new and improved version of this declassification guide – CG-HR-3.

Published in October 2005, CG-HR-3 contains many substantial changes from CG-HR-2. These changes include:

- five new chapters,
- new topics within existing chapters,
- declassification dates, events, or durations for each topic that retains classification, and
- for the first time, topics that direct the reviewer to refer documents to other agencies for a classification decision.

Some things have not changed. For consistency, chapter and topic structure remain the same. Topic 11.4 in CG-HR-2, is the same topic 11.4 in CG-HR-3. As before, many topics indicate there is a potential for Restricted Data (RD) or Formerly Restricted Data (FRD) in order to warn reviewers that this information should be reviewed carefully to determine if it contains RD or FRD.

The most noticeable change in CG-HR-3 is the addition of five new chapters. New chapters include radioisotope power systems, chemical and biological defense information, critical energy infrastructure, directed nuclear energy systems and nuclear directed energy weapons, and space nuclear reactor information. As with the old chapters, the introductions should be read carefully before making determinations because they provide valuable information, particularly

CG-HR-3 *(Continued on page 3)*

Born Classified *(Continued from page 1)*

The concept of "born classified" was a useful feature of RD in the early days of the atomic energy program when new information was being developed rapidly and its impact on national security was high. However, as the atomic energy program matured, many areas of RD information were declassified and removed from the RD category; and the remaining RD was codified in classification guides. This made it less likely that there would be new RD information that was not already addressed by classification. It also made it possible that new information that met the RD definition was in areas that had been declassified.

"Born classified" generated a great deal of controversy. Many detractors questioned the constitutionality of declaring categories of information pre-emptively classified, especially if it was generated by private industry. Others felt the concept ensured that very little information would be available, and therefore it would stifle scientific research. The controversy was intensified by public pressure for openness, particularly in the areas of: health, safety, and the environment; historical actions of DOE and its predecessors (the Atomic Energy Commission and the Energy Research and Development Administration); and the dismantlement of surplus nuclear weapons and management of the resulting hazardous materials.

Recognizing the fact that "born classified" had become less applicable, the classification of new RD information was addressed in 10 Code of Federal Regulations (CFR) Part 1045 subsection 1045.14. Today, if a classification determination is required for new nuclear-related information for which a classifier cannot locate guidance in a classification guide, it must be reviewed by the Director, Office of Classification, to determine: (1) if it is already RD under current classification guidance, or (2) if it is not already classified, if it falls within the scope of the definition of RD. If it is not covered by current guidance, information must be protected as RD as a temporary measure until a determination is made. Unlike the open-ended "born classified," the Director, Office of Classification, must make a classification determination within 90 days of receipt of a request. Therefore, as a practical matter, the "born classified" concept has little significance at the present time.

Despite the fact that "born classified" is no longer used, it continues to be promulgated in training and in discussion. It is important for all derivative classifiers to understand that new RD information is no longer considered "born classified." These are the key points to remember:

- Under 10 CFR Part 1045, subsection 1045.14, the Director, Office of Classification, determines whether information falls within the definition of RD.
- The information should be protected while the determination is being made, but the protection is not open-ended.
- Determinations made under 1045.14 are promulgated in classification guides.
- Derivative classifiers use the topics in classification guides to classify documents.

"Born classified" has been replaced by "may be classified upon review." The development of new information that meets the definition of RD is rare and is addressed on an individual basis. If you lack guidance for information, contact your local classification officer (CO). Chances are he or she can point you to applicable guidance. If not, the CO will start the process for making a decision.

If you have any questions regarding "born classified," contact Nick Prospero at nick.prospero@hq.doe.gov or (301) 903-9967.

CG-HR-3 ***(Continued from page 2)***

regarding referrals and unclassified topics in the chapter.

Many topics in CG-HR-2 have been expanded. This is especially evident in chapter 2, Safeguards and Security Information. For example, in CG-HR-2, there was only one topic (2.6) for Communications Security (COMSEC). In CG-HR-3, COMSEC has six topics, and several have subtopics. Sections on Transient Electromagnetic Pulse Standard, Vulnerabilities, Operations Security, and Technical Surveillance Countermeasures have also been augmented.

Another change is that some CG-HR-3 topics require documents to be referred to other agencies. For example, information regarding vulnerability and hardening of delivery systems which were retained under CG-HR-2, is now referred to the Department of Defense. Another example is the information in chapters 12 and 17 that must be referred to Naval Reactors even if the topic indicates the information is unclassified, because the information may still be subject to special handling, access, marking requirements, or distribution controls.

All information that is exempt from declassification according to CG-HR-3, except for those dealing with human intelligence sources, has a declassification date or event. The declassification event may be listed at the beginning of the topic section heading rather than in individual topics.

Because of the important changes in CG-HR-3, anyone who reviews NSI documents older than 25 years should be sure they have a copy of the guide and destroy their copies of CG-HR-2. If you have any questions regarding CG-HR-3, contact your local classification officer or Edie Chalk at Edie.Chalk@hq.doe.gov or (301) 903-1185.

What's the difference between a Secret Derivative Classifier and a Top Secret Derivative Classifier?

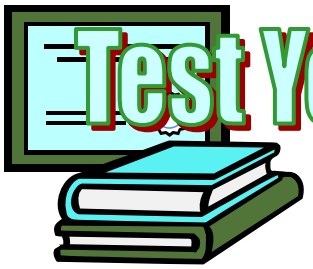
What's the difference between a Secret (S) and Top Secret (TS) derivative classifier (DC)? One can classify documents as TS, the other cannot. That sounds simple, but it isn't always. Some DCs are not aware of the limits of their authority. Therefore, it's worth discussing the differences between an SDC and a TSDC.

There are more similarities between SDCs and TSDCs than differences. As with SDC authority, TSDC authority is granted only for specific subject areas. All DCs, whether S or TS, must complete training, pass an examination prior to being granted authority, and must be recertified every 3 years. The requirements regarding training, examination, and recertification are the same, and there is no specialized training for TSDCs.

The difference between SDC and TSDC authority is in the way the authority is granted. Most local classification officers (COs) have the authority to grant SDC authority. However, only the Department of Energy's Director, Office of Classification and the National Nuclear Security Administration's Associate Administrator for Defense Nuclear Security have the authority to grant TSDC authority.

If you are an SDC and need to classify a document as TS, contact your local CO for a list of classifiers with TSDC authority in your subject areas. If you have a need to classify TS documents on an ongoing basis, and want the authority for yourself, contact your local CO. The CO will initiate a training program, when required, and request TS authority through the appropriate channels. When approved, the TS authority will be added to your existing authority and will expire or require recertification with your current authorities.

If you have any questions regarding classification authority, contact your local CO or Nick Prospero at nick.prospero@hq.doe.gov or (301) 903-9967.



1. True or False? The current issue of the *Index of DOE Headquarters Classification Guidance* is INDEX-05-02.

2. An individual who publishes a document in a classified subject area and intends to place the document on the organization's Web site must have the document reviewed by:

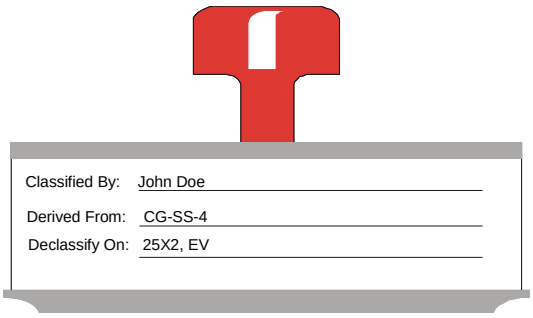
   a) any derivative classifier (DC) with authority in the subject area.
   b) a derivative declassifier.
   c) the classification officer.
   d) any of the above.

3. A DOE DC can use source documents under the following conditions:

   a) The document contains only NSI information.
   b) No guidance exists.
   c) The information is completely under the purview of another agency.
   d) All of the above.

4. Assume the stamp below was placed on a document that was determined to be Secret Restricted Data. List the errors on the stamp.

(Answers on page 7)



Personnel Updates

Farewell: Linda Brightwell, Office of Classification (retired)
Reece Edmonds, Office of Classification (now with SP-41)
Paul Laplante, Office of Classification (retired)
James Stone, Office of Classification (retired)

Official Use Only at the Department of Energy

Official Use Only (OUO) information is not classified, but may be exempt from public release. Although anyone can make an OUO determination, derivative classifiers are often asked for assistance with OUO determinations. This column will provide information about OUO that may be useful in making those determinations. This first article focuses on the history of the Department of Energy's (DOE) OUO program. Future articles will be devoted to the exemptions and issues that are brought to the attention of the Office of Classification.

The Freedom of Information Act (FOIA), which took effect in 1967, established requirements for Government openness and accountability. Its purpose was to ensure citizens were informed and had statutory access to information in order to hold the Government accountable. All information that is withheld from public release, including National Security Information, Restricted Data, Formerly Restricted Data, and Unclassified Controlled Nuclear Information is addressed by one of the nine FOIA exemptions. Eight of the nine FOIA exemptions are the basis for determining if information is OUO. The first Department of Energy (DOE)-wide directives for identifying, marking, and protecting OUO took effect in 2003.

As noted in previous issues of the CommuniQué, OUO was used as a security marking between July 18, 1949, and October 22, 1952. Since passage of the FOIA, OUO has been used to identify unclassified sensitive information. Although there were OUO programs in effect prior to 2003, they were not under the DOE or not DOE-wide. In 1968, the U.S. Atomic Energy Commission (AEC) issued Chapter 2104 of the AEC Manual, *Control of Information for Official Use Only*, that identified unclassified but sensitive Government information that could be exempt from public release under the FOIA. However, the AEC program was not continued when the AEC became the Energy Research and Development Administration (ERDA). ERDA planned to implement an OUO program, but the plan was overtaken by the establishment of the DOE and a policy was never published.

Prior to the development of DOE OUO directives, OUO programs and guidance did exist. Individual programs created policies and procedures for OUO, but they did not apply agency-wide. Defense Programs issued an OUO Order (DP 5650.1) and Guidelines (G-OUO-1) in 1990. Security Affairs (SA) also issued an OUO Order (SA 5650.1) and Guidelines (SA-OUO-1) in 1991. In addition, classification guides began to formalize specific OUO guidance for some topical areas. In 2000, CG-SS-4, *Classification and Unclassified Controlled Nuclear Information (UCNI) Guide for Safeguards and Security Information*, contained OUO guidance for certain information. As other guides were updated, potential OUO information was identified and the appropriate exemption cited.

During this time, because each organization had its own policy, DOE organizations used at least 20 different markings to identify documents containing unclassified information the organizations believed should be protected. There were no consistent rules for when to apply the markings or how to protect the documents marked as OUO. Some of the information being protected had no basis in statute (meaning the information would not have been eligible for protection under one of the FOIA exemptions).

On April 9, 2003, DOE created a consistent agency-wide OUO program by issuing DOE O 471.3, *Identifying and Protecting Official Use Only Information*, DOE M 471.3-1, *Manual for Identifying and Protecting Official Use Only Information*, and DOE G 471.3-1, *Guide to Identifying Official Use Only Information*. These directives specified the responsibilities, policies, and procedures for managing and administering DOE's program for identifying and protecting OUO information, giving DOE its first agency-wide OUO program.

OUO Determinations and FOIA Exemptions

The FOIA serves as the basis for the DOE's OUO program, and the exemptions used for OUO determinations are consistent with the FOIA exemptions. However, an OUO determination is NOT a determination that the document is exempt from release under the FOIA. OUO is an administrative marking to put holders on notice that the document MAY contain information exempt from release under the FOIA.

Although the OUO directive guidelines use FOIA exemptions as the basis for OUO determinations, it is important to understand that the decision to exempt information from public release under the FOIA is not made when a document is identified and marked as OUO, but when an appropriate DOE official conducts an in-depth FOIA review and makes a formal FOIA determination.

Guidance *(Continued from page 5)*

UCNI Topical Guidelines (TG)

TG-NNP-2. A revision of the nuclear nonproliferation TG is being developed.

If you have any questions, contact Edie Chalk, Director, Office of Technical Guidance, at Edie.Chalk@hq.doe.gov or (301) 903-1185.

Guidance Status

Classification Guides (CG)

CG-BPA-1. A new CG for the Bonneville Power Administration covering energy critical infrastructure information is being developed. A Working Group (WG) meeting was held on January 31, 2006.

CG-ES-1. A new CG for environmental sampling is in the concurrence process. This CG will provide guidance for the rapidly improving environmental sampling capabilities used in support of national and international arms control and nonproliferation objectives.

CG-NEPW-1. The final draft CG for the robust nuclear earth penetrator weapon has been approved by the National Nuclear Security Administration (NNSA) and was sent to the Department of Defense (DoD) on September 4, 2005. Once approved by the DoD and the Office of Classification, the guide will be published.

CG-HRW-1. The CG on historical radiological warfare information has been drafted and is awaiting declassification actions. The Technical Evaluation Panel reviewed and recommended the approval of the declassification of most of the radiological warfare information. An action memorandum has been sent to the DoD for coordination. Once the declassifications are approved, the guide will delineate only a small amount of radiological warfare information still requiring protection

CG-NMI-1. A new CG for nuclear material inventories is being developed.

CG-PET-1. A new CG to address proliferant enrichment technology is being developed. A WG meeting was held in January 2006.

CG-PSP-1. A new CG for the plasma separation process was developed. All technical issues have been resolved. The guide is in final coordination.

CG-RDD/IND-1. A new CG for radiological dispersal device/ improvised nuclear device emergency response and consequence management is being jointly developed by the DOE, the Department of Homeland Security, and the Nuclear Regulatory Commission. Derived primarily from CG-RER-1, *DOE Classification and UCNI Guide for Radiological Emergency Response*, the content is tailored to the non-"Q"-cleared interagency emergency response community. A draft is in final Headquarters concurrence process. Approval is expected by summer 2006. NOTE: To avoid possible confusion over the primary content of the guide, it is has been proposed to change the guide name to CG-NRIR-1, *DHS/DOE/ NRC Classification and UCNI Guide for Nuclear/Radiological Incident Emergency Response and Consequence Management*.

New Guidance

CG-SSP-1 *Notice of Guide Rescission and List of Topics Retained from the Stockpile Stewardship Program, 10/4/05*

CG-RWT-1. A new CG for the transportation of radioactive waste to Yucca Mountain is being developed. A WG meeting was held in October 2005. The guide is waiting for comments from the Department of Transportation.

CG-SS-4. A major revision of the CG for safeguards and security information is underway. WGs have been formed to address protection program operations, nuclear material control and accountability, and malevolent dispersal. Comments on the draft are being addressed

CG-UAV-2. Revision of the CG for the separation of uranium isotopes by the Atomic Vapor Laser Isotope Separation method is complete. The guide is in final coordination.

CG-UK-2. A WG, co-chaired by the DOE and the United Kingdom, has produced a final draft of the CG for the exchange and safeguard of material between the United States and the UK. The guide is in final coordination.

Topical Classification Guides (TCG)

TCG-DS-2. A revision to the TCG for detonation systems is being developed. The revised guide will incorporate new technological developments and add use control information. The guide is in final coordination.

TCG-NNT-1. Change 6 to the nonnuclear test guide is under development to augment existing topics and incorporate topics being transferred from CG-SSP-1. A second draft will be sent to WG members in the first quarter of 2006.

TCG-UC-2A. At the request of the program office, a pen-and-ink change was issued in February 2006 to remove the information in this supplement from Sigma 15 designation. TCG-UC-2A will be formally cancelled with publication of Change 2 to the TCG-UC-3.

TCG-UC-3. Change 2 to the TCG for nuclear weapon use control is in development. It will move all information currently in the Sigma 15 supplement (TCG-UC-2A) to the main guide and cancel the supplement. A WG meeting was held December 13-15, 2005; the next meeting will be April 11-13, 2006, at Sandia National Laboratories/New Mexico.

TCG-VH-2. A revision to the TCG for vulnerabilities and hardening is in final coordination. The guide was sent to DoD for their approval and signature on August 4, 2005.

TCG-WI-2. A first draft of a revision to the TCG for weapon initiators is being developed.

TCG-WM-2. A revision to the TCG for weapon materials has been developed. Comments on the draft guide have been received and are being incorporated. No comments have been received from the DoD.

TCG-WPMU-2. Change 1 to the TCG for weapons production and military use is in final coordination.

Guidance *(Continued on page 6)*

UPCOMING EVENTS

April 4-5	Derivative Declassifiers Course, Albuquerque
April 25-26	Classification Officers Technical Program Review Meeting, GTN
May 1-4	Historical Records Restricted Data Reviewers Course, FORS

Director (*Continued from page 1)*

recommended specific ways for the DOE to improve our Official Use Only (OUO) program in order to ensure consistent application of OUO throughout the Department. The GAO recommendations will be incorporated in revisions to the OUO order, manual, and guide. The recommendations include: requiring training for all DOE employees on identifying and protecting OUO information; issuing better guidance for making OUO decisions, and providing oversight for the OUO program. Needless to say, the responsibility for implementing these changes will likely fall on the information security experts – classification officers and classification representatives.

The GAO report was the result of a series of hearings the Government Reform Committee has held over the past 2 years. On March 14, Glenn Podonsky, Director, Office of Security and Safety Performance Assurance, testified regarding the DOE's management of sensitive unclassified information. Due to media coverage of the recent classification activities at the National Records and Archives Administration (NARA), he also testified on the DOE Historical Records Review at NARA. His testimony and the GAO recommendations will be discussed at the CO's meeting in April.

Speaking of oversight responsibility, the information classification and control oversight program now resides with the Office of Security Evaluations (SP-41). The Office of Classification is providing classification experts to support their efforts, so we anticipate being involved in the program for the foreseeable future. As we learn of changes to and requirements of the program, we will promulgate them through the classification officers and classification representatives and incorporate them into our assistance program. The first classification oversight review conducted by SP-41 will be at the Pantex Site Office and Pantex Plant Data collection will take place the week of March 13-17, and the appraisal will conclude April 7th.

We will complete the review of DOE documents of permanent historical value that will be 25 years old or more on December 31, 2006, in accordance with the E.O. 12958 the deadline. To prevent additional inadvertent releases of Restricted Data (RD)/Formerly Restricted Data (FRD), we will continue to conduct reviews of other agencies' permanent historical records reviewed under E.O. 12958. We will also be examining other Government agencies' permanent historical records that were made available to the public under E.O. 12958 without proper RD/FRD reviews.

All Headquarters classification guides have been converted to XML for inclusion into the classification guidance database. We will now begin to be populate them with metadata knowledge (keywords, rationale, keystones, etc). We will also begin coordination with the field classification officers to provide assistance with migrating the field classification guides to XML and populating them with metadata knowledge.

These projects and others will be covered in future issues of the CommuniQué. In the meantime, feel free to contact me or my staff for more information on any of the above topics.

Answers to Knowledge Test

1. False, INDEX-06-01 has been distributed.
2. C, see DOE Manual 4751.1-1A, Chapter VI, Part A, 2.a.(1)(b). Documents for public release or widespread distribution in classified subject areas must be submitted to the local classification officer (CO) or a delegated DC.
3. D, see DOE Manual 4751.1-1A, Chapter V, Part A, 1b. Source documents can be cited as a basis for classification if the information is entirely under the purview of another Government agency, a foreign government, or an international organization, and no joint classification guidance exists.
4. In addition to the derivative classifier's (DC's) name or personal identifier, the "Classified By" line must indicate the individual's position description (e.g., General Engineer). If the individual's agency and office of origin are not otherwise evident from the document letterhead, those must also be provided.

   In addition to giving the title of the guide from which the classification was derived, the "Derived From" line must indicate the date of the classification guide. Information Security Oversight Office marking instructions require the guide used to be identified by agency and office. This requirement will be included in future DOE directives.

   Documents containing RD/FRD or a mix of RD/FRD and NSI must never be automatically declassified, so the Classifier's stamp for those types of documents should only have the first two lines. Note: Even if the document was an NSI document, the stamp would have been incorrect. The actual event would have been written on the stamp instead of "EV."