



DIRECTIVE

Subject: CONTROLLED UNCLASSIFIED INFORMATION MARKING

Number: D-XX.X

Approved: X/XX/2017

Review: NA

Certified:

Responsible Office: Office of the General Manager

1. PURPOSE. The purpose of this Directive is to provide procedures for marking¹ controlled unclassified information (CUI).
2. EXPIRATION. This Directive expires on Month XX, 2021.
3. CANCELLATION. None.
4. APPLICABILITY. This Directive applies to all Agency employees, including Board Members and contractors, involved in handling CUI.
5. EXEMPTIONS. None.
6. REQUIREMENTS.
 - A. All Agency employees and contractors who develop material² related to CUI³ shall uniformly and conspicuously apply CUI banner markings (which shall be bold and centered to the maximum extent practicable) to the top portion of every page of all CUI documents (i.e., inclusive of all CUI within the document).⁴
 - B. The CUI banner marking shall consist of the following three elements, all separated by a double slash (//):
 - The CUI control marking which shall consist of the acronym “CUI.”
 - The CUI category or subcategory markings (reference Appendix A) (when including multiple categories or subcategories in a banner marking they are separated by a single forward slash (/)).
 - The limited dissemination control markings.
 - Documents related to management draft Recommendation would fall under the CUI Basic category and be appropriately marked.

¹ Defined terms (see Section 10) are underlined when first used.

² Material includes such items as Word Documents, supporting documents, concurrence sheets, emails, and voting sheets.

³ In the case of draft Recommendation material, the material is CUI until issuance of a Recommendation. “Issuance” is defined as transmission of a Board approved Recommendation to the Secretary of Energy under 42. U.S.C. § 2286d(a)(3) or § 2286d(h).

⁴ As an optional best practice, the banner marking may be placed at the bottom of the document as well.

- C. All documents containing CUI must indicate the agency and the applicable point of contact, e.g.,
- If the CUI document is on agency letterhead, “All questions regarding this document may be directed to the Office of the General Manager at 202-694-7060.”
 - If the CUI document does not otherwise identify the agency, “Controlled by: The Defense Nuclear Facilities Safety Board, Office of the General Manager, 202-694-7060.”
- D. Required indicators prescribed by law, regulation, or government-wide policy (e.g., informational or warning statements) or administrative markings (e.g., draft, deliberative, pre-decisional) shall not be included in the CUI Banner, but when used must appear in a manner readily apparent to authorized personnel and consistent with the underlying requirements of the enactments (e.g., at the top of the page under the CUI Banner, or as a watermark).
- E. Cover sheets to identify CUI, if used (e.g., to alert observers that CUI is present from a distance or serve as a shield to protect the attached CUI from inadvertent disclosure), must be approved cover sheets from the [CUI Registry](#) and can be obtained by clicking [here](#). Cover sheets may note that the material will be uncontrolled upon removal of particular documents.
- F. The marking principles described herein also apply to presentations and other forms of documented media. When filled in, forms that contain CUI must be marked.
- G. Handling of CUI within DNFSB may not include additional requirements or restrictions on handling CUI other than those permitted in the CUI Program. The CUI Registry has been established by NARA as the central repository for all information, guidance, policy, and requirements on handling CUI, including authorized CUI categories and subcategories, associated markings, and applicable decontrolling procedures.
- H. Any Agency closed meeting transcript or Notational Vote package relating to a potential Recommendation (as determined via a Board vote) shall be marked and protected as CUI. All Agency employees shall comply with the control requirements specified in this directive and shall not discuss or distribute the Agency closed meeting transcript or Notational Vote package outside of the Agency without explicit Board approval.
- I. Notational Vote packages or transcripts that do not include potential or draft Recommendation information, as determined via a Board vote, will not be marked or protected as CUI unless the information meets the criteria for protection as CUI under a separate category.
- J. Draft Recommendations shall be marked and protected as CUI. All Agency employees shall comply with the control requirements specified in this directive and shall not discuss or distribute the Draft Recommendation contents outside of the Agency without explicit Board approval

- K. The Board will determine via a Board vote on a case-by-case basis when CUI markings must be lined through and the document(s) must be remarked “Decontrolled.”
 - L. CUI may be destroyed when the information is no longer needed and when records disposition schedules published or approved by NARA or other applicable laws, regulations, or Government-wide policies no longer require retention. Destruction of CUI, including in electronic form, must be accomplished in a manner that makes it unreadable, indecipherable, and irrecoverable. CUI may not be placed in office trash bins or recycling containers. *CUI Specified* must be destroyed according to any specific directives regarding the information.
 - L. Available CUI training developed by the Information Security Oversight Office (ISOO) may be found [here](#).
7. RESPONSIBILITIES. Employees shall ensure that any CUI documents are clearly marked in accordance with the requirements contained in this Directive.
8. CONTROLS AND MEASURES. The CUI program is subject to annual self-inspection by the Office of the General Manager.
9. DEFINITIONS.
- A. Classified Information. Information that Executive Order 13526, “Classified National Security Information,” December 29, 2009 (3 CFR, 2010 Comp., p. 298), or any predecessor or successor order, or the Atomic Energy Act of 1954, as amended, requires agencies to mark with classified markings and protect against unauthorized disclosure.
 - B. Controlled Unclassified Information. Information the Government creates or possesses, or that an entity creates or possesses for or on behalf of the Government, that a law, regulation, or Government-wide policy requires or permits an agency to handle using safeguarding or dissemination controls. CUI does not include classified information or information a non-executive entity possesses or maintains in its own systems that did not come from, or was not created or possessed by or for, an executive branch agency or an entity acting for an agency.
 - C. CUI Executive Agent. The National Archives and Records Administration (NARA), which implements the executive branch-wide CUI Program and oversees Federal agency actions to comply with Executive Order 13556. NARA has delegated this authority to the Director of the Information Security Oversight Office.
 - D. CUI Program. The executive branch-wide program to standardize CUI handling by all Federal agencies. The Program includes the rules, organization, and procedures for CUI, established by the referenced Executive Order and regulation, and the CUI Registry.

- E. CUI Registry. The online repository for all information, guidance, policy, and requirements on handling CUI. Among other information, the CUI Registry identifies all approved CUI categories and subcategories, provides general descriptions for each, identifies the basis for controls, establishes markings, and includes guidance on handling procedures.
 - F. Decontrol. Agencies should decontrol as soon as practicable any CUI designated by their agency that no longer requires safeguarding or dissemination controls, unless doing so conflicts with the governing law, regulation, or Government-wide policy. Decontrolling CUI relieves authorized holders from requirements to handle the information under the CUI program, but does not constitute authorization for public release. Reference 32 CFR 2002.18 for full discussion of CUI decontrol guidelines.
 - G. Dissemination. Occurs when an authorized holders provide access, transmit, or transfer CUI to other authorized holders through any means, whether internal or external to an agency.
10. CONTACT. Address questions concerning this Directive to the General Manager.

Sean Sullivan
Chairman

Appendix A

CUI Categories and/or Subcategories Used by DNFSB in its Operations

CUI Category/Description	CUI Subcategory/Description	Marking
Decontrolling	Agencies should decontrol as soon as practicable any CUI designated by their agency that no longer requires safeguarding or dissemination controls, unless doing so conflicts with the governing law, regulation, or Government-wide policy. Previous markings shall be lined through and the word “DECONTROLLED” will added.	DE-CONTROLLED
Dissemination List Controlled	Dissemination authorized only to those individuals, organizations, or entities included on an accompanying dissemination list. Note: Use of this limited dissemination control supersedes other limited dissemination controls, but cannot supersede dissemination stipulated in federal law, regulation, or Government-wide policy.	DL ONLY
Emergency Management Related to information concerning the continuity of executive branch operations during all-hazards emergencies or other situations that may disrupt normal operations.	NA	EMGT
Financial Related to the duties, transactions, or otherwise falling under the purview of financial institutions or United States Government fiscal functions.	Budget Related to information concerning the federal budget, including authorizations and estimates of income and expenditures.	BUDG
Law Enforcement Related to techniques and procedures for law enforcement operations, investigations, prosecutions, or enforcement actions.	Whistleblower Identity Identity of any individual, or 2 or more individuals acting jointly, who provides information relating to a legal violation or illicit activity, including information provided by a whistleblower which could reasonably be expected to reveal the identity of a whistleblower.	WHSTL

<p>Legal Information related to proceedings in judicial or quasi-judicial settings.</p>	<p>Administrative Proceedings Adjudication of agency-related matters including, but not limited to, dispute resolution, settlements, and issuances of orders.</p>	<p>ADPO</p>
<p>Legal Information related to proceedings in judicial or quasi-judicial settings.</p>	<p>Privilege Per 15 USC 78x: The term "privilege" includes any work-product privilege, attorney-client privilege, governmental privilege, or other privilege recognized under Federal, State, or foreign law. Per 502(g): (1) "attorney-client privilege" means the protection that applicable law provides for confidential attorney-client communications; and (2) "work-product protection" means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.</p>	<p>PRIV</p>
<p>Nuclear Related to protection of information concerning nuclear reactors, materials, or security.</p>	<p>Safeguards Information Pursuant to 42 USC 2011, et seq., and as defined in 10 CFR 73.2, SGI relates to security related information concerning the physical protection of source, byproduct or special nuclear material and the detailed security measures for facilities and information contained within security plans.</p>	<p>SGI</p>
<p>Nuclear Related to protection of information concerning nuclear reactors, materials, or security.</p>	<p>Security-Related Information Related to information that could be useful, or could reasonably be expected to be useful, to a terrorist in a potential attack that does not qualify as Safeguards or classified information, including the exact location and quantities of radioactive material, certain detailed design drawings, information on nearby facilities, emergency planning information, and certain assessments of vulnerability and safety analyses.</p>	<p>SRI</p>

<p>Nuclear Related to protection of information concerning nuclear reactors, materials, or security.</p>	<p>Unclassified Controlled Nuclear Information-Energy Relating to certain design and security information concerning nuclear facilities, materials, and weapons, specific to the Department of Energy.</p>	<p>UCNI</p>
<p>Nuclear Related to protection of information concerning nuclear reactors, materials, or security.</p>	<p>Recommendation Material Related to recommendations to the Secretary of Energy with respect to Department of Energy defense nuclear facilities as determined necessary to ensure adequate protection of public health and safety.</p>	<p>RECCOM</p>
<p>Privacy Refers to personal information, or, in some cases, "personally identifiable information," as defined in OMB M-07-16, or "means of identification" as defined in 18 USC 1028(d)(7).</p>	<p>Personnel Related to the employees of federal agencies.</p>	<p>PERS</p>
<p>Procurement & Acquisition Material and information relating to, or associated with, the acquisition and procurement of goods and services, including but not limited to, cost or pricing data, contract information, indirect costs and direct labor rates.</p>	<p>Source Selection Per FAR 2.101: any of the following information that is prepared for use by an agency for the purpose of evaluating a bid or proposal to enter into an agency procurement contract, if that information has not been previously made available to the public or disclosed publicly: (Items 1-10).</p>	<p>SSEL</p>

See the CUI Registry at <https://www.archives.gov/cui/registry/category-list> for the safeguarding and/or dissemination authority, CUI subcategory designation (i.e., basis or specified), and sanction authority (if applicable) for each CUI subcategory. Information that is CUI Specified gains the “SP-” prefix. For example, the banner marking for UCNI governed by 10 C.F.R. 1017 would be “CUI//SP-UCNI”.

AFFIRMATION OF BOARD VOTING RECORD

SUBJECT: CUI Marking

Doc Control#2017-300-066

The Board, with Board Member(s) Jessie H. Roberson, Daniel J. Santos, Joyce L. Connery *approving*, Board Member(s) Sean Sullivan, Bruce Hamilton *disapproving*, Board Member(s) none *abstaining*, and Board Member(s) none *not participating*, have voted to approve the above document on September 27, 2017.

The votes were recorded as:

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIPATING*	COMMENT	DATE
Sean Sullivan	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	09/26/17
Bruce Hamilton	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	09/26/17
Jessie H. Roberson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	09/26/17
Daniel J. Santos	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	09/26/17
Joyce L. Connery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	09/27/17

*Reason for Not Participating:

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Board Members.


Assistant Executive Secretary to the Board

Attachments:

1. Voting Summary
2. Board Member Vote Sheets

cc: Board Members
OGC
OGM Records Officer
OTD

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Sean Sullivan

SUBJECT: CUI Marking

Doc Control#2017-300-066

Approved _____ Disapproved X _____ Abstain _____

Recusal – Not Participating _____

COMMENTS: Below X _____ Attached _____ None _____

The document is objectionable on several levels.

A directive on CUI Marking is required. The Board must set policy on compliance with our statutory mandate to make Recommendations available to the public only after the Secretary of Energy receives the final Recommendation from the Board. Consistent with the statutory mandate of 42 U.S.C. § 2286d(b), the Board must establish document marking requirements to prevent inadvertent public release.

However, as amended by the Board this Directive contains controls well beyond the statutory mandate. Specifically, the Directive bars any discussion with *anyone* outside the agency including other government officials charged with public safety, and provides for keeping the controls in place well after the statutory mandate has been satisfied.

The Directive is objectionable for the following reasons:

- 1. As applied to Board Members, the controls in the Directive are inappropriate and unenforceable.**

A Board Member has a duty to act as that Member deems necessary in the interest of public safety. If a Member deems it appropriate to speak with another government official, that Member may do so and is bound only by the law and not any policy of the Board. No other Member or majority of Members has the right or ability to control what a minority Member may say to other government officials. To the extent that this Directive seeks to do that, it is unenforceable.

- 2. As applied to Board Members, controls in excess of the statutory mandate should not be in a Directive.**

The Board's Directives set policy, procedures, and administrative requirements for the staff. As applied to Board Members, the Directives only set procedural or administrative requirements necessary for compliance with existing laws and regulations. Policy matters involving Board Members are reserved for the Board procedures. As stated in the preamble to those procedures,

such policies are generally set by unanimous agreement among the Members acting as collegial body.

Prior to amendment by the Board, the proposed Directive merely established markings and controls necessary to comply with the statutory mandate, requirements that appropriately apply to Board Members as well as agency staff. It now contains restrictions on Member behavior generated by the Board – restrictions that should be in the Board procedures, if at all. Even then, restrictions or prohibitions are voluntary and unenforceable regardless of how they may appear in the procedures.

3. The controls in the Directive provide a path to continue the pattern of anti-transparency exhibited by the Board over the past two years.

Prior to amendment by the Board, the controls expired automatically when the statutory mandate expired, such as when a final Recommendation was transmitted to the Secretary, or the Board decided that a Recommendation under consideration was no longer needed. Post-amendment, the Directive keeps the controls in place until an affirmative decision is made by the Board in each case to remove them.

The Board has held nine closed meetings since the beginning of June, 2015. One topic, emergency preparedness and response at Pantex, resulted in a Board Recommendation. The Board released closed meeting transcripts of deliberations on that topic, but only after a second vote (the first was disapproved) held months after the Secretary received the Recommendation. Moreover, the second vote passed with only two affirmative votes, the majority of Members either abstaining or declining to participate. During the nine closed meetings a number of other topics were discussed as possible Recommendations, but in most cases the Board either dropped the subject or affirmatively decided not to issue a Recommendation. Yet, votes to release transcripts on those other topics have all been disapproved (except in the case of the most recent closed meeting for which no vote to release has been held). The Directive provides a mechanism permitting the continuation of this anti-transparency practice. The Board will be required to affirmatively remove the controls from transcripts, votes, or other documents on a case-by-case basis. Under this Directive, a majority may refuse to remove those controls without providing any justification, as has been the practice during the past two years.

For all the reasons above, I disapprove.



Sean Sullivan

9/26/17

Date

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET**

FROM: Bruce Hamilton

SUBJECT: CUI Marking

Doc Control#2017-300-066

Approved _____ Disapproved X Abstain _____

Recusal – Not Participating _____

COMMENTS: Below X Attached _____ None _____

This Directive, as Amended, proposes to restrict control of CUI such that it cannot be shared outside the Agency. It goes well beyond the requirement of 42 U.S.C. § 2286d. (b) which only provides for Recommendation-related information to be withheld temporarily from *the public*. The federal government, however, is not a subset of the public, and preventing release of such information outside the Agency would inappropriately prevent the sharing of pre-decisional information with the Department of Energy, other federal government entities, and, in certain cases, Congress.

This Directive also sweeps up *potential* Recommendation information as being subject to CUI protection. Since “potential” information is not defined, it would establish a situation where just about anything the Board discusses could be withheld from the public. A broad view could find *potential* Recommendation information essentially anywhere.

This Directive not only overly limits the staff, but it purports to restrict Board Members as well. Board Members are appointed by the President of the United States, and as such, they serve in a *political* capacity. They are obliged to speak openly on unclassified issues of policy which they believe need to be addressed. They cannot be restrained beyond that provided in law from carrying out this obligation by an Agency Directive, even when that Directive is approved by a majority of Board Members. To do so would result in the outrageous state of affairs where a majority of Board Members could choose to suppress the voice of the minority.

I therefore disapprove.


Bruce Hamilton

26 SEPT 2017
Date

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

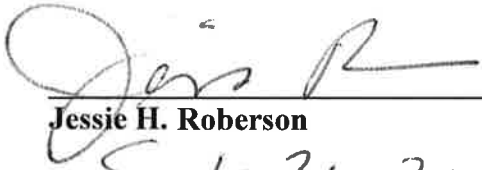
FROM: Jessie H. Roberson

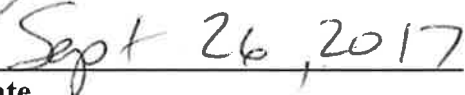
SUBJECT: CUI Marking

Doc Control#2017-300-066

Approved **Disapproved** _____ **Abstain** _____
Recusal - Not Participating _____

COMMENTS: **Below** _____ **Attached** _____ **None**



Jessie H. Roberson


Date

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Daniel J. Santos


SUBJECT: CUI Marking

Doc Control#2017-300-066

Approved **Disapproved** _____ **Abstain** _____

Recusal – Not Participating _____

COMMENTS: **Below** _____ **Attached** _____ **None**



Daniel J. Santos
9/26/17

Date

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET**

FROM: Joyce L. Connery

SUBJECT: CUI Marking

Doc Control #2017-300-066

Approved X **Disapproved** _____ **Abstain** _____

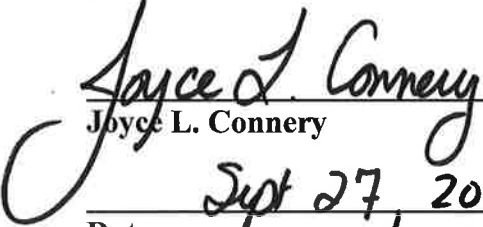
Recusal – Not Participating _____

COMMENTS: **Below** X **Attached** _____ **None** _____

I am dismayed by Board Member comments during the amendment process. The directive being deliberated is specifically for CUI markings, a designation that is a government-wide standard. The statements that when this directive is “applied to Board Members, the controls proposed are inappropriate and unenforceable” are not only unfounded, they are dangerous. Board Members, as any government employee, are bound by the rules that protect this sensitive government information, there is no exception for Board Members. Additionally, there is no “political role” for a Board Member that exempts them from sensitive information—CUI is broad category that includes PII and privacy act information as well as deliberative information and the allusion to the fact that a Board Member may release such information as a political appointee is exceedingly troubling and potentially threatening. Yes, we occupy politically appointed positions, but we are here to serve the mission of the Agency. In cases in which there is a need to speak in the “interest of public safety”, whistleblower protections and other parts of the law would take precedence and this directive would in no way preclude that.

The deliberative process is protected and as such Board Members are supposed as act as a body and individually to protect that process. The allegations that the Board has exhibited “anti-transparency” behavior is misplaced in this discussion of how to control CUI information. Release of Recommendation information at any time (not prohibited by the AEA) is a determination of the Board and the result of a Board vote. Premature release of draft Recommendation information is a violation of our law, the Atomic Energy Act, not a lack of transparency. Each individual Board Member can form their own position on whether or not information can or should be released, and we all abide by the majority decision. Taking the statements of other Board Members to their logical conclusion with regard to the “outrageous state of affairs”, any vote we take that falls short of unanimity would equate to the “suppression of the minority voice”.

The recent trend of split votes on non-safety issues, if sustained, will continue to erode the collegial nature of the Board. I remain committed to the primacy of the safety mission of the Agency—a commitment to which integrity demands we all remain true. And, as leaders in the organization, we must all be committed to the enduring mission of the Board, but unfortunately, not all Board Members demonstrate that commitment.



Joyce L. Connery

Date Sept 27, 2017