UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 5 2012

DEPUTY ADMINISTRATOR

MEMORANDUM

SUBJECT: Response to Early Warning Report 11-P-0722

FROM: Bob Perciasepe

TO: Arthur A. Elkins Jr.
Inspector General

I am responding to your February 7, 2012, memorandum addressing the U.S. Environmental Protection Agency's response to the September 29, 2011, Office of Inspector General's Early Warning Report 11-P-0722, *EPA Should Prepare and Distribute Security Classification Guides.*

I want to assure you that the EPA takes it's responsibilities, related to the protection of information that could damage national security with the highest level of seriousness.

I have reviewed your February 7, 2012, memo and met with staff. I have also asked staff to once again consult with the Information Security Oversight Office. Based on these reviews with staff and consultation with ISOO, the EPA respectfully disagrees with the report's conclusion that the current lack of classification guides is "a material internal control weakness" and is a failure to implement a "key internal control to protect information that could damage the national security of the United States." The EPA finds no foundation for the report's conclusion that "[w]ithout classification guides, EPA has no assurance that classified NSI is properly identified or safeguarded at the Agency." The EPA has a strong process in place to ensure classification decisions are commensurate with existing requirements. The agency's classification program is fully functioning and has the proper checks and balances in place to ensure that it is consistent and effective.

By law, the Information Security Oversight Office is the executive agent with the responsibility and authority under Section 5.2(b)(2) of Executive Order 13526 to "oversee agency actions to ensure compliance with" the EO and the Information Security Oversight Office's "implementing directives." The President has, in fact, authorized the Information Security Oversight Office to establish binding standards for agencies under the EO. The EPA has consulted extensively with the Information Security Oversight Office and has been repeatedly advised that the agency is not in violation of Section 2.2 of EO 13526. More specifically, the Information Security Oversight Office advised that, contrary to the conclusions in the subject report, the EPA does not need to create a classification guide due to the fact that so few original classification decisions have been made by the agency. The Information Security Oversight Office found that the EPA's original classification program was "fully functioning" and has in place strong and sufficient controls to ensure that classification determinations are made in accordance with EO 13526. I have attached the most recent ISOO letter.

We do agree to implement two recommendations contained in the subject report: The EPA should 1) issue classification guides that conform to EO 13526 and the EPA's *National Security Information Handbook* and 2) ensure the distribution of classification guides to users of the EPA's originally classified information. While not required, classification guides will be helpful to interagency partners in the production of derivative materials from our original documents.

As explained in my December 22, 2011, memorandum, the EPA will implement the subject report's recommendations "beginning with an initial classification guide that addresses materials most recently originally classified," that is, the seventh of the EPA's original classification decisions, and the one made by the current EPA Administrator. This classification guide is intended to be derivative guidance for the original classification determination made on January 21, 2011. The guide is now complete and will be distributed after the Administrator's approval. For the six original classification decisions made by previous Administrators, the EPA intends to implement EO 13526, Section 1.9 and conduct a deliberative review of these previous decisions. Additional guides may be developed as part of this review; however, this process will take more than 90 days and may downgrade, declassify or reclassify legacy documents, as warranted and in accordance with existing requirements.

We will also ensure that when the EPA's originally classified documents are disseminated to interagency partners, a document-specific classification guide be included to more comprehensively enable them to determine the nature of the information the EPA has originally classified and the reason for doing so. This is not a common practice when documents are disseminated. While classification guides are sometimes available for derivative classifiers, they normally rely upon portion-marking in the original material for production of derivative materials. Nevertheless, due to the specific nature of EPA classification decisions, the EPA deems it logical and prudent to take the additional explanatory step of issuing further guidance for information handling and dissemination. In doing so, the EPA will apply the principles in EO 13526 and will continue to follow the Information Security Oversight Office's binding direction in its interpretation and implementation.

Should you have additional questions or concerns, your staff may contact the Office of Administration Director Renee Page at (202) 564-8400 or page.renee@epa.gov.

cc: Craig E. Hooks
Debbie Dietrich
Renee Page
Sandy Womack

Attachment

INFORMATION SECURITY OVERSIGHT OFFICE
NATIONAL ARCHIVES and RECORDS ADMINISTRATION
700 PENNSYLVANIA AVENUE, NW, ROOM 100 WASHINGTON DC 20408-0001
www.archives.gov/isoo

NATIONAL ARCHIVES

March 26, 2012

Renee Page, Director
Office of Administration
U.S. Environmental Protection Agency
Washington, DC 20460

Dear Ms. Page:

This letter is in response to questions from your office concerning the application of Executive Order 13526, "Classified National Security Information," (the Order) at the Environmental Protection Agency. Our office, the Information Security Oversight Office (ISOO), is responsible for administering all aspects of the Order within the Executive Branch, including assisting agencies in developing sound classified national security programs and policies that comply with both the Order and its implementing directive, 32 C.F.R. Part 2001.

In 2011, EPA asked ISOO if it needed to create a classification guide to be in compliance with the Order. At that time, the Acting Director of ISOO responded that ISOO did not believe that EPA needed to create a classification guide and was not in violation of the Order. Additionally, the Acting Director noted that EPA was one of few agencies granted non delegable Original Classification Authority and EPA had only classified six documents in the previous seven fiscal years. Finally, the Acting Director noted EPA's process for making original classification decisions was quite rigorous, rational and informed.

Since then, EPA has asked ISOO to confirm its earlier interpretation that it does not need to create a classification guide to be in compliance with the Order. ISOO continues to affirm our June 1, 2011 finding that EPA's decision making process for determining whether to classify a document or not is quite sufficient and within the scope of the Order. We believe EPA's process for making these determinations ensures that classification decisions are consistent, effective, and limited.

Our office would be pleased to meet with you and the EPA staff to discuss this matter further. Please contact me at (202) 357-5205 if you have any questions or concerns.

Sincerely,

John P. Fitzpatrick

JOHN P. FITZPATRICK
Director