Department of Homeland Security
Instruction Number: 121-01-022
Revision Number: 00
Issue Date: 02/26/2021

INTERIM PROCEDURES FOR INTEGRATING THE CONTROLLED UNCLASSIFIED INFORMATION FRAMEWORK AT THE DEPARTMENT OF HOMELAND SECURITY

I. Purpose

This Instruction establishes the process and procedures by which the Department of Homeland Security (DHS) is to transition from current practices relating to sensitive but unclassified information (e.g., For Official Use Only, Law Enforcement Sensitive, etc.) to the Controlled Unclassified Information (CUI) framework as directed by Executive Order 13556, "Controlled Unclassified Information."

II. Scope

This Instruction applies to all DHS Components.

III. Authorities and References

A. Title 6, United States Code, Section 341, "Under Secretary for Management"

B. Public Law 113-283, 128 Stat. 3073, "Federal Information Security Modernization Act of 2014" (FISMA)

C. Executive Order 13556, "Controlled Unclassified Information"

D. Title 32, Code of Federal Regulations (CFR), Part 2002, "Controlled Unclassified Information (CUI)"

E. DHS Delegation 00002, "Delegation to the Under Secretary for Management"

F. DHS Delegation 12000, "Delegation for Security Operations Within the Department of Homeland Security"

G. DHS Directive 121-01, "Chief Security Officer"

H. DHS Management Directive 11042.1, "Safeguarding Sensitive But

Unclassified (For Official Use Only) Information"

I. DHS Instruction 121-01-014, "Access to "For Official Use Only" (FOUO) Information by the Private Sector, Foreign Governments, International Organizations, and Foreign Non-Governmental Individuals"

J. DHS Sensitive Systems Policy Directive 4300A

K. "Memorandum for the Senior Agency Official for the Controlled Unclassified Information (CUI) Program at the U.S. Department of Homeland Security (DHS)" from the CUI Executive Agent, dated September 7, 2018

L. Intelligence Community Directive 710, "Classification and Control Markings System"

M. Office of the Director of National Intelligence, "Security Markings Program Marking Manual"

N. Federal Information Processing Standards (FIPS) Publication 140-3, "Security Requirements for Cryptographic Modules," March 22, 2019

O. FIPS Publication 197, "Advanced Encryption Standard (AES)," November 2001

P. FIPS Publication 199, "Standards for Security Categorization of Federal Information and Information Systems," February 2004

Q. FIPS Publication 200, "Minimum Security Requirements for Federal Information and Information Systems," March 2006

IV. Definitions

A. ***Controlled Unclassified Information (CUI)***: 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. However, CUI does not include classified information or information a non-Executive Branch entity possesses and 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. Law, regulation, or government-wide policy may require or permit safeguarding or dissemination controls in three ways: requiring or permitting agencies to control or protect the information but providing no specific controls, which makes the information CUI Basic; requiring or permitting agencies to control or protect the information and providing specific controls for doing so, which makes the information CUI Specified; or requiring or permitting agencies to control the information and specifying only some of those controls, which makes the information CUI Specified but with CUI Basic controls

where the authority does not specify.

B. ***CUI Basic Categories***: A subset of CUI for which a law, regulation, or government-wide policy does not set out specific handling or dissemination controls, but nevertheless indicates that the information requires protection.

C. ***CUI-Specified Categories (CUI-SP)***: A subset of CUI in which a law, regulation, or government-wide policy contains specific handling controls that require or permit agencies to use that information in a manner that is different from those for CUI Basic.

D. ***CUI Registry***: An online repository that lists the categories and subcategories of CUI approved by the CUI Executive Agent for protection via the CUI program. It can be accessed at https://www.archives.gov/cui.

V. Responsibilities

A. ***DHS Chief Security Officer (CSO)*** has been designated by the Secretary as the CUI Senior Agency Official, consistent with 32 CFR § 2002.8(b)(2) and as designated by the Under Secretary for Management in DHS Directive 121-01. The CSO directs and oversees the Department's CUI Program, promulgates implementing policies for the Department, grants waivers as appropriate, and serves as the Department's representative to the CUI Advisory Council.

B. ***Component Heads***:

1. Implement and comply with the standards articulated in this Instruction within their respective Components, including aligning Component policies and procedures with this Instruction.

2. Inform the CSO of CUI categories for which their Component has a particular interest in developing.

3. Consult with the CSO prior to issuing any Component-specific CUI policies, including policies related to the protection and dissemination of CUI-SP.

C. ***DHS Chief Privacy Officer*** evaluates CUI programs, information systems, and initiatives for potential privacy impacts and provides mitigation strategies to reduce the privacy impact of the DHS implementation of CUI.

D. ***DHS Officer for Civil Rights and Civil Liberties*** evaluates CUI programs, information systems, and initiatives for potential civil rights and civil liberties impacts and provides mitigation strategies to reduce the civil rights or civil liberties impact of the DHS implementation of CUI, including providing information and advice needed to implement CUI categories at DHS.

E. ***Component Chief Security Officers*** serve as the principal advisors to their respective Component Head on CUI safeguarding issues and ensure that Component security programs meet the requirements of this Instruction.

F. ***DHS Chief Information Officer (CIO)*** is the Senior Information Systems Executive for DHS. The CIO, in coordination with the CSO, is responsible for promulgating information system regulations, policies, and guidance, as needed, to ensure CUI is protected on DHS information systems.

G. ***DHS Chief Information Security Officer (CISO)*** approves or denies waivers and/or deviations from information system security policy as it applies to the protection of CUI on Unclassified DHS systems.

H. ***Component Chief Information Officers***:

1. Ensure that information systems containing CUI conform with appropriate standards set by the FIPS and the National Institute of Standards and Technology.

2. Ensure that security requirements for information systems containing CUI are incorporated into life-cycle documentation.

3. Ensure that a risk assessment is done in accordance with DHS Sensitive Systems Policy Directive 4300A and the Federal Information Security Modernization Act whenever modifications are made that have the potential to significantly impact the approved security posture of a system containing CUI, or to the physical environments, interfaces, or user community. The risk assessment considers the effects of the modifications on the operational security posture of the information system as defined by the approved security controls. System profiles are updated and recertifications are conducted if warranted by the results of the risk assessment.

4. Develop and maintain encryption plans for systems used to input, process, store, display, or transmit CUI.

5. Ensure only cryptographic modules that are FIPS Publication 197 (AES-256) compliant and have received FIPS Publication 140-3 validation at the level appropriate to their intended use are used.

I. ***DHS Chief Procurement Officer (CPO)*** is the Senior Procurement Executive for DHS. The CPO, in coordination with the CSO, is responsible for promulgating acquisition regulations, policies, and guidance, as needed, to ensure CUI provided under DHS contracts is properly safeguarded.

J. ***Heads of the Component Contracting Activities*** ensure solicitations and contracts include requirements that address the handling and proper

safeguarding of CUI, including when CUI is processed, stored, or transmitted on information systems.

K. ***DHS Personnel***:

1. Utilize CUI markings once Appendix A of this Instruction is populated with categories. DHS personnel are not required to utilize CUI markings until such time as Appendix A of this Instruction contains categories.

2. Comply with the following once Appendix A contains categories:

a. Comply with the marking and safeguarding requirements for CUI as described in this Instruction;

b. Consistent with guidance provided in 32 CFR § 2002.14(c), protect CUI received from other agencies/departments as marked, unless and until proposed changes have been coordinated with those agencies/departments;

c. Use proper safeguarding and marking when CUI is combined with classified information, and proper safeguarding and marking when shared;

d. Are aware that misuse of CUI, to include dissemination without proper authorization, could result in administrative or disciplinary action, civil penalty, or other enforcement or corrective action; and

e. Participate in classroom or computer-based training sessions presented to communicate the requirements for recognizing, identifying, and safeguarding CUI.

VI. Content and Procedures

A. ***Implementation of CUI***: DHS is to implement the CUI framework gradually, as departments and agencies agree to common standards and markings of categories, limited dissemination controls, proper safeguarding and marking when combined with classified information, and proper safeguarding and marking when shared.

B. ***Population of Appendix A***:

1. Appendix A is to be populated based on corresponding entries in the ODNI Security Markings Program Marking Manual. Entries in the ODNI Security Markings Program Marking Manual are coordinated across the Intelligence Community agencies. This provides a level of assurance

that DHS's partner agencies are prepared to recognize the CUI markings and handle them in a manner consistent with DHS practices.

2. Components that have an interest in the development of a particular CUI category prior to inclusion in Appendix A should inform OCSO. The listing of all CUI categories is located at: https://www.archives.gov/cui/registry/category-list.

3. OCSO is to establish a working group composed of interested Components to review proposed CUI markings for Appendix A. The review by Components of proposed CUI markings prior to inclusion in Appendix A includes an assessment of whether the proposed CUI marking meets the safeguarding and dissemination requirements of applicable laws and the needs of DHS originators.

4. Categories listed in Appendix A may have DHS-specific guidance.

C. ***Application of CUI Markings***:

1. Approved uses of CUI categories and limited dissemination controls at DHS are found in Appendix A. Appendix A is to be updated regularly to reflect the ODNI Security Markings Program Manual and any additional information needed to implement the CUI categories at DHS. Note: At the time of initial issuance of this Instruction, Appendix A contains only a sample of how eventual entries are anticipated to appear.

2. When an approved CUI marking is added to Appendix A, DHS originators are to discontinue the use of any corresponding legacy markings. Continued use of legacy markings for which there is a corresponding approved CUI marking requires a waiver from the DHS Chief Security Officer.

3. Information generated prior to the issuance of this Instruction using the legacy marking system does not need to be converted to approved CUI markings in Appendix A; however, if the information is reused in a new product, the approved CUI markings in Appendix A are used. When disseminating documents containing legacy markings for which there are now approved categories in Appendix A, the authorized holders are to make recipients aware of the information's CUI status using an alternative marking method that is readily apparent (e.g., user access arrangements, digital splash screens, signs in storage areas, etc.).

4. When information marked as CUI is received from another federal department or agency and does not have a corresponding entry in Appendix A, the receiver contacts the originating agency to determine what protection and dissemination controls are required, as needed.

5. When information using legacy markings is received from another federal department or agency for which DHS utilizes a CUI marking in Appendix A, the information retains the originating department or agency's markings unless the originating agency agrees to convert to the CUI marking.

6. When the DHS Chief Security Officer, with concurrence from the General Counsel, Chief Privacy Officer, DHS Officer for Civil Rights and Civil Liberties, and the Chief Information Officer, determines that there is no longer any need for continued legacy marking use, the CSO is to issue a new DHS CUI Instruction formally superseding this Instruction and rescind both DHS Management Directive 11042.1 and DHS Instruction 121-01-014.

D. ***Safeguarding and Destruction:*** CUI is handled, protected, and destroyed the same as required by legacy marking systems, unless different or supplemental protections are provided for the CUI category in Appendix A.

E. ***Training***: The required baseline standards and materials are developed and provided to Components by the Office of the Chief Security Officer (OCSO). It is recommended that Components and/or offices add supplemental information or materials to meet local conditions as needed. If Components and offices choose to modify or develop their own materials and training for local conditions, the training is reviewed and approved by the DHS CSO through the Enterprise Security Operations and Support (ESOS) Directorate to ensure such modifications and materials meet the baseline standards for CUI Initial and CUI Biennial Refresher Training. The CUI training program includes, but is not limited to, the development and presentation of the following:

1. ***CUI Initial Security Briefing***: CUI initial security briefing is provided to all DHS personnel prior to access to CUI. The initial training covers: designation of CUI, relevant CUI categories and subcategories for DHS, the CUI Registry, the use of Appendix A of this Instruction, associated markings, applicable safeguarding, dissemination, and decontrol.

2. ***CUI Biennial Refresher***: CUI biennial refresher training is mandatory for all DHS employees with access to CUI to reinforce and update awareness of security policies and the employees' responsibilities. Such training covers the same areas as the initial training. Components and offices may want to supplement such training with Component- or office-specific CUI concerns.

F. ***Other***: Security compliance information, to include governance reporting requirements, and any other requirement not specified in Appendix A, is the same as required by legacy marking systems (e.g., FOUO, Section 1367 information).

G. ***Waivers***: Requests to waive the requirements of this Instruction are submitted in writing through the Chief Security Officer of the requesting Component to DHS OCSO/ESOS. Waiver requests require sufficient justification to support the request and identification of compensatory measures to be implemented to mitigate deficiencies. DHS OCSO/ESOS concurs or non-concurs with the request, and forwards the request, along with their recommendation, to the DHS CSO for a determination. There are two types of waivers:

1. ***Limited CUI Marking Waivers*** within DHS may be granted when the DHS CSO determines that marking information as CUI is excessively burdensome. These waivers may only be considered when 1) the information stays within DHS, 2) safeguarding and dissemination controls can be observed, and 3) authorized holders are able to make recipients aware of the information's CUI status using an alternative marking method that is readily apparent (e.g., user access arrangements, digital splash screens, signs in storage areas, etc.).

2. ***Exigent Circumstances Waivers*** may be granted by the DHS CSO in emergency circumstances to waive provisions of this Instruction or the CUI Registry both within DHS, and if necessary, when shared outside of DHS, unless specifically prohibited by applicable laws, regulations, or U.S. Government-wide policies. At a minimum, requests for such waivers require the inclusion of a mechanism for ensuring that authorized holders of the waived CUI notify recipients of the information's CUI status using an alternative marking method that is readily apparent (e.g., user access arrangements, digital splash screens, signs in storage areas, etc.).

VII. Questions

Address any questions or concerns regarding this Instruction to the DHS Office of the Chief Security Officer, Deputy Director for Strategic Operations for Policy, 202-447-5341.

RICHARD D MCCOMB

Digitally signed by RICHARD D MCCOMB
Date: 2021.02.26 12:52:41 -05'00'

Richard D. McComb
Chief Security Officer

February 26, 2021
Date

Appendix A
Approved Controlled Unclassified Information Markings for Use at the Department of Homeland Security

(U) SAMPLE

(U) Marking Title: [enter category]

(U) Category Marking: [ENTER CATEGORY ABBREVIATION]

(U) Basic or Specified: [Basic or Specified]

(U) Example Portion Mark:
(CUI)
(CUI//[ENTER CATEGORY ABBREVIATION])

(U) Example Banner Line:
CUI
CUI//[ENTER CATEGORY ABBREVIATION]
CONTROLLED
CONTROLLED//[ENTER CATEGORY ABBREVIATION]

(U) Marking Sponsor/Policy Basis: 32 CFR 2002 (CUI Implementing Directive)

(U) Definition:
- (U) [Enter description from CUI Registry.]
  (U) [Reference CUI Category [enter category]]

(U) Further Guidance:
- (U) [List applicable laws, regulations, or government-wide policies as found on the CUI

- (U) 32 CFR 2002 (CUI Implementing Directive)
- (U) ODNI Security Markings Program Marking Manual
- (U) CUI Registry, Limited Dissemination Controls
- (U) Individual Agency Policy

(U) Applicability:
- (U) [List agencies that are authorized to create or generate this category of CUI. All other entities are to be recipients of this information. For example: *DHS and Department of Transportation (DOT) are authorized to create SSI information and originally apply this marking. Agencies or elements that use the SSI marking maintain agency-specific implementation guidelines*.] All other entities are to be recipients of this information.

Agencies or elements that use information with this marking maintain agency-specific implementation guidelines.
(U) [Reference CUI Category [marking sponsor]]

- (U) Reference 32 CFR 2002.20, ODNI Security Markings Program Marking Manual, Limited Dissemination Controls, and individual agency policy for additional and specific marking guidelines.

(U) Derivative use (re-use of information in whole or in part into intelligence products):

- (U) [Enter category] may be sourced.
  (U) [Reference CUI Category [marking sponsor]]
- (U) Reference 32 CFR 2002.20, ODNI Security Markings Program Marking Manual, Limited Dissemination Controls, and individual agency policy for additional and specific marking guidelines.

(U) Limited Dissemination:

- (U) [List any limited dissemination control markings that may or are required to be applied to this category of CUI.]
  (U) [Reference CUI Category [marking sponsor]]
- (U) Examples of banner line with limited dissemination:
  - **(U) CUI//[ENTER CATEGORY ABBREVIATION]//[LIMITED DISSEMINATION]**
  - **(U) CONTROLLED//[ENTER CATEGORY ABBREVIATION]//[LIMITED DISSEMINATION]**
- U) Example of portion marking with limited dissemination:
  - (U) (CUI//[ENTER CATEGORY ABBREVIATION]//[LIMITED DISSEMINATION])
- (U) Reference 32 CFR 2002.20, ODNI Security Markings Program Marking Manual, Limited Dissemination Controls, and individual agency policy for additional and specific marking guidelines.

(U) Relationship(s) to other markings:

- **(U) [enter category] in Classified Documents:**
  - (U) [List any markings, statements, or warning statements that are required to be applied to documents containing this information that the underlying law, regulation, or government-wide policy requires.]
  - (U) [banner line]
  - (U) [portion marking]
- **(U) [enter category] in Unclassified Documents:**
  - (U) [List any markings, statements, or warning statements that are required to be applied to documents containing this information that the underlying law, regulation, or government-wide policy requires.]
  - (U) [banner line]
  - (U) [portion marking]
- (U) Reference 32 CFR 2002.20, ODNI Security Markings Program Marking Manual, Limited Dissemination Controls, and individual agency policy for additional and specific marking guidelines.

(U) Additional Marking Instructions:

- (U) [Specify where on documents any additional markings, informational statements, or warning statements (called for by the underlying law, regulation, or government-wide policy) are required to appear.]
- **(U) [enter category] in Classified Documents:**
  - (U) In Classified documents, since [enter category] is a basic category of CUI, the CUI control marking and category marking do not need to appear in the banner.
- **(U) [enter category] in Unclassified Documents:**
  - (U) In Unclassified documents, a banner marking is required to appear as bold capitalized text on the top portion of the document, centered when feasible. A banner marking **may** appear on the bottom portion of the document. If used, banners appearing on the bottom portion of the document are required to be identical to the banner used in the top portion.
  - (U) If multiple categories appear in banners or in portions, they are required to be alphabetized with specified categories appearing before any basic categories.
  - (U) In banners and portions, two forward slashes (//) are used to separate major elements and a single forward slash (/) is used to separate like elements. The CUI control marking is separated from any category markings by two forward slashes. Multiple categories listed in banners or portions are separated by a single forward slash.
- (U) Reference 32 CFR 2002.20, ODNI Security Markings Program Marking Manual, Limited Dissemination Controls, and individual agency policy for additional and specific marking guidelines.

(U) Precedence rules for banner line guidance:

- **(U) [enter category] in Classified Documents:**
  (U) The CUI control marking and any applicable category markings are required to appear **after** either the U.S. Classification, non-U.S. Classification, Joint Classification, Sensitive Compartmented Information (SCI) Control System, Special Access Program (SAP), Atomic Energy Act Information, or Foreign Government Information markings, and **before** any limited dissemination control markings.
- **(U) [enter category] in Unclassified Documents:**
  (U) The CUI control marking appears before all limited dissemination control markings. Category markings appear after the CUI control marking and before any limited dissemination control markings. Limited dissemination control markings appear after the CUI control marking and any applicable category markings.
- (U) Reference 32 CFR 2002.20, ODNI Security Markings Program Marking Manual, Limited Dissemination Controls, and individual agency policy for additional and specific marking guidelines.

(U) Commingling rule(s) within a portion:

- **(U) [enter category] in Classified Documents:**
  (U) To the greatest extent possible, use separate portions for [enter category]. The precedence rules for banner lines apply to portions. When portions are used, a “U” is

placed in parentheses to indicate that a portion contains Uncontrolled Unclassified Information (i.e., the portion does not contain CUI or Classified information).

- **(U) [enter category]in Unclassified Documents:**
  (U) Portion marking Unclassified documents is not required. If portion marking Unclassified documents, the following rules apply.
  (U) (1) Portion markings are placed at the beginning of the portion to which they apply and are required to be used throughout the entire document.
  (U) (2) The CUI control marking appears before all limited dissemination control markings.
  (U) (3) Category markings appear after the CUI control marking and before any limited dissemination control markings.
  (U) (4) Limited dissemination control markings appear after the CUI control marking and any applicable category markings.
  (U) (5) When portions are used, a "U" is placed in parentheses to indicate that a portion contains Uncontrolled Unclassified Information (i.e., the portion does not contain CUI).
- (U) Reference 32 CFR 2002.20, ODNI Security Markings Program Marking Manual, Limited Dissemination Controls, and individual agency policy for additional and specific marking guidelines.

(U) Notes:

- (U) [Add statement to contact the CUI program manager of the agency for more information if applicable.]
- (U) [Enter any release instructions applicable to this category of CUI. For example: [enter category] is withheld from public release until approved for release by the originator.]
- (U) The CUI control marking is mandatory for all CUI and may consist of either the word "CONTROLLED" or the acronym "CUI" (at the designator's discretion).
- (U) As an optional best practice, the CUI banner marking may be placed at the bottom of the document as well.
- (U) Reference 32 CFR 2002.20, ODNI Security Markings Program Marking Manual, Limited Dissemination Controls, and individual agency policy for additional and specific marking guidelines.

(U) Distribution statements, warnings, etc.:

- (U) [List any markings, informational statements, or warning statements that are required to be applied to documents containing this information that the underlying law, regulation, or government-wide policy requires.]
- (U) Reference 32 CFR 2002.20, ODNI Security Markings Program Marking Manual, Limited Dissemination Controls, and individual agency policy for additional and specific marking guidelines.

(U) Notional Example of a document page containing [enter category]:

CUI//[ENTER CATEGORY ABBREVIATION]//Limited Dissemination Control

(CUI//[ENTER CATEGORY ABBREVIATION]//Limited Dissemination Control) This is the portion mark for a portion that is UNCLASSIFIED and contains [enter UPPERCASE category] information with Limited Dissemination Control. This portion is marked for training purposes only.

CUI//[ENTER CATEGORY ABBREVIATION]//Limited Dissemination Control

(U) Notional Example of a document page containing [enter category] and Classified Information:

SECRET//CUI//[ENTER CATEGORY ABBREVIATION]//Limited Dissemination Control

(S) This is the portion mark for a portion that is classified SECRET. This portion is marked for training purposes only.

(CUI//[ENTER CATEGORY ABBREVIATION]//Limited Dissemination Control) This is the portion mark for a portion that is UNCLASSIFIED and contains [enter UPPERCASE category] information with Limited Dissemination Control. This portion is marked for training purposes only.

SECRET//CUI//[ENTER CATEGORY ABBREVIATION]//Limited Dissemination Control