

CUI Notice 2018-04: Provisional Categories

November 16, 2018

Purpose

1. This notice provides agencies with guidance for instances when they identify or discover that a type of information that they would like to protect does not currently qualify as Controlled Unclassified Information (CUI) because it lacks a suitable law, regulation, or Government-wide policy (LRGWP) that would permit its protection under the CUI Program. This notice describes the process for receiving a provisional approval from the CUI Executive Agent (EA) that would allow for the protection of the information while the agency or applicable regulatory authority issues a suitable authority for the information type(s).
2. This notice rescinds Controlled Unclassified Information (CUI) Notice 2013-01: Provisional Approval of Proposed CUI Categories and Subcategories.

Authorities

1. Executive Order 13556, "Controlled Unclassified Information," (the Order) November 10, 2010; and
2. 32 CFR Part 2002, "Controlled Unclassified Information," (the Directive) September 14, 2016.

Protection of Provisional Categories

1. Approved provisional categories of CUI shall be protected in accordance with the guidelines relating to the information as found on the CUI Registry.
2. Upon submission of the request to the CUI EA, the information may be:
 - a. **Marked** as CUI using the CUI Control Marking (i.e., CUI) in accordance with the marking guidance found on the CUI Registry;
 - b. **Protected** in accordance with the Directive; and
 - c. **Disseminated** in accordance with any Limited Dissemination Control markings applied to the information. The CUI Registry lists all Limited Dissemination Control markings that can be applied to CUI.

Approval Process

1. When an agency determines that a type of information qualifies as CUI but the inclusion of the information in the CUI Registry is not supported by an existing LRGWP, it may submit a proposal to the CUI EA to approve the information as a provisional category.
2. The sponsoring agency's Senior Agency Official for CUI must submit, on agency letterhead, a written request to the CUI EA that describes:

- a. The information;
 - b. The need to protect the information within the CUI Program;
 - c. The agency's status in protecting the information (see the Protection of Provisional Categories section of this notice);
 - d. A proposed CUI marking and description;
 - e. Any safeguarding measures that exceed the measures outlined for CUI Basic that are necessary to protect the information from unauthorized disclosure to include, but not limited to, the physical safeguarding requirements, the electronic or technical safeguarding requirements, the marking requirements, the destruction requirements, the decontrol requirements, and the dissemination requirements;
 - f. The agency's commitment to sponsor or issue a LRGWP;
 - g. The anticipated date or timeframe for the release of the LRGWP related to the information; and
 - h. Any supporting authorities that help establish the need or justification for the proposed LRGWP, any drafts of the proposed authority the agency plans to develop, information on any development steps already undertaken and where the agency is in the development process for the proposed authority, and any other relevant information.
3. Upon receipt of the request and within 30 days, the CUI EA must acknowledge receipt on agency letterhead.
 4. Upon receipt of the request and within 60 days, the CUI EA must consult the CUI Advisory Council, the CUI Registry Committee, and the Office of Management and Budget (OMB) regarding the proposed provisional category.
 5. The CUI EA must render a decision, on agency letterhead, to the sponsoring agency within 90 days of receipt of the request.
 6. If the provisional category is approved, the sponsoring agency must provide quarterly updates to the CUI EA on the status of the process for developing and issuing a LRGWP.
 - a. When the LRGWP is in final form the agency must immediately notify the CUI EA.
 7. Information types granted provisional category status must be reflected on the CUI Registry as soon as possible and no later than 30 days from the date the CUI EA approved the provisional category.
 - a. The CUI EA must update the CUI Registry with the following:
 - i. The sponsoring agency's original request;
 - ii. The CUI EA's approval;
 - iii. The information's CUI Category name and description;
 - iv. The CUI marking; and
 - v. All safeguarding measures that exceed those for CUI Basic.

- b. Once the applicable LRGWP is in final form, the CUI EA must update the CUI Registry.
8. The provisional approval will remain in effect until a suitable LRGWP is issued for the information.
9. The CUI EA may rescind the provisional status of a CUI Category if the sponsoring agency has failed to initiate the process to establish a LRGWP.

Evaluation by the CUI Executive Agent

1. When deciding whether to grant a provisional approval, the CUI EA considers factors such as the consistency of the proposed category with the Order, a legitimate and justified need for the category which the agency is able to demonstrate, and the current taxonomy of the Registry. The CUI EA also considers the agency's commitment to begin the authority development process within six months, zealously pursue it, and complete the process within a reasonable period of time.
2. The CUI EA grants approvals based on:
 - a. Suitability of the proposed authority and the category– including consistency with the Order and the current taxonomy of the Registry;
 - b. In the case of a Government-wide policy, the agency proposing the category must be authorized to issue such a policy applicable to the executive branch; and
 - c. In the case of a Federal Regulation, the agency proposing the category must have the statutory authority to issue such a regulation.

Appeals

1. If the CUI EA denies the request to establish a provisional category or rescinds a provisional approval, agencies may appeal the CUI EA's decision through the Director of OMB to the President for resolution.

Reporting by the CUI Executive Agent

1. In its Annual Report to the President, the CUI EA will report on the status of all provisional categories and the efforts by agencies to sponsor, issue, or coordinate a LRGWP.

Please direct any questions regarding this notice to: cui@nara.gov.



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Director