

ISOO Notice 2026-08: Controlled Unclassified Information (CUI) Program Revised Requirements for Waivers

September 2, 2026

Purpose

1. This Notice addresses waivers as an element of implementation requirements for agency Controlled Unclassified Information (CUI) programs, consistent with Executive Order (E.O.) 13556, “Controlled Unclassified Information,” and 32 CFR 2002.
2. This notice furthers alignment of the CUI program with E.O. 14243, *Stopping Waste, Fraud, and Abuse by Eliminating Information Silos*.

Background

3. The Director of the Information Security Oversight Office (ISOO) exercises Executive Agent (EA) responsibilities for CUI Program implementation in accordance with the authorities defined in E.O. 13556 and further articulated via 32 CFR 2002.
4. Full implementation of the CUI Program is essential to: ensure the protection of sensitive information, facilitate appropriate information sharing for critical government functions including artificial intelligence (AI) development, maintain compliance with Administration priorities, and sustain public trust in government operations.
5. As a component of this implementation, 32 CFR 2002.38 provides for agency-level waivers of CUI Program provisions or requirements to address specific, narrowly defined circumstances as outlined under that section.
6. This CUI Notice rescinds and replaces:

CUI Notice 2020-07: Using Alternate Designation Indicators (ADI) with CUI

CUI Notice 2020-06: Limited Marking Waiver Best Practices to Alert Users of CUI

CUI Notice 2020-05: Using Exigent Circumstances Waivers

CUI Memo 2020-03-30: Applying Exigent Circumstances Waiver to CUI
Safeguarding Requirements While Teleworking in Response to the COVID-19
Pandemic

CUI Notice: 2020-02: Alternate Marking Methods

Guidance

7. There are three types of waivers allowed in CUI Program implementation, pursuant to 32 CFR 2002.38, and all waivers must meet the requirements for one of the three authorized types: limited CUI marking waivers within the agency; limited legacy material marking waivers within the agency; or exigent circumstances waivers. The first two waivers are marking-specific waivers and apply only while the CUI subject to the waiver remains within agency control. For all waivers, agencies must adhere to the requirements listed in 32 CFR 2002.38(d) and (e). As part of the annual CUI reporting cycle, ISOO will ensure that CUI Senior Agency Officials (SAOs) are meeting their obligations in accordance with these sections, and that the use of waivers adheres to E.O. 13556 and 32 CFR 2002.

8. Limited CUI Marking Waivers within the Agency (32 CFR 2002.38(a)).

When an agency designates information as CUI, but the agency's appointed CUI SAO determines that marking it as CUI is excessively burdensome, the agency's appointed CUI SAO may approve waivers of all or some of the CUI marking requirements while that CUI remains within agency control.

9. Limited legacy material marking waives within the Agency (32 CFR 2002.38(b)).

In situations in which an agency has a substantial amount of stored information with legacy markings, and removing legacy markings and designating or re-marking it as CUI would be excessively burdensome as determined by an agency's CUI SAO, the agency's CUI SAO may approve a waiver of these requirements for some or all of that information while it remains under agency control.

When an authorized holder re-uses any legacy information or information derived from legacy documents that qualifies as CUI, they must remove or redact legacy markings and designate or re-mark the information as CUI, even if the information is under a legacy material marking waiver prior to its re-use. Re-use is defined in 32 CFR 2002.4(pp).

10. Exigent circumstances waivers (32 CFR 2002.38(c)).

In exigent circumstances, the agency head or the CUI SAO may temporarily waive the provisions and requirements established in this part or the CUI Registry for any CUI while it is within the agency's possession or control, unless specifically prohibited by applicable laws, regulations, or Government-wide policies.

Unlike marking waivers, exigent circumstances waivers may apply when an agency shares the information with other agencies or non-Federal entities; however, in such cases, the authorized holders must make recipients aware of the CUI status of any disseminated information. When an agency properly invokes an exigent circumstances waiver to forgo CUI marking requirements, but still wants to share the affected CUI externally, the agency must follow the second part of 32 CFR 2002.38, sub-paragraph

(c)(2). This means agencies must still make external recipients of CUI aware of the information's status as a particular type of CUI, even though an agency is not properly marking it at that time. And, in accordance with subparagraph (d)(5), when the circumstances requiring the waiver end, the agency must re-institute CUI requirements for the covered information without delay (although the agency need not redistribute the CUI to external recipients once they mark it).

Unlike the two waiver types in sections 8 and 9 of this Notice, because exigent circumstances waivers may continue to apply when the agency shares the CUI outside the agency, the threshold for issuing them must be higher. It is not a sufficient justification for an agency to deem a programmatic requirement excessively burdensome, but rather the circumstances justifying an exigent circumstances waiver must truly necessitate it, which must be only in extremely rare cases.

Exigent circumstances waivers may only be granted if the agency head or CUI SAO determines that the waiver is necessary to prevent harm to the agency or its personnel or to avoid impeding efficient information-sharing among agencies or non-Federal entities in times of emergencies or crises. Such situations may include, but are not limited to, broad events such as natural disasters, national emergencies, and pandemics, and agency-specific situations such as a fire that destroys a facility, a significant system outage, or a critical need to immediately share information.

11. The following requirements must be met for all waivers:

- (a) The CUI SAO must still ensure that the agency appropriately safeguards and disseminates the CUI.
- (b) The CUI SAO must formally document each individual waiver, and detail in each waiver the alternate protection methods the agency will employ to ensure protection of CUI subject to the waiver.
- (c) All marking waivers apply to CUI subject to the waiver only while that agency continues to possess that CUI. No marking waiver may accompany CUI when an authorized holder disseminates it outside that agency.
- (d) Authorized holders must uniformly and conspicuously apply CUI markings to all CUI prior to disseminating it outside the agency unless otherwise specifically permitted by the CUI EA.
- (e) The CUI SAO must notify authorized recipients, and the public, of any CUI waivers.
- (f) The CUI SAO must reinstitute the requirements for all CUI subject to the waiver without delay when the circumstances requiring the waiver end, or if, upon review, a waiver is determined to be inconsistent with 32 CFR 2002.38, subject to procedures set forth in Subpart 13 of this Notice.
- (g) The CUI SAO must retain a record of each waiver, include a description of all current waivers and waivers issued during the preceding year in their annual report to the CUI EA, along with the rationale for each waiver and the alternate steps the agency takes to ensure sufficient protection of CUI.

12. The Information Security Oversight Office (ISOO), as the CUI EA, is responsible for reviewing and approving agency policies that implement 32 CFR 2002 (see 32 CFR 2002.8(a)(4)) as well as reviewing, evaluating, and overseeing agencies' actions to implement the CUI program to ensure compliance (see 32 CFR 2002.8(a)(5)). Waivers of CUI requirements issued under 32 CFR 2002.38 constitute implementing actions under the regulation and fall within ISOO's review and approval authority under 32 CFR 2002.8(a)(4).
13. Agencies shall submit all three types of CUI waivers to ISOO for review as part of the CUI annual reporting cycle to ensure that the use of such waivers is consistent with E.O. 13556, 32 CFR 2002, and all required directives to comply with the CUI program. Additionally, agencies shall submit waivers to ISOO for review not later than 30 days after the onset of the circumstances necessitating the waiver arise. ISOO will inform agencies of any waivers that are determined to not be in compliance, and provide agencies with an opportunity to amend, revise, or rescind such waivers within 60 days following notification by ISOO. ISOO shall include reporting on agency waivers in its annual report to the President and maintain a repository of each agency's waivers on its public-facing website.

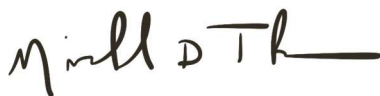
Authorities

E.O. 13556, Sec. 4(b), Controlled Unclassified Information

32 Code of Federal Regulations (CFR) 2002

This guidance pertains to Federal agencies and is binding on agency actions as authorized under law and similar authority. This guidance does not apply to, and is not meant to bind, the public, except as authorized by law or regulation or as incorporated into a contract.

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

A handwritten signature in black ink, appearing to read "Michael D. Thomas", with a stylized flourish at the end.

MICHAEL D. THOMAS
Director