

U.S. DEPARTMENT OF AGRICULTURE  
WASHINGTON, D.C. 20250

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| <b>DEPARTMENTAL REGULATION</b>                                | NUMBER:<br>DR 3440-003                 |
| SUBJECT: Controlled Unclassified Information (CUI)<br>Program | DATE:<br>September 13, 2021            |
| OPI: Office of Homeland Security                              | EXPIRATION DATE:<br>September 13, 2026 |

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## 1. PURPOSE

This Departmental Regulation (DR) establishes the United States Department of Agriculture (USDA) program office for Controlled Unclassified Information (CUI) and begins program implementation.

## 2. SPECIAL INSTRUCTIONS/CANCELLATIONS

- a. This policy is effective immediately and remains in effect until superseded or expiration.
- b. All USDA Mission Areas, agencies, and staff offices must align their policies and procedures with this DR within 6 months of the publication date.
- c. The term “USDA employees” means USDA employees, contractors, affiliates, interns, fellows, and volunteers who work for USDA.

### 3. SCOPE

- a. This DR applies to all Mission Areas, agencies, staff offices, and USDA employees;
- b. An individual or organization generally does not need to demonstrate a need-to-know to access CUI, unless required by a law, regulation, or Governmentwide policy, but must have a lawful governmental purpose for such access;
- c. The Office of the Inspector General (OIG) to the extent that the OIG determines the provisions are consistent with, and do not infringe upon, OIG's statutory independence and authorities under the [\*Inspector General Act of 1978\*](#), Public Law (P.L.) 95-452, amended, and do not conflict with other OIG policies or the OIG mission;
- d. The CUI Program covers any information the Federal Government creates or possesses, or that an entity creates or possesses for or on behalf of the Government, that is required to be protected under law, regulation, or Governmentwide policy. This information does not include classified information or information a non-executive branch 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 a Federal agency. Specific details about the types of information considered to be CUI can be found in National Archives and Records Administration (NARA) [\*Controlled Unclassified Information, Final Rule\*](#) ("Final Rule"), 32 CFR Part 2002, as amended.

### 4. BACKGROUND

- a. [\*Executive Order \(E.O.\) 13556, Controlled Unclassified Information\*](#), establishes an open and uniform program for managing information that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies, excluding information that is classified under E.O. 13526 of December 29, 2009, or the *Atomic Energy Act of 1946*, [\*42 United States Code \(U.S.C.\) § 2011 et seq.\*](#), as amended (hereinafter described as Controlled Unclassified Information (CUI));
- b. On September 14, 2016 NARA issued a [\*Final Rule\*](#) amending 32 CFR 2002 to establish a uniform policy for Federal agencies on designating, safeguarding, disseminating, marking, decontrolling, and disposing of CUI, self-inspection and oversight requirements, and other facets of the program;
- c. In the past, Federal agencies employed ad hoc, agency-specific policies, procedures, and markings to safeguard and control this information and there was no Governmentwide direction on what information should or should not be protected. E.O. 13556 established a uniform program for managing CUI. Under the CUI Program, only the categories and subcategories of information listed in the NARA [\*CUI Registry\*](#) will be marked and

handled as CUI;

- d. CUI is unclassified information that requires safeguarding and dissemination controls pursuant to laws, regulations, or Governmentwide policy, as listed in the NARA [CUI Registry](#);
- e. The CUI Executive Agent (EA) at NARA, through the Information Security Oversight Office (ISOO), published and released [32 CFR Part 2002](#) which provides implementing requirements for E.O. 13556. Designed as a response to the information sharing challenges from inconsistent definitions and marking requirements applied to CUI, 32 CFR Part 2002 standardized the definition of CUI and codified the identification, sharing, safeguarding, marking, storage, distribution, transmission, decontrol, destruction, training, monitoring, and reporting requirements across the Executive Branch of Government;
- f. Per 32 CFR Part 2002, CUI requires safeguarding or dissemination controls identified in a laws, regulations, or Governmentwide policy for information that does not meet the requirements for classification in accordance with EO 13526.

## 5. POLICY

- a. This DR establishes USDA's CUI Program, the overarching policy, and the associated roles and responsibilities.
- b. The forthcoming USDA DR 3440-xxx, *Controlled Unclassified Information Handling* policy, will establish USDA policy for the handling, marking, protecting, sharing, destroying, and decontrolling of CUI per NARA requirements.
- c. The use of marking designations such as For Official Use Only (FOUO), Sensitive Security Information (SSI), and Sensitive But Unclassified (SBU) will be discontinued as noted in Section 4c. CUI markings must be used to safeguard all protected information once the CUI Program has been implemented. Appropriate CUI markings consistent with the NARA requirements must be used for all protected information as of December 31, 2021.
- d. This DR is consistent with the [Departmental Manual \(DM\) 3510-001](#), *Physical Security Standards for Information Technology (IT) Restricted Space* and, [DR 3515-002](#), *Privacy Policy and Compliance for Personally Identifiable Information (PII)*. Any perceived conflicts with these policies should be addressed to the USDA CUI Program Manager (PM) who will coordinate with the USDA Chief Information Officer (CIO) to resolve.

## 6. ROLES AND RESPONSIBILITIES

The responsibilities of CUI-specific roles established to implement the CUI Program under E.O. 13556 are provided below:

- a. The NARA CUI Executive Agent (EA), through ISOO:
  - (1) [E.O. 13556](#) designates NARA as the CUI EA to implement the CUI Program, oversee Federal agency actions, and ensure compliance with E.O. 13556;
  - (2) Performs the duties assigned to NARA as the CUI EA; and
  - (3) The CUI Advisory Council consists of representatives from each executive branch agency who work with the EA on CUI-related matters.
- b. The Director, USDA Office of Homeland Security (OHS) will:
  - (1) Administer and provide executive leadership for the USDA CUI Program per [7 CFR § 2.95\(b\)\(10\)](#); and
  - (2) Serve as the USDA Senior Agency Official (SAO) for CUI.
- c. The SAO for CUI will:
  - (1) Be appointed at the Senior Executive Service level or equivalent;
  - (2) Establish, administer, and oversee the CUI Program in USDA;
  - (3) Serve as the USDA primary liaison and representative to the NARA CUI Advisory Council;
  - (4) Ensure USDA develops CUI implementing policies and plans;
  - (5) Implement a CUI education and training program and ensure USDA employees receive appropriate CUI-awareness training;
  - (6) Provide updates on CUI implementation efforts to the NARA CUI EA;
  - (7) Review and render decisions for Mission Area, agency, and staff office policy waiver requests; (see Section 7);
  - (8) Maintain an electronic file of approved policy waivers;
  - (9) Notify authorized recipients, the NARA CUI EA, and the public of any waivers granted by USDA, including a description of all waivers in the annual report to the CUI EA;

- (10) Develop and implement the USDA's CUI self-inspection program or internal review;
  - (11) Establish a process to accept and manage challenges to CUI status (including improper or absence of marking) in accordance with existing processes based on laws, regulations, and Governmentwide policies;
  - (12) Establish processes and criteria for investigating and reporting improper handling of CUI;
  - (13) Ensure USDA compliance with laws, regulations, and USDA policies in collaboration with the USDA CIO and Senior Agency Official for Privacy (SAOP);
  - (14) Establish processes for handling CUI decontrol requests;
  - (15) Appoint and oversee the activities and responsibilities of the USDA CUI PM; and
  - (16) Implement and execute the necessary internal controls to proactively monitor, measure, audit, report, and enforce compliance with the provisions of DR 3440-003.
- d. The USDA CUI PM will:
- (1) Report to the SAO for CUI respective to program management functions;
  - (2) Manage all aspects of the CUI Program, supported by the CUI Working Group;
  - (3) Manage the day-to-day operations of USDA CUI Program as directed by the SAO for CUI;
  - (4) Coordinate CUI policy development and updates;
  - (5) Carry out the certain responsibilities of the SAO that are delegated to the USDA CUI PM;
  - (6) Interact directly and officially with the NARA CUI EA on matters including submission of required reports;
  - (7) Develop CUI-awareness training materials to educate USDA employees on policies and requirements;
  - (8) Issue guidance addressing handling of legacy markings; and
  - (9) Supply cover sheets.

- e. Mission Area, Agency, and Staff Office Administrators will:

Appoint Mission Area, agency, or staff office CUI PMs. The appointments should be in writing with a copy forwarded to the USDA CUI PM at [cui@usda.gov](mailto:cui@usda.gov).

- f. Mission Area, Agency, and Staff Office CUI PMs will:

- (1) Complete all required CUI-awareness training;
- (2) Conduct oversight actions to ensure compliance within areas of responsibility and report findings annually to the USDA CUI PM;
- (3) Serve as Mission Area, agency, or staff office CUI Subject Matter Experts (SMEs), responding to most organizational inquiries and consulting with the USDA CUI PM on questions beyond expertise;
- (4) Ensure all personnel within organizations complete required CUI-awareness training and report training progress to the USDA CUI PM;
- (5) Conduct annual organizational CUI Program inspections in accordance with guidance provided by the USDA CUI PM to reflect the progress of implementation and report results to the USDA CUI PM;
- (6) Provide input from respective organizations for all other reporting requirements to the USDA CUI PM to enable a USDA response to NARA;
- (7) Report instances of potential CUI violations or infractions to the USDA CUI PM and keep track of violations for reporting purposes;
- (8) Confirm statuses as a CUI Point of Contact (POC) with the USDA CUI PM on a semi-annual basis (by the dates designated by the USDA CUI PM) and provide notification within five business days if statuses change;
- (9) Include the applicable security language and standards in their requirements documents (Statement of Work, Performance Work Statements, etc.)
- (10) Identify the types of CUI agreements;
- (11) Include the appropriate CUI requirements of this policy in all agreements; and
- (12) Ensure contractors receive training on CUI within 30 days of contract award or prior to accessing CUI, whichever occurs first.

- g. The USDA Chief Information Officer (CIO) will:

- (1) Identify USDA systems that contain CUI;

- (2) Ensuring that all Federal information technology systems that are used to process CUI are categorized at no less than the Federal baseline of moderate confidentiality impact level per National Institute of Standards and Technology (NIST), Federal Information Processing Standards Publication [\(FIPS PUB\) 199](#), *Standards for Security Categorization of Federal Information and Information Systems*;
- (3) Coordinate with the SAO for CUI and Departmental Chief Information Security Officer (CISO) on IT system security to comply with CUI requirements;
- (4) Ensure the Department applies appropriate security requirements and controls from FIPS PUB 199, [FIPS PUB 200](#), *Minimum Security Requirements for Federal Information and Information Systems*, and NIST Special Publication [\(SP\) 800-53, Revision 5](#), *Security and Privacy Controls for Information Systems and Organizations*, that process, store, or transmit CUI;
- (5) Ensure the Department applies NIST [SP 800-171 Revision 2](#), *Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations* when establishing security requirements to protect CUI's confidentiality on non-Federal information systems unless the information involved prescribes specific safeguarding requirements or unless the agreement establishes requirements to protect CUI at higher than moderate confidentiality;
- (6) Issue guidance regarding acceptable methods of protecting CUI within information technology systems and transmitting CUI from USDA email systems;
- (7) Issue guidance regarding acceptable methods of protecting CUI on public-facing websites and in cloud-based systems;
- (8) Ensure information systems that contain CUI have the appropriate CUI markings per 32 CFR Part 2002.20 and per the NARA [Marking Controlled Unclassified Information](#) handbook; and
- (9) Serve as the SAOP.

h. The SAOP will:

- (1) Advise the CUI SAO and USDA CUI PM on all policies, procedures, laws, regulations, and guidance relating to the *Privacy Act of 1974*, [5 U.S.C. § 552a](#), and Personally Identifiable Information (PII) and coordinate with the CUI SAO and USDA CUI PM to ensure consistency with the CUI framework and requirement; and
- (2) Ensure USDA's compliance with privacy laws, regulations, and policies applicable to CUI and DR 3440-003.

- i. The Director, Office of Contracting and Procurement (OCP) will:
  - (1) Include the applicable security clauses and standards in USDA contracts;
  - (2) Identify the types of CUI agreements;
  - (3) Include the appropriate CUI requirements of this DR in all USDA agreements; and
  - (4) Ensure contractors receive CUI-awareness training within 30 days of contract award or prior to accessing CUI, whichever occurs first.
- j. The Departmental Freedom of Information Act (FOIA) Officer, within the Office of the General Counsel (OGC), will:
  - (1) Advise the CUI SAO and USDA CUI PM on all policies, procedures, laws, regulations, and guidance pertaining to the disclosure of information under FOIA; and
  - (2) Coordinate with the CUI SAO and USDA CUI PM to resolve any conflicts with the CUI framework and requirements.
- k. The CUI Working Group will:
  - (1) Be chaired by the USDA CUI PM;
  - (2) Include the USDA CUI PM and representatives from Mission Areas, agencies, staff offices, and USDA policy offices (i.e., OCIO, the USDA Chief Privacy Officer, the OGC, the USDA Chief FOIA Officer, the USDA Records Officer, Office of Contracting and Procurement (OCP), and the Office of Human Resource Management (OHRM));
  - (3) Collaborate to research topics, coordinate plans, and provide recommendations in support of the CUI SAO; and
  - (4) Meet regularly and follow the directions outlined in the USDA CUI Working Group Charter.
- l. USDA employees will:
  - (1) Safeguard CUI at all times in a manner that minimizes risk of unauthorized disclosure while allowing timely access by authorized individuals; and
  - (2) Complete CUI-awareness training as directed.

## 7. POLICY EXCEPTIONS

- a. All USDA employees are required to conform to this DR. If a specific policy requirement cannot be met as explicitly stated, a waiver request may be submitted to the OHS Director, serving as the SAO for CUI, for review and determination. Submit the waiver request to [cui@usda.gov](mailto:cui@usda.gov). The waiver request will explain the reason for the request, identify compensating controls and actions that meet the intent of the policy, and identify how the compensating controls and actions provide a similar or greater level of defense or compliance compared to the policy requirement.
- b. Waivers to requirements of DR 3440-003 that have been granted approval by the SAO for SAO and that are associated with a control identified in NIST SP 800-53 Revision 5, will be recorded and tracked as a Plan of Action and Milestones (POA&M) item in the USDA *Federal Information Security Modernization Act of 2014* (FISMA), 44 U.S.C. §§ 3551 *et seq.*, data management and reporting tool.
- c. Waivers will expire at the end of the Federal Fiscal Year (FY) or 6 months from the date of approval, whichever is later. Unless specified otherwise, Mission Areas, agencies, and staff offices will review and renew approved policy waivers every FY.

## 8. COMPLIANCE

[DR 4070-735-001](#), *Employee Responsibilities and Conduct*, Section 16, sets forth USDA developed policies, procedures, and standards on employee responsibilities and conduct regarding the use of computers and telecommunications equipment. In addition, DR-4070 735 001, Section 21, *Disciplinary or Adverse Action*, states:

- a. A violation of any of the responsibilities and conduct standards contained in this DR may be cause for disciplinary or adverse action; and
- b. Disciplinary or adverse action will be affected in accordance with applicable law and regulations.

Such disciplinary or adverse action will be consistent with applicable laws and regulations such as the Office of Personnel Management regulations, Office of Management and Budget regulations, and *Standards of Ethical Conduct for Federal Employees of the Executive Branch*, [5 CFR Part 2635](#).

## 9. INQUIRIES

Questions and comments concerning the requirements of this DR should be directed to the SAO for CUI and the USDA CUI PM at [cui@USDA.gov](mailto:cui@USDA.gov).

-END-

## APPENDIX A

### ACRONYMS AND ABBREVIATIONS

|          |                                                      |
|----------|------------------------------------------------------|
| CFR      | Code of Federal Regulations                          |
| CIO      | Chief Information Officer                            |
| CISO     | Chief Information Security Officer                   |
| CUI      | Controlled Unclassified Information                  |
| DM       | Departmental Manual                                  |
| DR       | Departmental Regulation                              |
| EA       | Executive Agent                                      |
| E.O.     | Executive Order                                      |
| FIPS PUB | Federal Information Processing Standards Publication |
| FISMA    | Federal Information Security Modernization Act       |
| FOIA     | Freedom of Information Act                           |
| FOUO     | For Official Use Only                                |
| ISOO     | Information Security Oversight Office                |
| IT       | Information Technology                               |
| NARA     | National Archives and Records Administration         |
| NIST     | National Institute of Standards and Technology       |
| OCIO     | Office of the Chief of Information Officer           |
| OCF      | Office of Contracting and Procurement                |
| OGC      | Office of the General Counsel                        |
| OHRM     | Office of Human Resource Management                  |
| OHS      | Office of Homeland Security                          |
| OIG      | Office of the Inspector General                      |
| PII      | Personally Identifiable Information                  |
| P.L.     | Public Law                                           |
| PM       | Program Manager                                      |
| POA&M    | Plan of Action and Milestones                        |
| POC      | Point of Contact                                     |
| SAO      | Senior Agency Official                               |
| SAOP     | Senior Agency Official for Privacy                   |
| SME      | Subject Matter Expert                                |
| SP       | Special Publication                                  |
| SBU      | Sensitive But Unclassified                           |
| SSI      | Sensitive Security Information                       |
| U.S.C.   | United States Code                                   |
| USDA     | United States Department of Agriculture              |

## APPENDIX B

### DEFINITIONS

Agency. Organization units of the Department, other than staff offices as defined below, whose heads reports to officials within the Office of the Secretary, Deputy Secretary, Under Secretaries, Assistant Secretaries, and Assistant to the Secretary. (Source: USDA, [DR 0100-001](#), *Departmental Directives System*)

Controlled Unclassified Information (CUI). Unclassified information that requires safeguarding and dissemination controls pursuant to law, regulation, or Governmentwide policy, as listed in the CUI Registry NARA.

Freedom of Information Act (FOIA). The *Freedom of Information Act* (FOIA) is a Federal freedom of information law that requires the full or partial disclosure of previously unrelased information and documents controlled by the U.S. Government upon request. The act defines Federal agency records subject to disclosure.

Mission Area. A group of agencies with related functions that report to the same Under or Assistant Secretary. Research, Education, and Economics (REE) is an example of a Mission Area. (Source: DR 0100-001)

Program Manager (PM). The Program Manager (PM) is the person authorized to lead the team or teams responsible for achieving program objectives.

Staff Office. Departmental administrative offices whose heads report to officials within the Office of the Secretary. (Source: DR 0100-001)

## APPENDIX C

### AUTHORITIES AND REFERENCES

[5 CFR Part 2635](#), *Standards of Ethical Conduct for Employees of the Executive Branch*

[7 CFR § 2.95](#), *Director, Office of Homeland Security*

[32 CFR Part 2002](#), *Controlled Unclassified Information (CUI)*, September 14, 2016

*Atomic Energy Act of 1946*, [42 United States Code \(U.S.C.\) § 2011 et seq.](#), as amended

[E.O. 13526](#), *Classified National Security Information*, December 29, 2009

[E.O. 13556](#), *Controlled Unclassified Information*, November 4, 2010

*Federal Information Security Modernization Act of 2014 (FISMA)*, [44 U.S.C. §§ 3551 et seq.](#), December 18, 2014

*Inspector General Act of 1978*, [P.L. 95-452](#), October 12, 1978

National Archives and Records Administration (NARA), [Controlled Unclassified Information \(CUI\)](#) website

NARA, [Controlled Unclassified Information, Final Rule](#), September 14, 2016

NARA, [Marking Controlled Unclassified Information](#), Version 1.1, December 6, 2016

National Institute of Standards and Technology (NIST), [FIPS PUB 199](#), *Standards for Security Categorization of Federal Information and Information Systems*, February 1, 2004

NIST, [FIPS PUB 200](#), *Minimum Security Requirements for Federal Information and Information Systems*, March 1, 2006

NIST, [SP 800-53, Revision 5](#), *Security and Privacy Controls for Information Systems and Organizations*, September 2020, includes updates as of December 10, 2020

NIST, [SP 800-88, Revision 1](#), *Guidelines for Media Sanitization*, December 2014

NIST, [SP 800-171 Revision 2](#), *Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations*, February 2020

*Privacy Act of 1974*, [5 U.S.C. § 552a](#), December 31, 1974, as amended

USDA, CUI Working Group, Charter

USDA, [DM 3510-001](#), *Physical Security Standards for Information Technology (IT) Restricted Space*, August 19, 2004

USDA, [DR 0100-001](#), *Departmental Directives System*, January 4, 2018

USDA, [DR 3515-002](#), *Privacy Policy and Compliance for Personally Identifiable Information (PII)*, October 30, 2020

USDA, DR 3440-xxx, *Controlled Unclassified Information Handling*, forthcoming

USDA, [DR 3445-001](#), *Media Protection*, October 30, 2019

USDA, [DR 3450-002](#), *Freedom of Information Act Implementing Regulations*, February 7, 2003

USDA, [DR 3565-003](#), *Plan of Action and Milestones Policy*, September 25, 2013

USDA, DR [4070-735-001](#), *Employee Responsibilities and Conduct*, October 4, 2007