

FTC CUI Legacy Marking Waiver

Pursuant to [32 C.F.R. 2002.20](#), all federal agencies are required to uniformly and conspicuously apply controlled unclassified information (CUI) markings to all documents and information containing CUI. Per the agency's Controlled Unclassified Information policy (https://ftcintranet.ftc.gov/cfportal/adminmanual/page.cfm?page_id=18033#9), staff shall be responsible for properly protecting, marking and otherwise handling CUI in accordance with all applicable FTC CUI policies, procedures, and guidance.

However, “[w]hen an agency designates information as CUI but determines that marking it as CUI is excessively burdensome, an agency’s CUI Senior Agency Official may approve waivers of all or some of the CUI marking requirements while that CUI remains within agency control.” 32 CFR 2002.38.

Based on agency appropriations and budget allocations, weighed against the scope and extent of the FTC’s digital and physical information assets, the FTC does not have the financial or staff resources to implement and maintain a comprehensive program to mark all of its existing or “legacy” documents or information, which would be excessively burdensome at this time. Therefore, the marking requirements set forth in the CUI Rule, 32 CFR part 2002, as reflected in the NARA CUI Marking Handbook, are waived at this time for existing or legacy FTC information including, but not limited to, information stored on the FTC shared drives or in offsite storage. . If the information is transmitted outside of FTC control, however, authorized holders shall comply with applicable CUI marking requirements. In the meantime, the FTC will continue to work towards applying informational banners to any agency-owned and operated systems that store or process CUI, to help ensure that newly generated or compiled CUI is marked and maintained in accordance with applicable CUI Rule requirements.

Legacy information within the agency’s control remains protected by the information security policy in the FTC Administrative Manual. See https://ftcintranet.ftc.gov/cfportal/adminmanual/page.cfm?page_id=108#II. Accordingly, FTC authorized holders shall continue to apply and use these existing information security protections as long as the information remains their control. Protections include secured physical and electronic storage locations, i.e., secured facilities, FTC internal network, locked drawers and file cabinets, authorized destruction methods, etc. In addition, legacy markings (e.g., “nonpublic,” “confidential,” “in camera”) continue to identify legacy materials that require CUI protection. Furthermore, this waiver applies only to the mandatory implementation and maintenance of a comprehensive CUI marking program for the agency’s legacy materials, and does not prohibit the marking of such materials as CUI in lieu of legacy markings on a case-by-case basis, as appropriate and feasible.

This waiver will be reviewed on a bi-annual basis for a determination of continued applicability. If circumstances substantiate the waiver no longer applies, it will be rescinded immediately.

Any questions concerning this waiver or agency CUI marking requirements should be directed to either CUI Senior Agency Official, April Tabor, at 202.326.3310 or the CUI Program Manager, Yvonne Wilson, at 202.326.2263.