

basis for making licensing or permitting determinations, or during regulatory proceedings.

(Pub. L. 107-296, title II, §212, Nov. 25, 2002, 116 Stat. 2150.)

SHORT TITLE

For short title of this part as the “Critical Infrastructure Information Act of 2002”, see section 211 of Pub. L. 107-296, set out as a note under section 101 of this title.

**§ 132. Designation of critical infrastructure protection program**

A critical infrastructure protection program may be designated as such by one of the following:

- (1) The President.
- (2) The Secretary of Homeland Security.

(Pub. L. 107-296, title II, §213, Nov. 25, 2002, 116 Stat. 2152.)

**§ 133. Protection of voluntarily shared critical infrastructure information**

**(a) Protection**

**(1) In general**

Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to a covered Federal agency for use by that agency regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, when accompanied by an express statement specified in paragraph (2)—

(A) shall be exempt from disclosure under section 552 of title 5 (commonly referred to as the Freedom of Information Act);

(B) shall not be subject to any agency rules or judicial doctrine regarding ex parte communications with a decision making official;

(C) shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith;

(D) shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of this part, except—

- (i) in furtherance of an investigation or the prosecution of a criminal act; or
- (ii) when disclosure of the information would be—

(I) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or

(II) to the Comptroller General, or any authorized representative of the Comp-

troller General, in the course of the performance of the duties of the Government Accountability Office.<sup>1</sup>

(E) shall not, if provided to a State or local government or government agency—

(i) be made available pursuant to any State or local law requiring disclosure of information or records;

(ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information; or

(iii) be used other than for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act; and

(F) does not constitute a waiver of any applicable privilege or protection provided under law, such as trade secret protection.

**(2) Express statement**

For purposes of paragraph (1), the term “express statement”, with respect to information or records, means—

(A) in the case of written information or records, a written marking on the information or records substantially similar to the following: “This information is voluntarily submitted to the Federal Government in expectation of protection from disclosure as provided by the provisions of the Critical Infrastructure Information Act of 2002.”; or

(B) in the case of oral information, a similar written statement submitted within a reasonable period following the oral communication.

**(b) Limitation**

No communication of critical infrastructure information to a covered Federal agency made pursuant to this part shall be considered to be an action subject to the requirements of the Federal Advisory Committee Act.

**(c) Independently obtained information**

Nothing in this section shall be construed to limit or otherwise affect the ability of a State, local, or Federal Government entity, agency, or authority, or any third party, under applicable law, to obtain critical infrastructure information in a manner not covered by subsection (a) of this section, including any information lawfully and properly disclosed generally or broadly to the public and to use such information in any manner permitted by law.

**(d) Treatment of voluntary submittal of information**

The voluntary submittal to the Government of information or records that are protected from disclosure by this part shall not be construed to constitute compliance with any requirement to submit such information to a Federal agency under any other provision of law.

**(e) Procedures**

**(1) In general**

The Secretary of the Department of Homeland Security shall, in consultation with ap-

<sup>1</sup> So in original. The period probably should be a semicolon.