AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

§ 29.5 Requirements for protection.

(a) CII shall receive the protections of section 214 of the CII Act when:

(1) Such information is voluntarily submitted, directly or indirectly, to the PCII Program Manager or the PCII Program Manager's designee;

(2) The information is submitted for protected use regarding the security of critical infrastructure or protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other appropriate purposes including, without limitation, for the identification, analysis, prevention, preemption, disruption, defense against and/or mitigation of terrorist threats to the homeland;

(3) The information is labeled with an express statement as follows:

(i) In the case of documentary submissions, 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

(ii) In the case of oral information:

(A) Through an oral statement, made at the time of the oral submission or within a reasonable period thereafter, indicating an expectation of protection from disclosure as provided by the provisions of the CII Act; and

(B) Through a written statement substantially similar to the one specified above accompanied by a document that memorializes the nature of oral information initially provided received by the PCII Program Manager or the PCII Program Manager's designee within a reasonable period after using oral submission; and

(iii) In the case of electronic information:

(A) Through an electronically submitted statement within a reasonable period of the electronic submission indicating an expectation of protection from disclosure as provided by the provisions of the CII Act; and

(B) Through a non-electronically submitted written statement substantially similar to the one specified above accompanied by a document that memorializes the nature of e-mailed information initially provided, to be received by the PCII Program Manager or the PCII Program Manager's designee within a reasonable period after using e-mail submission.

(4) The submitted information additionally is accompanied by a statement, signed by the submitting person or an authorized person on behalf of an entity identifying the submitting person or entity, containing such contact information as is considered necessary by the PCII Program Manager, and certifying that the information being submitted is not customarily in the public domain;

(b) Information that is not submitted to the PCII Program Manager or the PCII Program Manager's designees will not qualify for protection under the CII Act. Only the PCII Program Manager or the PCII Program Manager's designees are authorized to acknowledge receipt of information being submitted for consideration of protection under the Act.

(c) All Federal, State and local government entities shall protect and maintain information as required by these rules or by the provisions of the CII Act when that information is provided to the entity by the PCII Program Manager or the PCII Program Manager's designee and is marked as required in 6 CFR 29.6(c).

(d) All submissions seeking PCII status shall be presumed to have been submitted in good faith until validation or a determination not to validate pursuant to these rules.

§ 29.6 Acknowledgment of receipt, validation, and marking.

(a) *Authorized officials.* Only the DHS PCII Program Manager is authorized to validate, and mark information as PCII. The PCII Program Manager or the Program Manager's designees, may mark information qualifying under categorical inclusions pursuant to 6 CFR 29.6(f).

(b) *Presumption of protection.* All information submitted in accordance with the procedures set forth hereby will be presumed to be and will be treated as PCII, enjoying the protections of section 214 of the CII Act, from the time the information is received by the PCII Program Office or the PCII

Program Manager's designee. The information shall remain protected unless and until the PCII Program Office renders a final decision that the information is not PCII. The PCII Program Office will, with respect to information that is not properly submitted, inform the submitting person or entity within thirty days of receipt, by a means of communication to be prescribed by the PCII Program Manager, that the submittal was procedurally defective. The submitter will then have an additional 30 days to remedy the deficiency from receipt of such notice. If the submitting person or entity does not cure the deficiency within thirty calendar days of the date of receipt of the notification provided in this paragraph, the PCII Program Office may determine that the presumption of protection is terminated. Under such circumstances, the PCII Program Office may cure the deficiency by labeling the submission with the information required in 6 CFR 29.5 or may notify the applicant that the submission does not qualify as PCII. No CII submission will lose its presumptive status as PCII except as provided in 6 CFR 29.6(g).

(c) *Marking of information*. All PCII shall be clearly identified through markings made by the PCII Program Office. The PCII Program Office shall mark PCII materials as follows: ''This document contains PCII. In accordance with the provisions of 6 CFR Part 29, this document is exempt from release under the Freedom of Information Act (5 U.S.C. 552(b)(3)) and similar laws requiring public disclosure. Unauthorized release may result in criminal and administrative penalties. This document is to be safeguarded and disseminated in accordance with the CII Act and the PCII Program requirements.'' When distributing PCII, the distributing person shall ensure that the distributed information contains this marking.

(d) *Acknowledgement of receipt of information*. The PCII Program Office or the PCII Program Manager's designees shall acknowledge receipt of information submitted as CII and accompanied by an express statement, and in so doing shall:

(1) Contact the submitting person or entity, within thirty calendar days of receipt of the submission of CII, by the means of delivery prescribed in procedures developed by the PCII Program Manager. In the case of oral submissions, receipt will be acknowledged in writing within thirty calendar days after receipt by the PCII Program Office or the PCII Program Manager's designee of a written statement, certification, and documents that memorialize the oral submission, as referenced in 6 CFR 29.5(a)(3)(ii);

(2) Enter the appropriate data into the PCIIMS as required in 6 CFR 29.4(e); and

(3) Provide the submitting person or entity with a unique tracking number that will accompany the information from the time it is received by the PCII Program Office or the PCII Program Manager's designees.

(e) *Validation of information*. (1) The PCII Program Manager shall be responsible for reviewing all submissions that request protection under the CII Act. The PCII Program Manager shall review the submitted information as soon as practicable. If a final determination is made that the submitted information meets the requirements for protection, the PCII Program Manager shall ensure that the information has been marked as required in paragraph (c) of this section, notify the submitting person or entity of the determination, and disclose it only pursuant to 6 CFR 29.8.

(2) If the PCII Program Office makes an initial determination that the information submitted does not meet the requirements for protection under the CII Act, the PCII Program Office shall:

(i) Notify the submitting person or entity of the initial determination that the information is not considered to be PCII. This notification also shall, as necessary:

(A) Request that the submitting person or entity complete the requirements of 6 CFR 29.5(a)(4) or further explain the nature of the information and the submitting person or entity's basis for believing the information qualifies for protection under the CII Act;

(B) Advise the submitting person or entity that the PCII Program Office will review any further information provided before rendering a final determination;

(C) Advise the submitting person or entity that the submission can be withdrawn at any time before a final determination is made;

(D) Notify the submitting person or entity that until a final determination is made the submission will be treated as PCII;

(E) Notify the submitting person or entity that any response to the notification must be received by the PCII Program Office no later than thirty calendar days after the date of the notification; and

(F) Request the submitting person or entity to state whether, in the event the PCII Program Office makes a final determination that any such information is not PCII, the submitting person or entity prefers that the information be maintained without the protections of the CII Act or returned to the submitter or destroyed. If a request for withdrawal is made, all such information shall be returned to the submitting person or entity.

(ii) If the information submitted has not been withdrawn by the submitting person or entity, and the PCII Program Office, after following the procedures set forth in paragraph (e)(2)(i) of this section, makes a final determination that the information is not PCII, the PCII Program Office, in accordance with the submitting person or entity's written preference, shall, within thirty calendar days of making a final determination, return the information to the submitter. If return to the submitter is impractical, the PCII Program Office shall destroy the information within 30 days. This process is consistent with the appropriate National Archives and Records Administration-approved records disposition schedule. If the submitting person or entity cannot be notified or the submitting person or entity's response is not received within thirty calendar days of the date of the notification as provided in paragraph (e)(2)(i) of this section, the PCII Program Office shall make the initial determination final and return the information to the submitter.

(f) *Categorical Inclusions of Certain Types of Infrastructure as PCII.* The PCII Program Manager has discretion to declare certain subject matter or types of information categorically protected as PCII and to set procedures for receipt and processing of such information. Information within a categorical inclusion will be considered validated upon receipt by the Program Office or any of the Program Manager's designees without further review, provided that the submitter provides the express statement required by section 214(a)(1). Designees shall provide to the Program Manager information submitted under a categorical inclusion.

(g) *Changing the status of PCII to non-PCII.* Once information is validated, only the PCII Program Office may change the status of PCII to that of non-PCII and remove its PCII markings. Status changes may only take place when the submitting person or entity requests in writing that the information no longer be protected under the CII Act; or when the PCII Program Office determines that the information was, at the time of the submission, customarily in the public domain. Upon making an initial determination that a change in status may be warranted, but prior to a final determination, the PCII Program Office, using the procedures in paragraph (e)(2) of this section, shall inform the submitting person or entity of the initial determination of a change in status. Notice of the final change in status of PCII shall be provided to all recipients of that PCII under 6 CFR 29.8.

§29.7 Safeguarding of Protected Critical Infrastructure Information.

(a) *Safeguarding.* All persons granted access to PCII are responsible for safeguarding such information in their possession or control. PCII shall be protected at all times by appropriate storage and handling. Each person who works with PCII is personally responsible for taking proper precautions to ensure that unauthorized persons do not gain access to it.

(b) *Background Checks on Persons with Access to PCII.* For those who require access to PCII, DHS will, to the extent practicable and consistent with the purposes of the Act, undertake appropriate background checks to ensure that individuals with access to PCII do not pose a threat to national security.