

form or type of regulatory proceeding or other matter outside of DHS.

(l) *State* has the same meaning set forth in section 2 of the Homeland Security Act of 2002 and means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any possession of the United States.

(m) *Submission* as referenced in these procedures means any transmittal, either directly or indirectly, of CII to the DHS PCII Program Manager or the PCII Program Manager's designee, as set forth herein.

(n) *Submitted in good faith* means any submission of information that could reasonably be defined as CII or PCII under this section. Upon validation of a submission as PCII, DHS has conclusively established the good faith of the submission. Any information qualifying as PCII by virtue of a categorical inclusion identified by the Program Manager pursuant to section 214 of the CII Act and this Part is submitted in good faith.

(o) *Voluntary* or *voluntarily*, when used in reference to any submission of CII, means the submittal thereof in the absence of an exercise of legal authority by DHS to compel access to or submission of such information. Voluntary submission of CII may be accomplished by (*i.e.*, come from) a single state or local governmental entity; private entity or person; or by an ISAO acting on behalf of its members or otherwise. There are two exclusions from this definition. In the case of any action brought under the securities laws—as is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))—the term “voluntary” or “voluntarily” does not include information or statements contained in any documents or materials filed, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 781(i)), with the U.S. Securities and Exchange Commission or with Federal banking regulators or a writing that accompanied the solicitation of an offer or a sale of securities. Information or statements previously submitted to DHS in the course of a regulatory proceeding or a licensing or permitting determina-

tion are not “voluntarily submitted.” In addition, the submission of information to DHS for purposes of seeking a Federal preference or benefit, including CII submitted to support an application for a DHS grant to secure critical infrastructure will be considered a voluntary submission of information. Applications for SAFETY Act Designation or Certification under 6 CFR Part 25 will also be considered a voluntary submission.

(p) The term *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* in section 214(a)(1)(C) of the CII Act means any use in any proceeding other than a criminal prosecution before any court of the United States or of a State or otherwise, of any PCII, or any drafts or copies of PCII retained by the submitter, including the opinions, evaluations, analyses and conclusions prepared and submitted as CII, as evidence at trial or in any pretrial or other discovery, notwithstanding whether the United States, its agencies, officers, or employees is or are a party to such proceeding.

§ 29.3 Effect of provisions.

(a) *Freedom of Information Act disclosure exemptions.* Information that is separately exempt from public disclosure under the Freedom of Information Act or applicable State, local, or tribal law does not lose its separate exemption from public disclosure due to the applicability of these procedures or any failure to follow them.

(b) *Restriction on use of PCII by regulatory and other Federal, State, and Local agencies.* A Federal, State or local agency that receives PCII may utilize the PCII only for purposes appropriate under the CII Act, including securing critical infrastructure or protected systems. Such PCII may not be utilized for any other collateral regulatory purposes without the written consent of the PCII Program Manager and of the submitting person or entity. The PCII Program Manager or the PCII Program Manager's designee shall not share PCII with Federal, State or local government agencies without instituting appropriate measures to ensure that

PCII is used only for appropriate purposes.

§ 29.4 Protected Critical Infrastructure Information Program administration.

(a) *Preparedness Directorate Program Management.* The Secretary of Homeland Security hereby designates the Under Secretary for Preparedness as the senior DHS official responsible for the direction and administration of the PCII Program. He shall administer this program through the Assistant Secretary for Infrastructure Protection.

(b) *Appointment of a PCII Program Manager.* The Under Secretary for Preparedness shall:

(1) Appoint a PCII Program Manager serving under the Assistant Secretary for Infrastructure Protection who is responsible for the administration of the PCII Program;

(2) Commit resources necessary for the effective implementation of the PCII Program;

(3) Ensure that sufficient personnel, including such detailees or assignees from other Federal national security, homeland security, or law enforcement entities as the Under Secretary deems appropriate, are assigned to the PCII Program to facilitate secure information sharing with appropriate authorities.

(4) Promulgate implementing directives and prepare training materials as appropriate for the proper treatment of PCII.

(c) *Appointment of PCII Officers.* The PCII Program Manager shall establish procedures to ensure that each DHS component and each Federal, State, or local entity that works with PCII appoint one or more employees to serve as a PCII Officer in order to carry out the responsibilities stated in paragraph (d) of this section. Persons appointed to serve as PCII Officers shall be fully familiar with these procedures.

(d) *Responsibilities of PCII Officers.* PCII Officers shall:

(1) Oversee the handling, use, and storage of PCII;

(2) Ensure the secure sharing of PCII with appropriate authorities and individuals, as set forth in 6 CFR 29.1(a), and paragraph (b)(3) of this section;

(3) Establish and maintain an ongoing self-inspection program, to include periodic review and assessment of the compliance with handling, use, and storage of PCII;

(4) Establish additional procedures, measures and penalties as necessary to prevent unauthorized access to PCII; and

(5) Ensure prompt and appropriate coordination with the PCII Program Manager regarding any request, challenge, or complaint arising out of the implementation of these regulations.

(e) *Protected Critical Infrastructure Information Management System (PCIIMS).* The PCII Program Manager shall develop, for use by the PCII Program Manager and the PCII Manager's designees, an electronic database, to be known as the "Protected Critical Infrastructure Information Management System" (PCIIMS), to record the receipt, acknowledgement, validation, storage, dissemination, and destruction of PCII. This compilation of PCII shall be safeguarded and protected in accordance with the provisions of the CII Act. The PCII Program Manager may require the completion of appropriate background investigations of an individual before granting that individual access to any PCII.

§ 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