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DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 29

Protected Critical Infrastructure Information: Technical Amendments

AGENCY: Cybersecurity and Infrastructure Security Agency, DHS.

ACTION: Final rule; technical amendment.

SUMMARY: This final rule amends the Protected Critical Infrastructure Information regulations to provide non-substantive technical, organizational, and conforming updates that are intended to improve the accuracy of these provisions. This action is editorial in nature and does not impose any new regulatory requirements on affected parties.

DATES: This final rule is effective December 21, 2022.

FOR FURTHER INFORMATION CONTACT: Phillip Boggs, Protected Critical Infrastructure Information Program Manager, (202) 878–2859, *Phillip.Boggs@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the Critical Infrastructure Information Act of 2002 [1] (CII Act), the Department of Homeland Security (DHS) established uniform procedures for the receipt, care, and storage of critical infrastructure information voluntarily provided to the Federal government by the public. (69 FR 8074, Feb. 20, 2004; 71 FR 52262, Sep. 1, 2006). Today, these procedures are known as the Protected Critical Infrastructure Information (PCII) regulations outlined in Title 6, part 29 of the Code of Federal Regulations (6 CFR part 29). In 2007, DHS transitioned the responsibility to carry out the functions and responsibilities of the PCII Program from the DHS Preparedness Directorate to the National Protection and Programs Directorate (NPPD).[2] In 2018, Congress passed the Cybersecurity and Infrastructure Security Agency Act of 2018 which redesignated NPPD as the Cybersecurity and Infrastructure Security Agency (CISA) and established it as a new agency within DHS.[3] This technical amendment is intended to account for the organizational changes related to responsibility for the PCII Program within DHS and improve the regulation's accuracy through non-substantive, technical, and editorial updates. See the Description of Technical Amendments section below for a more detailed discussion of the updates included in this action.

II. Description of Technical Amendments

Technical amendments are made through this final rule to apply throughout the entirety of 6 CFR part 29. A majority of the changes made throughout 6 CFR part 29 are intended to reflect that CISA is the agency responsible for operating the PCII Program within DHS and providing the public with accurate information regarding how CISA currently operates the program. Specifically, the part is amended to accurately identify the names of offices and titles of personnel responsible for operating the PCII Program within CISA and to update legal citations and cross-references. This rule also creates several new definitions and amends existing definitions to clarify terms, titles, and acronyms used throughout the part that are specific to CISA's operation of the PCII Program. For example, some new definitions include ''CISA'', ''Director'', ''Executive Assistant Director'', and ''PCII Program Manager'' and do not create substantive changes to the regulations. Other definitions such as ''Critical Infrastructure'', ''Information Sharing and Analysis Organization'', and ''Voluntary or Voluntarily'' are amended through this rule to align the definitions with the exact statutory text of the CII Act or to update outdated legal citations.

This final rule also makes changes throughout the entirety of 6 CFR part 29 to correct typographical and grammatical errors and to clarify the regulation through stylistic wording and organizational changes. Some of these changes in the wording of the regulation are to align the regulatory text with the statutory text of the CII Act by incorporating the exact statutory language instead of cross-references to the CII Act or to add words from the statutory language of the CII Act which were initially erroneously omitted from 6 CFR part 29. Other wording and organizational changes are editorial in nature and intended to improve the clarity of the regulatory text. An example of such changes in wording includes the deletion of ''tribal'' used throughout the PCII regulations in the interest of brevity and ease of reading. Deleting ''tribal'' does not change the scope or substance of the rule because the definition of ''Local government'' in Section 29.2 expressly includes ''Indian tribe or authorized tribal organization, or in Alaska, a Native village or Alaska Regional Native Corporation.'' Overall, none of the technical amendments made through this final rule should be construed as modifying or creating any new substantive requirements.

A. Significant Changes to Regulatory Text

Some of the most significant changes to the regulation include changes to:

Section 29.3 Effect of Provisions

The section title has been replaced with ''FOIA Exemptions and Restrictions on Regulatory Use of PCII'' to more accurately describe the content provided in this section which relates to FOIA exemptions for PCII and other restrictions on the use of PCII.

Section 29.5 Requirements for Protection

In section 29.5(a)(3)(iii)(A) & (B), the ''and'' inserted between subparagraphs (A) & (B) has been replaced with ''or'' to correct a technical drafting error. As currently written, the ''and'' between both subparagraphs suggests that submitters must provide identical electronic and non-electronic express statements to CISA in order to receive PCII protection for electronically

[1] 6 U.S.C. 671–674.

[2] Notices of Implementation of the Post-Katrina Emergency Reform Act of 2006 and of Additional Changes Pursuant to Section 872 of the Homeland Security Act of 2002, to Michael B. Enzi, U.S. Senate Committee on Health, Education, Labor and Pensions (Jan. 28, 2007) and to Bennie G. Thompson, U.S. House of Representatives Committee on Homeland Security (Sep. 11, 2007) (on file with the Department of Homeland Security).

[3] 6 U.S.C. 652(a).

submitted information. However, the statute only requires, and PCII Program only needs, one express statement to accompany written information or records seeking PCII protection regardless of the method used to submit the information to CISA (*e.g.,* documentary, oral, or electronic submission formats). This change aligns the regulatory text with the legal requirements for PCII protection of information under the CII Act and eliminates the technical drafting error suggesting that submitters must follow a duplicative and more burdensome process for electronic submissions to receive PCII protection.

Section 29.6 Acknowledgment of Receipt, Validation, and Marking

Throughout this section, the term ''calendar'' has been added throughout the section to areas describing deadlines where it was erroneously omitted. This change is made to improve consistency and clarity throughout the section and to reflect the PCII Program's longstanding practice of using calendar days for all deadlines related to this section.

In section 29.6(e)(2)(ii), the paragraph was reorganized and revised to improve clarity on the chronological steps that CISA follows to return to the submitter information that is not eligible for PCII protection. The changes to this paragraph are editorial in nature to reflect a chronological sequence. They do not change any of the steps that CISA will follow to return information to submitters.

B. Amendatory Instructions

Amendatory instructions are the standard terms that the Office of the Federal Register uses to give specific instructions on how to change the CFR. Due to the extensive number of technical and conforming amendments made through this final rule, CISA is utilizing the Office of the Federal Register's new amendatory instruction ''revise and republish'' to codify the revisions set out in this regulatory action.[4] Use of the combined instruction allows CISA to republish 6 CFR part 29 in its entirety instead of using piecemeal amendments to revise the full unit of the CFR. Because piecemeal amendments are not used in this rule to signal where changes have been made, CISA intends to publish an unofficial, informal document showing what changes CISA made through this final rule to assist industry and other stakeholders in reviewing the changes that this final rule makes to the regulatory text. CISA will make the unofficial, informal document showing edits available on its website at *https://www.cisa.gov/pcii-program.*

[4] The Office of the Federal Register's Document Drafting Handbook (Chapter 2, 2–39) explains that agencies ''use [r]epublish to set out unchanged text for the convenience of the reader, often to provide context for your regulatory changes.'' *https://www.archives.gov/federal-register/write/handbook.*

III. Exemption From Public Notice and Delayed Effective Date Requirements

DHS has determined that this rulemaking is exempt from notice-and-comment rulemaking requirements under 5 U.S.C. 553(b)(A) and 5 U.S.C. 553(b)(B). Many of the amendments made through this action pertain solely to the organizational change in responsibility for the PCII Program within DHS and constitute ''rules of agency organization, procedure, or practice'' not subject to the Administrative Procedure Act's (APA) notice and comment requirements under 5 U.S.C. 553(b)(A). All of the amendments made through this action are technical or editorial non-substantive corrections, which are intended to provide the public with more accurate and current regulatory information about the PCII Program. These changes are necessary to correct errors and grammatical language, update definitions and titles, provide current legal citations, and make other non-substantive amendments that improve the clarity of the CFR. None of the amendments included in this action will have a substantive impact on the public and nor will they alter the regulatory requirements in the affected part. Accordingly, CISA finds for good cause that this final rule is exempt from public notice-and-comment rulemaking procedures under 5 U.S.C. 553(b)(B) because such procedures are unnecessary.

For the same reasons that this rule is exempt from notice-and-comment rulemaking requirements, and because affected parties will not need time to adjust to the amendments to the regulation made through this action, CISA finds that good cause exists to make this final rule effective upon publication in the **Federal Register** under 5 U.S.C. 553(d)(3).

This final rule constitutes final agency action under the APA and is issued under the authority of 5 U.S.C. 552(a), 5 U.S.C. 553, and 6 U.S.C. 673.

IV. Regulatory Flexibility Act and Executive Order 12866

Because CISA has determined that this rule is exempt from notice and comment rulemaking requirements, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply to this action. This technical amendment also does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

V. Paperwork Reduction Act

There is no new or amended collection of information required by this document; therefore, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

List of Subjects in 6 CFR Part 29

Confidential business information, Reporting and record keeping requirements.

■ For the reasons set forth in the preamble, the Department of Homeland Security amends 6 CFR part 29 as follows:

PART 29—PROTECTED CRITICAL INFASTRUCTURE INFORMATION

Sec.
29.1 Purpose and scope.
29.2 Definitions.
29.3 FOIA exemptions and restrictions on use of PCII.
29.4 PCII program administration.
29.5 Requirements for protection.
29.6 Acknowledgement of receipt, validation, and marking.
29.7 Safeguarding of PCII.
29.8 Disclosure of PCII.
29.9 Investigation and reporting of violation of PCII procedures.

■ 1. Revise the authority citation to read as follows:

Authority: 6 U.S.C. 671–674; Section 2222–2225 of the Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2135, as amended by Subtitle B of the Cybersecurity and Infrastructure Security Act of 2018, Pub. L. 115–278, 132 Stat. 4184. 5 U.S.C. 301.

■ 2. Revise and republish §§ 29.1 through 29.9 to read as follows:

§ 29.1 Purpose and scope.

(a) *Purpose of this part.* This part implements the Critical Infrastructure Information Act of 2002 (CII Act) by establishing uniform procedures for the receipt, care, and storage of Critical Infrastructure Information voluntarily submitted to the Department of Homeland Security through CISA. Consistent with the statutory mission of DHS to prevent terrorist attacks within the United States and reduce the vulnerability of the United States to terrorism, CISA will encourage the voluntary submission of CII by safeguarding and protecting that information from unauthorized disclosure and by ensuring that such information is, as necessary, securely shared with State and Local governments pursuant to the CII Act. As

required by the CII Act, this part establishes procedures regarding:

(1) The acknowledgment of receipt by CISA of voluntarily submitted CII;

(2) The receipt, validation, handling, storage, proper marking, and use of information as PCII;

(3) The safeguarding and maintenance of the confidentiality of such information and appropriate sharing of such information with State and Local governments or government agencies pursuant to 6 U.S.C. 673(a)(1)(E); and

(4) The issuance of advisories, notices, and warnings related to the protection of critical infrastructure or protected systems in such a manner to protect, as appropriate, from unauthorized disclosure the source of critical infrastructure information that forms the basis of the warning, and any information that is proprietary or business sensitive, might be used to identify the submitting person or entity, or is otherwise not appropriately in the public domain.

(b) *Scope.* This part applies to all persons and entities that are authorized to handle, use, store, or otherwise accept receipt of PCII.

§ 29.2 Definitions.

For purposes of this part:

Critical Infrastructure has the same meaning stated in 6 U.S.C. 101(4) (which cross references the term used in 42 U.S.C. 5195c(e)) and means systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.

Critical Infrastructure Information or CII has the same meaning stated in 6 U.S.C. 671(1) and means information not customarily in the public domain and related to the security of critical infrastructure or protected systems, including documents, records or other information concerning:

(1) Actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or Local law, harms interstate commerce of the United States, or threatens public health or safety;

(2) The ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk-management planning, or risk audit; or

(3) Any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

CII Act means the Critical Infrastructure Information Act of 2002 in 6 U.S.C. 671–674; Sections 2222–2225 of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, as amended by Subtitle B of the Cybersecurity and Infrastructure Security Act of 2018, Public Law 115–278, 132 Stat. 4168.

CISA means the Cybersecurity and Infrastructure Security Agency.

Department or DHS means the Department of Homeland Security.

Director means the Director of the CISA, any successors to that position within the Department, or any designee.

Executive Assistant Director means the Executive Assistant Director for the Infrastructure Security Division of the CISA, any successors to that position within the Department, or any designee.

Information Sharing and Analysis Organization or ISAO has the same meaning stated in 6 U.S.C. 671(5) and means any formal or informal entity or collaboration created or employed by public or private sector organizations for purposes of:

(1) Gathering and analyzing CII, including information related to cybersecurity risks and incidents, in order to better understand security problems and interdependencies related to critical infrastructure and protected systems, so as to ensure the availability, integrity, and reliability thereof;

(2) Communicating or disclosing CII, including cybersecurity risks and incidents, to help prevent, detect, mitigate, or recover from the effects of an interference, compromise, or an incapacitation problem related to critical infrastructure or protected systems; and

(3) Voluntarily disseminating CII, including cybersecurity risks and incidents, to its members, Federal, State, and Local governments, or any other entities that may be of assistance in carrying out the purposes specified in paragraphs (h)(1) and (2) of this section.

In the public domain means information lawfully, properly, and regularly disclosed generally or broadly to the public. Information regarding system, facility, or operational security is not ''in the public domain.'' Information submitted with CII that is proprietary or business sensitive, or which might be used to identify a submitting person or entity will not be considered ''in the public domain.'' Information may be ''business sensitive'' for this purpose whether or not it is commercial in nature, and even if its release could not demonstrably cause substantial harm to the competitive position of the submitting person or entity.

Local government has the same meaning stated in 6 U.S.C. 101(13) and means:

(1) A county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a Local government;

(2) An Indian tribe or authorized tribal organization, or in Alaska, a Native village or Alaska Regional Native Corporation; and

(3) A rural community, unincorporated town or village, or other public entity.

Protected Critical Infrastructure Information or PCII means validated CII, including information covered by § 29.6(b) and (h), including the identity of the submitting person or entity and any person or entity on whose behalf the submitting person or entity submits the CII, that is voluntarily submitted, directly or indirectly, to CISA, for its use regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other appropriate purpose. PCII also includes any information, statements, compilations or other materials reasonably necessary to explain the CII, put the CII in context, or describe the importance or use of the CII when accompanied by an express statement as described in § 29.5.

PCII Program Manager means the federal employee within the Infrastructure Security Division of CISA appointed as responsible for the administration of the PCII Program pursuant to this part, any successors to that position within the Department, or any designee.

PCII Program Manager's Designee means a federal employee outside of the PCII Program Office, whether employed by CISA or another federal agency, to whom certain functions of the PCII

Program Office are delegated by the PCII Program Manager, as determined on a case-by-case basis.

Protected Critical Infrastructure Information Program Office or PCII Program Office means the personnel organized within the Infrastructure Security Division of CISA who carry out the operational and administrative functions of the PCII Program pursuant to the direction of the PCII Program Manager.

PCII Program Officer means a Federal, State, or Local government employee appointed by their respective agency or entity and, upon approval of the PCII Program Manager, carries out the responsibilities described in 6 CFR 29.4(d) to ensure the proper use, storage, and handling of PCII within their respective agency or entity.

Protected Critical Infrastructure Information Program or PCII Program means the program implementing the CII Act within the Infrastructure Security Division of the CISA, including the maintenance, management, and review of the information provided in furtherance of the protections provided by the CII Act.

Protected Critical Infrastructure Information Management System or PCIIMS means the electronic database and platform used to record the receipt, acknowledgement, validation, storage, dissemination, and destruction of PCII. PCIIMS also enables CISA to manage and train individuals authorized to view, handle, and access PCII.

Protected system has the same meaning stated in 6 U.S.C. 671(6) and means any service, physical or computer-based system, process, or procedure that directly or indirectly affects the viability of a facility of critical infrastructure; and includes any physical or computer-based system, including a computer, computer system, computer or communications network, or any component hardware or element thereof, software program, processing instructions, or information or data in transmission or storage therein, irrespective of the medium of transmission or storage.

Purposes of the CII Act has the meaning set forth in the CII Act and includes the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purposes.

Regulatory proceeding, as used in 6 U.S.C. 671(7) and this part, means administrative proceedings in which DHS is the adjudicating entity, and does not include any form or type of regulatory proceeding or other matter outside of DHS.

State has the same meaning stated in 6 U.S.C. 101(17) 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.

Submission as referenced in these procedures means any transmittal, either directly or indirectly, of CII to the CISA PCII Program Office or the PCII Program Manager's Designee, as set forth herein.

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, CISA has conclusively established the good faith of the submission. Any information qualifying as PCII by virtue of a categorical inclusion identified by the PCII Program Manager pursuant to this part is submitted in good faith.

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:

(1) In the case of any action brought under the securities laws—as is defined in 15 U.S.C. 78c(a)(47)—the term ''voluntary'' or ''voluntarily'' does not include:

(i) Information or statements contained in any documents or materials filed pursuant to 15 U.S.C. 78l(i) with the U.S. Securities and Exchange Commission or with federal banking regulators; or

(ii) A writing that accompanied the solicitation of an offer or a sale of securities; and

(2) Information or statements previously submitted to DHS in the course of a regulatory proceeding or a licensing or permitting determination 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 Support Anti-terrorism by Fostering Effective Technologies Act of 2002 filed pursuant to 6 U.S.C. 441 *et seq.,* or SAFETY Act Designation or Certification under 6 CFR part 25, will also be considered a voluntary submission.

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 6 U.S.C. 673(a)(1)(C) 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 FOIA exemptions and restrictions on use of PCII.

(a) *Freedom of Information Act disclosure exemptions.* Information that is separately exempt from public disclosure under the Freedom of Information Act (5 U.S.C. 552) or applicable State, or Local 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 agencies and other Federal, State, and Local agencies.* A Federal, State, or Local government 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 will 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 PCII Program administration.

(a) *Cybersecurity and Infrastructure Security Agency.* The Secretary of the Department of Homeland Security hereby designates the Director as the senior DHS official responsible for the direction and administration of the PCII Program. The Director administers this program through the Executive Assistant Director.

(b) *Appointment of a PCII Program Manager.* The Director will:

(1) Appoint a PCII Program Manager serving under the Executive Assistant Director 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 detailees or assignees from other federal national security, homeland security, or law enforcement entities, as the Director deems appropriate, are assigned to the PCII Program to facilitate secure information sharing with appropriate authorities; and

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

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

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

(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 § 29.1(a), and paragraph (b)(3) of this section;

(3) Establish and maintain an ongoing self-inspection program including periodic review and assessment of 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 or PCIIMS.* The PCII Program Manager will develop, for use by the PCII Program Office and the PCII Manager's Designees, an electronic database to be known as PCIIMS to record the receipt, acknowledgement, validation, storage, dissemination, and destruction of PCII. This compilation of PCII must 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 receives the protections of the CII Act when:

(1) Such information is voluntarily submitted, directly or indirectly, to the PCII Program Office or a 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) *Documentary submissions.* In the case of documentary submissions, 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, as amended by the Cybersecurity and Infrastructure Security Act of 2018'';

(ii) *Oral submissions.* In the case of oral submissions:

(A) Through an oral statement, made at the time of the oral submission or within a reasonable period of time 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 in paragraph (a)(3)(i) of this section accompanied by a document that memorializes the nature of the oral submission initially provided to the PCII Program Office or the PCII Program Manager's Designee within a reasonable period of time after making the oral submission; or

(iii) *Electronic submissions.* In the case of electronic submissions:

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

(B) Through a non-electronically submitted written statement substantially similar to the one specified in paragraph (a)(3)(i) of this section accompanied by a document that memorializes the nature of the electronic submission initially provided to the PCII Program Office or the PCII Program Manager's Designee within a reasonable period after making the electronic submission; and

(4) The documentary, electronic, or oral submission 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 Office, and certifying that the information being submitted is not customarily in the public domain.

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

(c) All Federal, State, and Local government entities must protect and maintain information as required by this part and by the provisions of the CII Act when that information is provided to the entity by the PCII Program Manager or a PCII Program Manager's Designee and is marked as required in § 29.6(c).

(d) All submissions seeking PCII status are presumed to have been submitted in good faith until validation or a determination not to validate is made pursuant to this part.

§ 29.6 Acknowledgment of receipt, validation, and marking.

(a) *Authorized officials.* Only the PCII Program Manager is authorized to validate and mark information submitted for protection outside of a categorical inclusion as PCII. The PCII Program Manager or a Program Manager's Designee may mark information qualifying for protection under categorical inclusions pursuant to paragraph (f) of this section as PCII.

(b) *Presumption of protection.* All information submitted in accordance with the procedures set forth in § 29.5 of this part will be presumed to be and will be treated as PCII, enjoying the protections of the CII Act, from the time the information is received by the PCII Program Office or a PCII Program Manager's Designee. The information must 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 calendar 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 thirty calendar days to remedy the deficiency from the date of receipt of such notification by the PCII Program Office. If the submitting person or entity does not cure the deficiency within thirty calendar days after the date of receipt of the notification provided by the PCII Program Office 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 § 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 paragraph (g) of this section.

(c) *Marking of information.* All PCII must be clearly identified through markings made by the PCII Program Office. The PCII Program Office will 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 PCII Program requirements.'' When distributing PCII, the distributing person must ensure that the distributed information contains this marking.

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

(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 a PCII Program Manager's Designee of a written statement, certification, and documents that memorialize the oral submission, as referenced in § 29.5(a)(3)(ii);

(2) Enter the appropriate data into the PCIIMS as required in § 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 a PCII Program Manager's Designee.

(e) *Validation of information.* (1) The PCII Program Manager is responsible for reviewing all submissions that request protection under the CII Act. The PCII Program Manager will 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 must 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 § 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 will:

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

(A) Request that the submitting person or entity complete the requirements of § 29.5(a) 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, returned to the submitting person or entity, or destroyed. If a request for return is made, all such information will be returned to the submitting person or entity.

(ii) If the information submitted has not been withdrawn by the submitting person or entity, the PCII Program Office will return the information to the submitter in accordance with the submitting person or entity's written preference and the procedures set forth in paragraph (e)(2)(i) of this section within thirty calendar days of making a final determination that the information submitted is not eligible for protections under the CII Act. 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 will make the initial determination final and return the information to the submitter. If return to the submitter is impractical, the PCII Program Office will destroy the information within thirty calendar days. This process is consistent with the appropriate National Archives and Records Administration-approved records disposition schedule.

(f) *Categorical Inclusions of Certain Types of CII 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 PCII Program Manager or any of the PCII Program Manager's Designees without further review, provided that the submitter provides the express statement required by § 29.5(a)(3). The PCII Program Manager's designees will provide to the PCII Program Office information submitted under a categorical inclusion.

(g) *Changing the status of PCII to non-PCII.* Once information is validated, only the PCII Program Manager 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, will inform the submitting person or entity of the initial determination of a change in status. Notice of the final change in status of PCII will be provided to all recipients of PCII received under § 29.8.

§ 29.7 Safeguarding of PCII.

(a) *Safeguarding.* All persons granted access to PCII are responsible for safeguarding such information in their possession or control. PCII must 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, CISA will, to the extent practicable and consistent with the purposes of the CII Act, undertake appropriate background checks to ensure that individuals with access to PCII do not pose a threat to national security. These checks may also be waived in exigent circumstances.

(c) *Use and storage.* When PCII is in the physical possession of a person, reasonable steps must be taken, in accordance with procedures prescribed by the PCII Program Manager, to minimize the risk of access to PCII by unauthorized persons. When PCII is not in the physical possession of a person, it must be stored in a secure environment.

(d) *Reproduction.* Pursuant to procedures prescribed by the PCII Program Manager, a document or other material containing PCII may be reproduced to the extent necessary and consistent with the need to carry out official duties, provided that the reproduced documents or material are marked and protected in the same manner as the original documents or material.

(e) *Disposal of information.* Documents and material containing PCII may be disposed of by any method that prevents unauthorized retrieval, such as shredding or incineration.

(f) *Transmission of information.* PCII will be transmitted only by secure means of delivery as determined by the PCII Program Manager, and in conformance with appropriate federal standards.

(g) *Automated Information Systems.* The PCII Program Manager will establish security requirements designed to protect information to the maximum extent practicable, and consistent with the CII Act, for Automated Information Systems that contain PCII. Such security requirements will be in conformance with the information technology security requirements in the Federal Information Security Management Act and the Office of Management and Budget's implementing policies.

§ 29.8 Disclosure of PCII.

(a) *Authorization of access.* The Director, the Executive Assistant Director, or either's designee may choose to provide or authorize access to PCII under one or more of the paragraphs in this section when it is determined that access supports a lawful and authorized government purpose as enumerated in the CII Act or other law, regulation, or legal authority.

(b) *Federal, State, and Local government sharing.* The PCII Program Office or a PCII Program Manager's Designee may provide PCII to an employee of the federal government, provided, subject to paragraph (f) of this section, that such information is shared for purposes of securing the critical infrastructure or protected systems, analysis, warning, interdependency study, recovery, reconstitution, or for another appropriate purpose including, without limitation, the identification, analysis, prevention, preemption, and/or disruption of terrorist threats to the homeland. PCII may not be used, directly or indirectly, for any collateral regulatory purpose. PCII may be provided to a State or Local government entity for the purpose of protecting critical infrastructure or protected systems, or in furtherance of the investigation or prosecution of a criminal act. The provision of PCII to a State or Local government entity will normally be made only pursuant to an arrangement with the PCII Program Manager providing for compliance with the requirements of paragraph (d) of this section and acknowledging the understanding and responsibilities of the recipient. State and Local governments receiving such information will acknowledge in such arrangements the primacy of PCII protections under the CII Act; agree to assert all available legal defenses to disclosure of PCII under State or Local public disclosure laws, statutes, or ordinances; and will agree to treat breaches of the agreements by their employees or contractors as matters subject to the applicable criminal code or employee code of conduct for the jurisdiction.

(c) *Disclosure of information to Federal, State, and Local government contractors.* Disclosure of PCII to Federal, State, and Local government contractors may be made when necessary for an appropriate purpose under the CII Act, and only after the PCII Program Manager or a PCII Program Officer certifies that the contractor is performing services in support of the purposes of the CII Act. The contractor's employees who will be handling PCII must sign individual nondisclosure agreements in a form prescribed by the PCII Program Manager, and the contractor must agree by contract, whenever and to whatever extent possible, to comply with all relevant requirements of the PCII Program. The contractor must safeguard PCII in accordance with these procedures and may not remove any ''PCII'' markings. An employee of the contractor may, in the performance of services in support of the purposes of the CII Act and when authorized to do so by the PCII Program Manager or a PCII Program Manager's Designee, communicate with a submitting person or an authorized person of a submitting entity about a submittal of information by that person or entity. Contractors will not further disclose PCII to any other party not already authorized to receive such information by the PCII Program Manager or a PCII Program Manager's Designee, without the prior written approval of the PCII Program Manager or a PCII Program Manager's Designee.

(d) *Further use or disclosure of information by State and Local governments.* (1) State and Local governments receiving information marked ''Protected Critical Infrastructure Information'' will not share that information with any other party not already authorized to receive such information by the PCII Program Manager or a PCII Program Manager's Designee, with the exception of their contractors after complying with the requirements of paragraph (c) of this section, or remove any PCII markings, without first obtaining authorization from the PCII Program Manager or a PCII Program Manager's Designee, who is responsible for requesting and obtaining written consent from the submitter of the information.

(2) State and Local governments may use PCII only for the purpose of protecting critical infrastructure or protected systems, or as set forth elsewhere in these rules.

(e) *Disclosure of information to appropriate entities or to the general public.* PCII may be used to prepare advisories, alerts, and warnings to relevant companies, targeted sectors, governmental entities, ISAOs, or the general public regarding potential threats and vulnerabilities to critical infrastructure as appropriate pursuant to the CII Act. Unless exigent circumstances require otherwise, any such warnings to the general public will be authorized by the Secretary of the Department of Homeland Security, the Director, the Executive Assistant Director for Infrastructure Security of CISA, or the Executive Assistant Director for Cybersecurity of CISA. Such exigent circumstances exist only when approval of the Secretary, the Director, the Executive Assistant Director for Infrastructure Security for CISA, or the Executive Assistant Director for Cybersecurity for CISA cannot be obtained within a reasonable time necessary to issue an effective advisory,

alert, or warning. In issuing advisories, alerts, and warnings, DHS will consider the exigency of the situation, the extent of possible harm to the public or to critical infrastructure, and the necessary scope of the advisory, alert, or warning; and take appropriate actions to protect from disclosure any information that is proprietary, business sensitive, relates specifically to or might be used to identify the submitting person or entity or any persons or entities on whose behalf the CII was submitted, or is not otherwise appropriately in the public domain. Depending on the exigency of the circumstances, DHS may consult or cooperate with the submitter in making such advisories, alerts, or warnings.

(f) *Disclosure for law enforcement purposes and communication with submitters; access by Congress, the Comptroller General, and the Inspector General; and whistleblower protection.*

(1) Exceptions for disclosure.

(i) PCII will not, without the written consent of the person or entity submitting such information, be used or disclosed for purposes other than the purposes of the CII Act, except:

(A) In furtherance of the investigation or prosecution of a criminal act by the federal government, or by a State, Local, or foreign government, when such disclosure is coordinated by a federal law enforcement official;

(B) To communicate with a submitting person or an authorized person on behalf of a submitting entity, about a submittal of information by that person or entity when authorized to do so by the PCII Program Manager or a PCII Program Manager's Designee; or

(C) When disclosure of the information is made by any officer or employee of the United States;

(1) 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

(2) To the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the Government Accountability Office.

(ii) If any officer or employee of the United States makes any disclosure pursuant to these exceptions, contemporaneous written notification must be provided to CISA through the PCII Program Manager.

(2) Consistent with the authority to disclose information for any of the purposes of the CII Act, disclosure of PCII may be made, without the written consent of the person or entity submitting such information, to the DHS Office of Inspector General.

(g) *Responding to requests made under the Freedom of Information Act or State and Local government information access laws.* PCII will be treated as exempt from disclosure under the Freedom of Information Act and any State or Local government law requiring disclosure of records or information. Any Federal, State, or Local government agency with questions regarding the protection of PCII from public disclosure must contact the PCII Program Office, who will in turn consult with the CISA Office of the Chief Counsel.

(h) *Ex parte communications with decision-making officials.* Pursuant to 6 U.S.C. 673(a)(1)(B), PCII is not subject to any agency rules or judicial doctrine regarding ex parte communications with a decision-making official.

(i) *Restriction on use of PCII in civil actions.* Pursuant to 6 U.S.C. 673(a)(1)(C), PCII will not, without the written consent of the person or entity submitting such information, be used directly by any Federal, State, or Local authority, or by any third party, in any civil action arising under Federal, State, or Local law.

§ 29.9 Investigation and reporting of violation of PCII procedures.

(a) *Reporting of possible violations.* Persons authorized to have access to PCII must report any suspected violation of security procedures, the loss or misplacement of PCII, and any suspected unauthorized disclosure of PCII immediately to the PCII Program Manager or a PCII Program Manager's Designee. Suspected violations may also be reported to the DHS Office of Inspector General. The PCII Program Manager or a PCII Program Manager's Designee will in turn report the incident to the appropriate security officer and to the DHS Office of Inspector General.

(b) *Review and investigation of written report.* The PCII Program Manager, or the appropriate security officer must notify the DHS Office of Inspector General of their intent to investigate any alleged violation of procedures, loss of information, and/or unauthorized disclosure, prior to initiating any such investigation. Evidence of wrongdoing resulting from any such investigations by agencies other than the DHS Inspector General must be reported to the United States Department of Justice, Criminal Division, through the CISA Office of the Chief Counsel. The DHS Office of Inspector General also has authority to conduct such investigations and will report any evidence of wrongdoing to the United States Department of Justice, Criminal Division, for consideration of prosecution.

(c) *Notification to originator of PCII.* If the PCII Program Manager or the appropriate security officer determines that a loss of information or an unauthorized disclosure of PCII has occurred, the PCII Program Manager or a PCII Program Manager's Designee must notify the person or entity that submitted the PCII, unless providing such notification could reasonably be expected to hamper the relevant investigation or adversely affect any other law enforcement, national security, or homeland security interest.

(d) *Criminal and administrative penalties.* (1) As established in 6 U.S.C. 673(f), whoever, being an officer or employee of the United States or of any department or agency thereof, knowingly publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law, any information protected from disclosure by the CII Act coming to the officer or employee in the course of his or her employment or official duties or by reason of any examination or investigation made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, shall be fined under title 18 of the United States Code, imprisoned not more than one year, or both, and shall be removed from office or employment.

(2) In addition to the penalties set forth in paragraph (d)(1) of this section, if the PCII Program Manager determines that an entity or person who has received PCII has violated the provisions of this part or used PCII for an inappropriate purpose, the PCII Program Manager may disqualify that entity or person from future receipt of any PCII or future receipt of any sensitive homeland security information under 6 U.S.C. 482, provided, however, that any such decision by the PCII Program Manager may be appealed to the Director.

Alejandro Mayorkas,

Secretary, Department of Homeland Security.

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