Council Meeting of
October 18, 2011

Honorable Mayor and Members
of the Torrance City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Police - Accept the 2010 Buffer Zone Protection Plan grant, approve a Subrecipient Agreement, and appropriate and allocate the grant funds for authorized equipment. Expenditure: $190,000.

RECOMMENDATION

Recommendation of the Chief of Police that Council:

1. Authorize the acceptance of the 2010 Buffer Zone Protection Plan grant in the amount of $190,000;
2. Approve the 2010 Buffer Zone Protection Program Subrecipient Agreement; and
3. Appropriate and allocate grant funds for the purchase of authorized equipment.

FUNDING

Funding is available in the 2010 Buffer Zone Protection Plan grant.

BACKGROUND

The U.S. Department of Homeland Security, through the Los Angeles County Office of Emergency Management, is providing financial assistance to law enforcement agencies through the 2010 Buffer Zone Protection Plan grant. This grant is for the purpose of assisting first responders in protecting designated sites identified as critical infrastructure.

ANALYSIS

As a subgrantee of the County of Los Angeles, the City of Torrance was awarded funds under the 2010 Buffer Zone Protection Plan grant. Funds are earmarked to enhance protection of designated sites. The Police Department will use the grant funds to purchase equipment authorized under the grant and approved by the State of California Office of Homeland Security. The U.S. Department of Homeland Security has designated the site identification and protection plan as "Protected

Critical Infrastructure Information," which is exempt from disclosure pursuant to the Critical Infrastructure Information Act of 2002, 6 U.S.C. §§ 131 et seq.

Respectfully submitted,

JOHN J. NEU
CHIEF OF POLICE

By Lt. Thomas Stark
Communications Division Commander

CONCUR:

John J. Neu
Chief of Police

LeRoy J. Jackson
City Manager

Attachment A – 2010 Buffer Zone Protection Program Subrecipient Agreement (Limited Distribution)

Subrecipient Agreement

With the City of Torrance

Grant Year 2010

Buffer Zone Protection Program

AGREEMENT
BETWEEN THE COUNTY OF LOS ANGELES
AND
THE CITY OF TORRAMCE

THIS AGREEMENT is made and entered into by and between the County of Los Angeles, a political subdivision of the State of California (the "County of Los Angeles"), and the City of Torrance, a public agency (the "Subrecipient")

W I T N E S S E T H

WHEREAS, the U.S. Department of Homeland Security Title 28 C.F.R. through the Office of Grants and Training (G&T), has provided financial assistance from the Buffer Zone Protection Program, Catalog of Federal Domestic Assistance (CFDA) 97.078 directly to the California Emergency Management Agency (CalEMA) for the 2010 Buffer Zone Protection Program (BZPP); and

WHEREAS, the CalEMA, provides said funds to the Los Angeles County Chief Executive Officer (CEO), on behalf of the County of Los Angeles, as its Subgrantee, and CEO is responsible for managing and overseeing the BZPP funds that are distributed, by CEO, to other specified jurisdictions within Los Angeles County; and

WHEREAS, this financial assistance is being provided to the Subrecipient in order to address the unique equipment and planning management needs of the Subrecipient, and to assist the Subrecipient in building effective prevention and protection capabilities to prevent, respond to, and recover from threats or acts of terrorism; and

WHEREAS, the CEO as Subgrantee has obtained approval of a BZPP 2010 grant from CalEMA for the Subrecipient in the amount of $190,000; and

WHEREAS, the CEO now wishes to distribute BZPP grant funds to the Subrecipient, as further detailed in this Agreement; and

WHEREAS, the CEO is authorized to enter into subrecipient agreements with cities providing for re-allocation and use of these funds; and to execute all future amendments, modifications, extensions, and augmentations relative to the subrecipient agreements, as necessary; and

WHEREAS, the County of Los Angeles and Subrecipient are desirous of executing this Agreement and the County Board of Supervisors on August 2, 2011 authorized the CEO to prepare and execute this Agreement.

NOW, THEREFORE, the County of Los Angeles and Subrecipient agree as follows:

SECTION I

INTRODUCTION

§101. Parties to this Agreement

The parties to this Agreement are:

A. County of Los Angeles, a political subdivision of the State of California, having its principal office at Kenneth Hahn Hall of Administration, 500 West Temple Street, Los Angeles, CA 90012; and

B. City of Torrance, a public agency, having its principal office at 3031 Torrance Boulevard, Torrance, CA 90503.

§102. Representatives of the Parties and Service of Notices

A. The representatives of the respective parties who are authorized to administer this Agreement and to whom formal notices, demands and communications shall be given are as follows:

1. The representative of the County of Los Angeles shall be, unless otherwise stated in this Agreement:

   Carol Kindler, Manager
   Chief Executive Office, Los Angeles County (LAC)
   500 W. Temple Street, Room 754
   Los Angeles, CA 90012
   Phone: (213) 974-1154
   Fax: (213) 687-3765
   Ckindler@ceo.lacounty.gov

   With a copy to:
   Norman Braverman, Grants Manager
   Chief Executive Office, LAC
   500 W. Temple Street, Room 754
   Los Angeles, CA 90012
   Phone: (213) 893-7955
   Fax: (213) 687-3765
   Nbraverman@ceo.lacounty.gov

2. The representative of Subrecipient shall be:

Name and Title:	Laurie Anderson, Business Manager
Organization	Torrance Police Department
Address:	3300 Civic Center Drive
City/State/Zip:	Torrance, CA 90503
Phone:	(310) 618-5676
Fax:	(310) 618-5675
Email	LAnderson@TorranceCA.gov

With a copy to:

Name and Title:	Sue Herbers, City Clerk
Organization	City of Torrance
Address:	3031 Torrance Boulevard
City/State/Zip:	Torrance, CA 90503
Phone:	(310) 618-2870
Fax:	(310) 618-2931
Email	SHerbers@TorranceCA.gov

B. Formal notices, demands and communications to be given hereunder by either party shall be made in writing and may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and shall be deemed communicated as of the date of mailing.

C. If the name and/or title of the person designated to receive the notices, demands or communications or the address of such person is changed, written notice shall be given, in accord with this section, within five (5) business days of said change.

§103. Independent Party

Subrecipient is acting hereunder as an independent party, and not as an agent or employee of the County of Los Angeles. No employee of Subrecipient is, or shall be an employee of the County of Los Angeles by virtue of this Agreement, and

Subrecipient shall so inform each employee organization and each employee who is hired or retained under this Agreement. Subrecipient shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the County of Los Angeles by virtue of this Agreement.

§104. Conditions Precedent to Execution of This Agreement

Subrecipient shall provide the following signed documents to the County of Los Angeles, unless otherwise exempted.

A. Certifications and Disclosures Regarding Lobbying, attached hereto as Exhibit A and made a part hereof, in accordance with §411.A.14 of this Agreement. Subrecipient shall also file a Disclosure Form at the end of each calendar quarter in which there occurs any event requiring disclosure or which materially affects the accuracy of the information contained in any Disclosure Form previously filed by Subrecipient.

B. Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, attached hereto as Exhibit B and made a part hereof as required by Executive Order 12549 in accordance with §411.A.12 of this Agreement .

C. Certification Regarding Drug-Free Workplace, attached hereto as Exhibit C and made a part hereof, in accordance with §411.A.13 of this Agreement.

D. Certification of Assurances – Non-Construction Programs, attached hereto as Exhibit D and made a part hereof, in accordance with §411.C of this Agreement.

SECTION II

TERM AND SERVICES TO BE PROVIDED

§201. Time of Performance

The term of this Agreement shall commence upon execution by all parties and shall expire on the later of February 28, 2013, or if as of such date, not all activities required by this Agreement have been completed, then the Agreement shall expire on such later date that all such required activities, including close-out activities, are completed. Said term is subject to the provisions herein.

§202. Use of Grant Funds and Compliance with Protected Critical Infrastructure Information Requirements

A. Subrecipient has previously completed a budget/expenditure plan, hereinafter "Budget," for the BZPP 2010 Grant, which has been approved by CalEMA. This information has been validated as Protected Critical Infrastructure Information

(PCII) and is exempt from release under the Freedom of Information Act (5 U.S.C. 552) and similar State and local disclosure laws, to include the California Public Records Act (California Government Code §§6250-6270). Unauthorized release of this information or any newly created document containing PCII may result in criminal and administrative penalties. This information and any newly created document containing PCII is to be safeguarded and disseminated in accordance with the Critical Infrastructure Information Act of 2002, 6 U.S.C. §§131 et seq., the implementing Regulation at 6 C.F.R. Part 29 and PCII Program requirements, a copy of the Final Rule: Procedures for Handling Protected Critical Infrastructure Information is attached to this Agreement as Exhibit E. Subrecipient acknowledges that it is familiar with all pertinent statutory and regulatory requirements which govern the marking, storage, handling, dissemination and destruction of PCII.

Any request by Subrecipient to modify the Budget must be made in writing with the appropriate justification and submitted to CEO for approval. If during the County's review process, additional information or documentation is required, the Subrecipient will have ten (10) business days to comply with the request. If the Subrecipient does not comply with the request, CEO will issue written notification indicating that the requested modification will not be processed. Modifications must be approved in writing by the County of Los Angeles and CalEMA during the term of this Agreement. Upon approval, all other terms of this Agreement will remain in effect.

Subrecipient shall utilize grant funds in accordance with all Federal regulations and State Guidelines. Any subcontract entered into by Subrecipient, relating to this Contract, to the extent allowed hereunder, shall include the provisions of this paragraph and be subject to such provisions, and shall attach a copy of the Final Rule: Procedures for Handling Protected Critical Infrastructure Information, which is attached hereto as Exhibit E.

B. Subrecipient agrees that grant funds awarded will be used to supplement existing funds for program activities, and will not supplant (replace) non-Federal funds.

C. Subrecipient shall review the Federal Debarment Listing at www.epls.gov/epls/search.do prior to the purchase of equipment or services to ensure the intended vendor is not listed and also maintain documentation that the list was verified.

D. Prior to the purchase of equipment or services costing $100,000 or more utilizing a sole source contract, justification must be presented to CEO, who upon review, will request approval from CalEMA. Such approval in writing must be obtained prior to the commitment of funds

E. Subrecipient shall provide any reports requested by the County of Los Angeles to the CEO indicating Subrecipient's performance under this Agreement, including progress on meeting program goals. Reports shall be in the form requested by the County of Los Angeles, and shall be provided by the 15th of the following month. Subrecipient shall timely submit claims for reimbursement.

F. Subrecipient shall provide a copy of their Annual Single Audit Report, as required by Office of Management and Budget circular A-133, to CEO no later than March 31st of the year following the reporting period.

G. Subrecipient shall provide a Corrective Action Plan to CEO within 30 days of any audit finding.

H. Subrecipient will be monitored by the County of Los Angeles on an annual basis to ensure compliance with CalEMA grant program requirements. Said monitoring will include, at a minimum, one on-site visit during the term of this Agreement.

I. Any equipment acquired pursuant to this Agreement shall be authorized in the G&T Authorized Equipment List (AEL) available online at www.rkb.us. Subrecipient shall provide the County of Los Angeles a copy of its most current procurement guidelines and follow its own procurement requirements as long as they meet or exceed the minimum Federal requirements. Federal procurement requirements for the BZPP 2010 Grant can be found at OMB Circular A-102, Title 28 C.F.R. Part 66.36, and Office of G&T Financial Guide.

   Any equipment acquired or obtained with Grant Funds:

   1. Will be made available under the California Disaster and Civil Defense Master Mutual Aid Agreement in consultation with representatives of the various fire, emergency medical, hazardous materials response services, and law enforcement agencies within the jurisdiction of the applicant;

   2. Will be consistent with needs as identified in the State Buffer Zone Protection Program Guidance and will be deployed in conformance with that plan;

   3. Will be made available pursuant to applicable terms of the California Disaster and Civil Defense Master Mutual Aid Agreement and deployed with personnel trained in the use of such equipment in a manner consistent with the California Law Enforcement Mutual Aid Plan or the California Fire Services and Rescue Mutual Aid Plan.

J. Equipment acquired pursuant to this Agreement shall be subject to the requirements of Title 28, C.F.R. 66.32, 66.33 and Office of G&T Financial Guide. For the purposes of this subsection, "Equipment" is defined as tangible nonexpendable property, having a useful life of more than one year which costs $5,000 or more per unit. Items costing less than $5,000, but acquired under the "Equipment" category of the Grant shall also be listed on any required Equipment Ledger.

   1. Equipment shall be used by Subrecipient in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the Equipment may be used in other activities currently or previously supported by a Federal agency.

2. Subrecipient shall make Equipment available for use on other like projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency.

3. An Equipment Ledger shall be maintained listing each item of Equipment acquired with BZPP funds. The Equipment Ledger must be kept up to date at all times. Any changes shall be recorded in the Ledger within ten (10) business days and the updated Ledger is to be forwarded to the County Disaster Administrative Team. The Equipment Ledger shall include: (a) description of the item of Equipment, (b) manufacturer's model and serial number, (c) Federal Stock number, national stock number, or other identification number; (d) the fund source/grant year of acquisition of the Equipment, including the award number, (e) date of acquisition; (f) the per unit acquisition cost of the Equipment, (g) location and condition of Equipment and (h) disposition data, including date and sale price , if applicable. Records must be retained pursuant to Title 28 C.F.R. Part 66.42.

4. All Equipment obtained under this Agreement shall have an appropriate identification decal affixed to it, and, when practical, shall be affixed where it is readily visible.

5. A physical inventory of the Equipment shall be taken by the Subrecipient and the results reconciled with the Equipment Ledger at least once every two years or prior to any site visit by State or Federal auditors/monitors. The Subrecipient is required to submit a letter certifying as to the accuracy of the Equipment Ledger to the County of Los Angeles, in the frequency as above.

K. Any planning paid pursuant to this Agreement shall conform to the guidelines as listed in the 2010 Buffer Zone Protection Program, Program Guidance and Application Kit or subsequent grant year programs.

SECTION III

PAYMENT

§301. Payment of Grant Funds and Method of Payment

A. The County of Los Angeles shall reimburse Subrecipient up to the maximum grant amount of $190,000 as expenditures are incurred and paid by Subrecipient and all documentation is reviewed and approved by County. All expenditures shall be for the purchase of equipment and planning as described in Section II of this Agreement. The grant amount represents the amount allocated to Subrecipient in the 2010 BZPP Grant Award Letter from CalEMA.

B. Subrecipient shall submit invoices to the County of Los Angeles Chief Executive Office requesting payment as soon as expenses are incurred and paid, and the required supporting documentation is available. Said timeframe should be within ten (10) business days of Subrecipient's payment to vendors and/or prescribed due dates by CEO and/or CalEMA. Each reimbursement request shall be accompanied by the Reimbursement Request Checklist and Form (attached hereto as Exhibit F). All appropriate back-up documentation must be attached to the reimbursement form, including invoices, proof of payment and packing slips.

For planning reimbursements, Subrecipient must include a copy of the final tangible product as a result of the planning project.

C. County may, at its discretion, and with CalEMA approval, reallocate unexpended grant funds to another Subrecipient. Said reallocation may occur upon completion of an approved project, or by notification to County by Subrecipient that a portion of the grant funds identified in §301 A., above, will not be utilized. Notwithstanding the provisions of §502, below, any increase or decrease in the grant amount specified in §301 A., above, shall not require a written amendment to this Agreement.

D. Payment of final invoice shall be withheld by the County of Los Angeles until the County has determined that Subrecipient has turned in all supporting documentation and completed the requirements of this Agreement.

E. It is understood that the County of Los Angeles makes no commitment to fund this Agreement beyond the terms set forth herein.

F. 1. Funding for all periods of this Agreement is subject to continuing Federal appropriation of grant funds for this program. In the event of a loss or reduction of Federal appropriation of grant funds for this program, the Agreement may be terminated, or appropriately amended, immediately upon notice to Subrecipient of such loss or reduction of Federal grant funds.

2. County shall make a good-faith effort to notify subrecipient, in writing, of such non-appropriation at the earliest time.

SECTION IV

STANDARD PROVISIONS

§401. Construction of Provisions and Titles Herein

All titles or subtitles appearing herein have been inserted for convenience and shall not be deemed to affect the meaning or construction of any of the terms or provisions hereof. The language of this Agreement shall be construed according to its fair meaning and not strictly for or against either party.

§402. Applicable Law, Interpretation and Enforcement

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the County of Los Angeles. This Agreement shall be enforced and interpreted under the laws of the State of California and the County of Los Angeles.

If any part, term or provision of this Agreement shall be held void, illegal, unenforceable, or in conflict with any law of a Federal, State or Local Government having jurisdiction over this Agreement, the validity of the remaining portions of provisions shall not be affected thereby.

Applicable Federal or State requirements that are more restrictive shall be followed.

§403. Integrated Agreement

This Agreement sets forth all of the rights and duties of the parties with respect to the subject matter hereof, and replaces any and all previous agreements or understandings, whether written or oral, relating thereto. This Agreement may be amended only as provided for herein.

§404. Breach

If any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

§405. Prohibition Against Assignment or Delegation

Subrecipient may not, unless it has first obtained the written permission of the County of Los Angeles:

A. Assign or otherwise alienate any of its rights hereunder, including the right to payment; or

B. Delegate, subcontract, or otherwise transfer any of its duties hereunder.

§406. Permits

Subrecipient and its officers, agents and employees shall obtain and maintain all permits and licenses necessary for Subrecipient's performance hereunder and shall pay any fees required therefor. Subrecipient further certifies to immediately notify the County of Los Angeles of any suspension, termination, lapse, non renewal, or restriction of licenses, certificates, or other documents.

§407. Nondiscrimination and Affirmative Action

Subrecipient shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the County of Los Angeles. In performing this Agreement, Subrecipient shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, mental disability, marital status, domestic partner status or medical condition. Subrecipient shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CRF Part 60).

If required, Subrecipient shall submit an Equal Employment Opportunity Plan ("EEOP") to the DOJ Office of Civil Rights ("OCR") in accordance with guidelines listed at www.ojp.usdoj.gov/about/ocr/eeop.htm.

Any subcontract entered into by the Subrecipient relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of this §407 of this Agreement.

§408. Indemnification

Each of the parties to this Agreement is a public entity. This indemnity provision is written in contemplation of the provisions of Section 895.2 of the Government Code of the State of California, which impose certain tort liability jointly upon public entities, solely by reason of such entities being parties to an agreement, and the parties agree that this indemnity provision shall apply and shall be enforceable regardless of whether Section 895 et seq. is deemed to apply to this Agreement. The parties hereto, as between themselves, consistent with the authorization contained in Government Code Sections 895.4 and 895.6 agree to each assume the full liability imposed upon it or upon any of its officers, agents, or employees by law, for injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement, to the same extent that such liability would be imposed in the absence of Government Code Section 895.2. To achieve the above-stated purpose, each party agrees to indemnify and hold harmless the other party for any liability arising out of its own negligent acts or omissions in the performance of this Agreement (i.e., the Subrecipient agrees to indemnify and hold harmless the County of Los Angeles for liability arising out of the Subrecipient's negligent or wrongful acts or omissions and the County of Los Angeles agrees to indemnify and hold harmless the Subrecipient for liability arising out of the County of Los Angeles' negligent or wrongful acts or omissions). Each party further agrees to indemnify and hold harmless the other party for liability that is imposed on the other party solely by virtue of Government Code Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part hereof as if fully set forth herein. Subrecipient certifies that it has adequate self insured retention of funds to meet any obligation arising from this Agreement.

§409. Conflict of Interest

A. The Subrecipient covenants that none of its directors, officers, employees, or agents shall participate in selecting, or administrating any subcontract supported (in whole or in part) by Federal funds where such person is a director, officer, employee or agent of the subcontractor; or where the selection of subcontractors is or has the appearance of being motivated by a desire for personal gain for themselves or others such as family business, etc.; or where such person knows or should have known that:

1. A member of such person's immediate family, or domestic partner or organization has a financial interest in the subcontract;

2. The subcontractor is someone with whom such person has or is negotiating any prospective employment; or

3. The participation of such person would be prohibited by the California Political Reform Act, California Government Code §87100 et seq. if such person were a public officer, because such person would have a "financial or other interest" in the subcontract.

B. Definitions:

1. The term "immediate family" includes but is not limited to domestic partner and/or those persons related by blood or marriage, such as husband, wife, father, mother, brother, sister, son, daughter, father in law, mother in law, brother in law, sister in law, son in law, daughter in law.

2. The term "financial or other interest" includes but is not limited to:

a. Any direct or indirect financial interest in the specific contract, including a commission or fee, a share of the proceeds, prospect of a promotion or of future employment, a profit, or any other form of financial reward.

b. Any of the following interests in the subcontractor ownership: partnership interest or other beneficial interest of five percent or more; ownership of five percent or more of the stock; employment in a managerial capacity; or membership on the board of directors or governing body.

C. The Subrecipient further covenants that no officer, director, employee, or agent shall solicit or accept gratuities, favors, anything of monetary value from any actual or potential subcontractor, supplier, a party to a sub agreement, (or persons who are otherwise in a position to benefit from the actions of any officer, employee, or agent).

D. The Subrecipient shall not subcontract with a former director, officer, or employee within a one year period following the termination of the relationship between said person and the Subrecipient.

E. Prior to obtaining the County of Los Angeles' approval of any subcontract, the Subrecipient shall disclose to the County of Los Angeles any relationship, financial or otherwise, direct or indirect, of the Subrecipient or any of its officers, directors or employees or their immediate family with the proposed subcontractor and its officers, directors or employees.

F. For further clarification of the meaning of any of the terms used herein, the parties agree that references shall be made to the guidelines, rules, and laws of the County of Los Angeles, State of California, and Federal regulations regarding conflict of interest.

G. The Subrecipient warrants that it has not paid or given and will not pay or give to any third person any money or other consideration for obtaining this Agreement.

H. The Subrecipient covenants that no member, officer or employee of Subrecipient shall have interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work to be performed in connection with this project during his/her tenure as such employee, member or officer or for one year thereafter.

I. The Subrecipient shall incorporate the foregoing subsections of this Section into every agreement that it enters into in connection with this grant and shall substitute the term "subcontractor" for the term "Subrecipient" and "sub subcontractor" for "Subcontractor".

§410. Restriction on Disclosures

Any reports, analyses, studies, drawings, information, or data generated as a result of this Agreement are to be governed by the California Public Records Act (California Government Code Sec. 6250 et seq.).

§411. Statutes and Regulations Applicable To All Grant Contracts

A. Subrecipient shall comply with all applicable requirements of State, Federal, and County of Los Angeles laws, executive orders, regulations, program and administrative requirements, policies and any other requirements governing this Agreement. Subrecipient shall comply with applicable State and Federal laws and regulations pertaining to labor, wages, hours, and other conditions of employment. Subrecipient shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Agreement. These requirements include, but are not limited to:

1. Office of Management and Budget (OMB) Circulars

Subrecipient shall comply with OMB Circulars, as applicable: OMB Circular A-21 (Cost Principles for Educational Institutions); OMB Circular A-87 (Cost Principles for State, Local, and Indian Tribal Governments); OMB Circular A-102 (Grants and Cooperative Agreements with State and Local Governments); Common Rule, Subpart C for public agencies or OMB Circular A-110 (Uniform Administrative Requirements for Grants and

Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations); OMB Circular A-122 (Cost Principles for Non-Profit Organizations); OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations.

2. Single Audit Act

Since Federal funds are used in the performance of this Agreement, Subrecipient shall, as applicable, adhere to the rules and regulations of the Single Audit Act, 31 USC Sec. 7501 et seq.); OMB Circular A-133 and any administrative regulation or field memos implementing the Act.

3. Americans with Disabilities Act

Subrecipient hereby certifies that, as applicable, it will comply with the Americans with Disabilities Act 42, USC §§12101 et seq., and its implementing regulations. Subrecipient will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. Subrecipient will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by Subrecipient, relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

4. Political and Sectarian Activity Prohibited

None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office. Neither shall any funds provided under this Agreement be used for any purpose designed to support or defeat any pending legislation or administrative regulation. None of the funds provided pursuant to this Agreement shall be used for any sectarian purpose or to support or benefit any sectarian activity.

Subrecipient shall file a Disclosure Form at the end of each calendar quarter in which there occurs any event requiring disclosure or which materially affects the accuracy of any of the information contained in any Disclosure Form previously filed by Subrecipient. Subrecipient shall require that the language of this Certification be included in the award documents for all sub-awards at all tiers and that all subcontractors shall certify and disclose accordingly.

5. Records Inspection

At any time during normal business hours and as often as either the County of Los Angeles, the U.S. Comptroller General or the Auditor

General of the State of California may deem necessary, Subrecipient shall make available for examination all of its records with respect to all matters covered by this Agreement. The County of Los Angeles, the U.S. Comptroller General and the Auditor General of the State of California shall have the authority to audit, examine and make excerpts or transcripts from records, including all Subrecipient's invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

Subrecipient agrees to provide any reports requested by the County regarding performance of this Agreement.

6. Records Maintenance

Records, in their original form, shall be maintained in accordance with requirements prescribed by the County of Los Angeles with respect to all matters specified in this Agreement. Original forms are to be maintained on file for all documents specified in this Agreement. Such records shall be retained for a period of five (5) years after the expiration or earlier termination of this Agreement and after final disposition of all pending matters. "Pending matters" include, but are not limited to, an audit, litigation or other actions involving records. The County of Los Angeles may, at its discretion, take possession of, retain and audit said records. Records, in their original form pertaining to matters covered by this Agreement, shall at all times be retained within the County of Los Angeles unless authorization to remove them is granted in writing by the County of Los Angeles.

7. Subcontracts and Procurement

Subrecipient shall, as applicable, comply with the Federal, State and County of Los Angeles standards in the award of any subcontracts. For purposes of this Agreement, subcontracts shall include but not be limited to purchase agreements, rental or lease agreements, third party agreements, consultant service contracts and construction subcontracts.

Subrecipient shall, as applicable, ensure that the terms of this Agreement with the County of Los Angeles are incorporated into all Subcontractor Agreements. The Subrecipient shall submit all Subcontractor Agreements to the County of Los Angeles for review prior to the release of any funds to the subcontractor. The Subrecipient shall withhold funds from any subcontractor agency that fails to comply with the terms and conditions of this Agreement and their respective Subcontractor Agreement.

8. Labor

Subrecipient shall, as applicable, comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed requirements for merit systems for programs funded under one of the 19

statutes or regulations specified in Appendix A of OPM's Standards for a Merit System Personnel Administration (5 C.F.R. 900, Subpart F).

Subrecipient shall comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements, and the Hatch Act (5 USC §§1501-1508 and 7324-7328).

Subrecipient shall, as applicable, comply with the Federal Fair Labor Standards Act (29 USC §201) regarding wages and hours of employment.

None of the funds shall be used to promote or deter Union/labor organizing activities. CA Gov't Code Sec. 16645 et seq.

9. Civil Rights

Subrecipient shall, as applicable, comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681- 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of disabilities; (d) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; (j) the requirements of any other nondiscrimination statute(s) which may apply to the application; and (k) P.L. 93-348, National Research Act, regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

10. Environmental

Subrecipient shall, as applicable, comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose

property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

Subrecipient shall comply, as applicable, with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93205); and (i) Flood Disaster Protection Act of 1973 §102(a) (P.L. 93-234).

Subrecipient shall, as applicable, comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

Subrecipient shall, as applicable, comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

Subrecipient shall, as applicable, comply with the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.) which restores and maintains the chemical, physical and biological integrity of the Nation's waters.

Subrecipient shall, as applicable, ensure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of this project are not listed in the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal Grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

By signing this Agreement, Subrecipient ensures that it shall comply, as applicable, with the California Environmental Quality Act (CEQA), Public Resources Code §21000 et seq.

Subrecipient shall, as applicable, comply with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat. 871).

Subrecipient shall comply, as applicable, with the provision of the Coastal Barrier Resources Act (P.L. 97-348) dated October 19, 1982 (16 USC 3501 et. seq.) which prohibits the expenditure of most new Federal funds within the units of the Coastal Barrier Resources System.

11. Preservation

Subrecipient shall, as applicable, comply with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

12. Suspension, Debarment, Ineligibility and Voluntary Exclusion

Subrecipient shall, as applicable, comply with Title 28 C.F.R. Volume 67, Number 228, regarding Suspension and Debarment, and Subrecipient shall submit a Certification Regarding Debarment required by Executive Order 12549 and any amendment thereto and attached hereto as Exhibit B. Said Certification shall be submitted to the County of Los Angeles concurrent with the execution of this Agreement and shall certify that neither Subrecipient nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department head or agency. Subrecipient shall require that the language of this Certification be included in the award documents for all sub-award at all tiers and that all subcontractors shall certify accordingly.

13. Drug-Free Workplace

Subrecipient shall, as applicable, comply with the federal Drug-Free Workplace Act of 1988, 41 USC §701, Title 28 Code of Federal Regulations (CFR) Part 67; the California Drug-Free Workplace Act of 1990, CA Gov't Code §§8350-8357, and Subrecipient shall complete the Certification Regarding Drug-Free Workplace Requirements, attached hereto as Exhibit C, and incorporated herein by reference. Subrecipient shall require that the language of this Certification be included in the award documents for all sub-award at all tiers and that all subcontractors shall certify accordingly.

14. Lobbying Activities

Subrecipient shall, as applicable, comply with 31. U.S.C.1352 and complete the Disclosure of Lobbying Activities, (OMB 0038-0046), attached hereto as Exhibit A, and incorporated herein by reference.

15. Miscellaneous

Subrecipient shall, as applicable, comply with the Laboratory Animal Welfare Act of 1966, as amended (P.L. 89-544, 7 USC §§2131 et seq.).

B. Statutes and Regulations Applicable To This Particular Grant

Subrecipient shall comply with all applicable requirements of State and Federal laws, executive orders, regulations, program and administrative requirements, policies and any other requirements governing this particular grant program. Subrecipient shall, as applicable, comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Agreement. These requirements include, but are not limited to:

1. Title 28 CFR Part 66; EO 12372; (Financial Management Guide US Department of Homeland Security Directorates Preparedness January 2006, *Financial Guide*; U.S. Department of Homeland Security, Office of State and Local Government Coordination and Preparedness, Office for Domestic Preparedness, ODP WMD Training Course Catalogue; and DOJ Office for Civil Rights.

   Standardized Emergency Management System (SEMS) requirements as stated in the California Emergency Services Act, Government Code Chapter 7 of Division 1 of Title 2, §8607.1(e) and CCR Title 19, §§2445-2448.

   Provisions of Title 2, 6, 28, 44 CFR applicable to grants and cooperative agreements, including Part 18, Administrative Review Procedures; Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Systems Operating Policies; Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 35, Nondiscrimination on the Basis of Disability in State and Local Government Services; Part 38, Equal Treatment of Faith-based Organizations; Part 42, Nondiscrimination/Equal Employment Opportunities Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act; Part 63, Floodplain Management and Wetland Protection Procedures; Part 64, Floodplain Management and Wetland Protection Procedures; Federal laws or regulations applicable to Federal Assistance Programs; Part 69, New Restrictions on Lobbying; Part 70, Uniform Administrative Requirements for Grants and Cooperative Agreements (including sub-awards) with Institutions of Higher Learning, Hospitals and other Non-Profit Organizations; and Part 83, Government-Wide Requirements for a Drug Free Workplace (grants).

   Nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 USC 3789(d), or the Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act, as appropriate; the provisions of the current edition of the Office of Justice Programs Financial and Administrative Guide for Grants, M7100.1, and all other applicable Federal laws, orders, circulars, or regulations.

2. Travel Expenses

Subrecipient as provided herein shall be compensated for Subrecipient's reasonable travel expenses incurred in the performance of this Agreement, to include travel and per diem, unless otherwise expressed. Subrecipient's total travel for in-State and/or out-of-State and per diem costs shall be included in the contract budget(s). All travel including out-of-State travel not included in the budget(s) shall not be reimbursed without prior written authorization from the County of Los Angeles.

Subrecipient's administrative-related travel and per diem reimbursement costs shall be reimbursed based on the Subrecipient's policies and procedures. For programmatic-related travel costs, Subrecipient's reimbursement rates shall not exceed the amounts established by the County of Los Angeles.

3. Noncompliance

Subrecipient understands that failure to comply with any of the above assurances may result in suspension, termination or reduction of grant funds, and repayment by the Subrecipient to the County of Los Angeles of any unauthorized expenditures.

C. Compliance With Grant Requirements

To obtain the grant funds, the State required an authorized representative of the County of Los Angeles to sign certain promises regarding the way the grant funds would be spent. These requirements are included in the 2010 Program Guidance and Application Kit and in the "Grant Assurances", attached hereto as Exhibit D. By signing these Grant Assurances and accepting the Program Guidances, the County of Los Angeles became liable to the State for any funds that are used in violation of the grant requirements. Subrecipient shall be liable to the Grantor for any funds the State determines that Subrecipient used in violation of these Grant Assurances. Subrecipient shall indemnify and hold harmless the County of Los Angeles for any sums the State or Federal government determines Subrecipient used in violation of the Grant Assurances.

§412. Federal, State and Local Taxes

Federal, State and local taxes shall be the responsibility of the Subrecipient as an independent party and not of the County of Los Angeles and shall be paid prior to requesting reimbursement. However, these taxes are an allowable expense under the grant program.

§413. Inventions, Patents and Copyrights

A. Reporting Procedure for Inventions

If any project produces any invention or discovery (Invention) patentable or otherwise under Title 35 of the U.S. Code, including, without limitation, processes

and business methods made in the course of work under this Agreement, the Subrecipient shall report the fact and disclose the Invention promptly and fully to the County of Los Angeles. The County of Los Angeles shall report the fact and disclose the Invention to the State. Unless there is a prior agreement between the County of Los Angeles and the State, the State shall determine whether to seek protection on the Invention. The State shall determine how the rights in the Invention, including rights under any patent issued thereon, will be allocated and administered in order to protect the public interest consistent with the policy ("Policy") embodied in the Federal Acquisition Regulations System, which is based on Ch. 18 of title 35 U.S.C. Sections 200 et seq. (Pub. L. 95-517, Pub. L. 98-620, Title 37 CFR Part 401); Presidential Memorandum on Government Patent Policy to the Heads of the Executive Departments and Agencies, dated 2/18/1983); and Executive Order 12591, 4/10/87, 52 FR 13414, Title 3 CFR, 1987 Comp., p. 220 (as amended by Executive Order 12618, 12/22/87, 52 FR 48661, Title 3 CFR, 1987 Comp., p. 262). Subrecipient hereby agrees to be bound by the Policy, and will contractually require its personnel to be bound by the Policy.

B. Rights to Use Inventions

County of Los Angeles shall have an unencumbered right, and a non-exclusive, irrevocable, royalty-free license, to use, manufacture, improve upon, and allow others to do so for all government purposes, any Invention developed under this Agreement.

C. Copyright Policy

1. Unless otherwise provided by the State or the terms of this Agreement, when copyrightable material (Material) is developed under this Agreement, the County of Los Angeles, at the County's discretion, may copyright the Material. If the County of Los Angeles declines to copyright the Material, the County of Los Angeles shall have an unencumbered right, and a non-exclusive, irrevocable, royalty-free license, to use, manufacture, improve upon, and allow others to do so for all government purposes, any Material developed under this Agreement.

2. The State shall have an unencumbered right, and a non-exclusive, irrevocable, royalty-free license, to use, manufacture, improve upon, and allow others to do so for all government purposes, any Material developed under this Agreement or any Copyright purchased under this Agreement.

3. Subrecipient shall comply with Title 24 CFR 85.34.

D. Rights to Data

The State and the County of Los Angeles shall have unlimited rights or copyright license to any data first produced or delivered under this Agreement. "Unlimited rights" means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, or permit others to do so; as required by Title 48 CFR 27.401. Where the data are not first

produced under this Agreement or are published copyrighted data with the notice of 17 U.S.C. Section 401 or 402, the State acquires the data under a copyright license as set forth in Title 48 CFR 27.404(f)(2) instead of unlimited rights. (Title 48 CFR 27.404(a)).

E. Obligations Binding on Subcontractors

Subrecipient shall require all subcontractors to comply with the obligations of this section by incorporating the terms of this section into all subcontracts.

§414. Child Support Assignment Orders

Under the terms of this Agreement, Subrecipient shall comply with California Family Code Section 5230 et seq. as applicable.

§415. Minority, Women, And Other Business Enterprise Outreach Program

It is the policy of the County of Los Angeles to provide Minority Business Enterprises, Women Business Enterprises and all other business enterprises an equal opportunity to participate in the performance of all Subrecipient's contracts, including procurement, construction and personal services. This policy applies to all of the Subrecipient's contractors and sub-contractors.

SECTION V

DEFAULTS, SUSPENSION, TERMINATION, AND AMENDMENTS

§501. Defaults

Should either party fail for any reason to comply with the contractual obligations of this Agreement within the time specified by this Agreement, the non-breaching party reserves the right to terminate the Agreement, reserving all rights under State and Federal law.

§502. Amendments

Any changes in the terms of this Agreement, including changes in the services to be performed by Subrecipient, and any increase or decrease in the amount of compensation which are agreed to by the Subrecipient and County of Los Angeles must be incorporated into this Agreement by a written amendment properly executed and signed by the person authorized to bind the parties thereto.

SECTION VI

ENTIRE AGREEMENT

§601. Complete Agreement

This Agreement contains the full and complete Agreement between the two parties. Neither verbal agreement nor conversation or other communication with any officer or employee of either party shall affect or modify any of the terms and conditions of this Agreement.

§602. Number of Pages and Attachments

This Agreement may be executed in two (2) duplicate originals, each of which is deemed to be an original. This Agreement includes (23) pages and (6) Exhibits which constitute the entire understanding and agreement of the parties.

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IN WITNESS WHEREOF, the Subrecipient and County of Los Angeles have caused this Agreement to be executed by their duly authorized representatives.

COUNTY OF LOS ANGELES

By _____ _____
WILLIAM T FUJIOKA Date
Chief Executive Officer

By _____ By_____
SACHI A. HAMAI WENDY L. WATANABE
Executive Officer, Board of Supervisors Auditor-Controller

APPROVED AS TO FORM

ANDREA SHERIDAN ORDIN
County Counsel

BY_____
Principal Deputy County Counsel

BY_____ _____ _____
FRANK SCOTTO, City Mayor (Print Name) Date

APPROVED AS TO FORM

BY_____ _____ _____
JOHN L. FELLOWS III (Print Name) Date
City Attorney

ATTEST

BY_____ _____ _____
SUE HERBERS, City Clerk (Print Name) Date

EXHIBITS

Exhibit A	Certification and Disclosures Regarding Lobbying
Exhibit B	Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions and
Exhibit C	Certification Regarding Drug-Free Workplace
Exhibit D	Grant Assurances
Exhibit E	Final Rule: Procedures for Handling Protected Critical Infrastructure Information
Exhibit F	Reimbursement Request Checklist and Form

EXHIBIT A

CalEMA 2-232
Approved by OMB 0348-0046

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

1. Type of Federal Action:

☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:

☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:

☐ a. initial filing
b. material change

For Material Change Only:

Year _____ Quarter _____

date of last report _____

4. Name and Address of Reporting Entity:

☐ Prime ☐ Subawardee

Tier, *if known:* _____

Congressional District, *if known:* _____

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:* _____

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable: _____

8. Federal Action Number, *if known:* _____

9. Award Amount, *if known:* _____

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):
(attach Continuation Sheet(s) SF-LLL-A, if necessary)

b. Individuals Performing Services
(last name, first name, MI - include address if different from 10a)

11. Amount of Payment (check all that apply) :

_____ ☐ **Actual** ☐ **Planned**

12. Form of Payment *(check all that apply):*

☐ a. cash
☐ b. in-kind; specify:

nature _____ value _____

13. Type of Payment *(check all that apply):*

☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in item 11: (attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ◯ Yes ◯ No

16. Information requested through this form is authorized by *Title 31 U.S.C. Section 1352.* This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to *31 U.S.C. 1352.* This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Name: _____
Title: _____
Telephone: _____ *(area code)*
Date: _____

Federal Use Only:

Authorized for Local Reproduction Standard Form – LLL

Approved by OMB 0348-0046

DISCLOSURE OF LOBBYING ACTIVITIES
CONCONTINUATION SHEET

Continuation of 10 a-b: additional sheets may be added if necessary

Reporting Entity:

Last Name	First Name	MI
Address	City	Zip
Last Name	First Name	MI
Address	City	Zip
Last Name	First Name	MI
Address	City	Zip
Last Name	First Name	MI
Address	City	Zip

Continuation of 14: (additional sheets may be added if necessary)

Brief Description of Services and Payments indicated in item 11:

Authorized for Local Reproduction
Standard Form – LLL-A

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether sub-awardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to *Title 31 U.S.C. Section 1352*. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or sub-award recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; sub-grant announcement number; the contract, subgrant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g.,"RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a.) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
    (b.) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

EXHIBIT B

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 24 CFR Par t 24 Section 24.510, Participants' responsibilities.

(READ ATTACHED INSTRUCTIONS FOR CERTIFICATION BEFORE COMPLETING)

1. The prospective recipient of Federal assistance funds certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

_____

AGREEMENT NUMBER

_____

CONTRACTOR/BORROWER/AGENCY

_____

NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

_____

SIGNATURE DATE

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this document, the prospective recipient of Federal assistance is providing the certification as set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If tit is later determined that he prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to which this agreement is entered, if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous, when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," " primary covered transaction," 'principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.

5. The prospective recipient of Federal assistance funds agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation on this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective recipient of Federal assistance funds further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Procurement or Non Procurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded form participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

EXHIBIT C

CERTIFICATION REGARDING DRUG-FREE WORKPLACE ACT REQUIREMENTS

The Contractor certifies that it will provide a drug-free workplace, in accordance with State law and State Employment Development Department (EDD) Directive No. D907 by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

2. Establishing a drug-free awareness program to inform employees about:

   a. The dangers of drug abuse in the workplace;
   b. The Contractor's policy of maintaining a drug-free workplace;
   c. Any available drug counseling, rehabilitation and employee assistance programs; and
   d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

3. Making it a requirement that each employee to be engaged in the performance of this program be given a copy of the statement required by paragraph 1.above.

4. Notifying the employee in the statement required by paragraph 1. that, as a condition of employment under this program, the employee will:
   a. Abide by the terms of the statement, and
   b. Notify the Contractor of any criminal drug statute convictions for a violation occurring in the workplace no later than five days after such conviction.

5. Notifying the County within ten days after receiving notice under subparagraph 4.b. from an employee or otherwise receiving actual notice of such conviction.

6. Taking one of the following actions, within 30 days of receiving notice under subparagraph 4.b. with respect to any employee who is so convicted by taking appropriate personnel action against such an employee, up to and including termination.

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of the provision of this certification.

_____
CONTRACTOR/AGENCY

_____
NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

_____
SIGNATURE OF AUTHORIZED REPRESENTATIVE

_____
DATE

EXHIBIT D

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

EXHIBIT E

Federal Register

Friday,
September 1, 2006

Part IV

Department of Homeland Security

6 CFR Part 29
Procedures for Handling Critical Infrastructure Information; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 29

RIN 1601–AA14

Procedures for Handling Critical Infrastructure Information

AGENCY: Office of the Secretary, DHS.

ACTION: Final rule.

SUMMARY: This final rule amends the February 2004 Interim Rule establishing uniform procedures to implement the Critical Infrastructure Information Act of 2002. These procedures govern the receipt, validation, handling, storage, marking, and use of critical infrastructure information voluntarily submitted to the Department of Homeland Security. The procedures are applicable to all Federal, State, local, and tribal government agencies and contractors that have access to, handle, use, or store critical infrastructure information that enjoys protection under the Critical Infrastructure Information Act of 2002.

DATES: *Effective Date:* This final rule is effective September 1, 2006.

FOR FURTHER INFORMATION CONTACT: Laura Kimberly, Directorate for Preparedness (202) 360–3023, not a toll-free call.

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PART 29—PROTECTED CRITICAL INFRASTRUCTURE INFORMATION

Table of Abbreviations

In this document, the following abbreviations are commonly used:

APA—Administrative Procedure Act
CII—Critical Infrastructure Information
CII Act—Critical Infrastructure Information Act of 2002
DHS—Department of Homeland Security
FOIA—Freedom of Information Act
HSA—Homeland Security Act of 2002
ISAO—Information Sharing and Analysis Organization
NPRM—Notice of Proposed Rulemaking
PCII—Protected Critical Infrastructure Information
PCIIMS—Protected Critical Infrastructure Information Management System

I. Introduction

The Critical Infrastructure Information Act of 2002 (CII Act)[1] is a crucial tool in facilitating the Department of Homeland Security's (DHS) analysis of infrastructure vulnerability and related information for planning, preparedness, warnings and other purposes. The CII Act enables DHS to collaborate effectively to protect America's critical infrastructure, eighty-five percent of which is in the private sector's hands. The CII Act authorized DHS to accept information relating to critical infrastructure from the public, owners and operators of critical infrastructure, and State, local, and tribal governmental entities, while limiting public disclosure of that sensitive information under the Freedom of Information Act, 5 U.S.C. 552 (FOIA), and other laws, rules, and processes.

In responding to comments and drafting this final rule, DHS has been careful to further the purposes of the Protected Critical Infrastructure Information (PCII) Program as an effective anti-terrorism tool while also carefully observing its limitations. For the PCII Program to be successful, DHS believes that the rule must be as clear and certain as possible, yet flexible to respond to changing conditions. Among other measures, this final rule:

- Clarifies that a submittal validated as PCII will not thereafter lose its protected status except under a very narrow set of circumstances (section 29.6(g));
- Requires that PCII will be shared only for the Homeland Security purposes specified in the statute and in no event for other collateral regulatory purposes (section 29.3(b));
- Provides the PCII Program Manager with the flexibility to designate certain types of infrastructure information as presumptively valid PCII in order to accelerate the validation process and provide greater certainty to potential submitters (section 29.6(f));
- Provides that submissions not validated as PCII be returned to the submitter or destroyed (section 29.6(e)(2)(ii));
- Provides for submission of CII for protection through DHS field representatives (section 29.5(a)(1));
- Identifies procedures for indirect submissions to DHS through other Federal agencies (sections 29.1(f), 29.5(a)(1), 29.6(b), (d)); and
- Simplifies the information submission process (section 29.6).

On April 15, 2003, DHS published a notice of proposed rulemaking (NPRM) regarding the establishment of the PCII Program. 68 FR 18523 (Apr. 15, 2003). Written comments were accepted through June 16, 2003. DHS received 117 sets of comments.

DHS subsequently published an interim rule on February 20, 2004 at 69 FR 8074. In the February 2004 Interim Rule, DHS responded to the public comments received in response to the initial NPRM and invited additional public comments. DHS received 32 sets of responsive comments from various entities, including trade organizations writing on behalf of their membership, private sector and public interest entities, one State government agency, and individual commenters. The comments may be reviewed at *http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0438.xml.*

[1] Homeland Security Act of 2002 (HSA) Pub. L. 108–275, tit. II, subtit. B, sec. 211, 116 Stat. 2135, 2150 (Nov. 25, 2002) (6 U.S.C. 131–134).

II. Major Issues in the February 2004 Interim Rule

DHS has resolved several major issues raised in public comments on the February 2004 Interim Rule. The following sections identify specific issues raised by commenters and describe how these issues have been resolved.

A. Indirect Submissions of PCII

The preamble to the February 2004 Interim Rule discussed "indirect submission" of CII. Section 29.2 of the NPRM[2] defined "submission of CII to DHS," to include "either directly or indirectly via another Federal agency, which, upon receipt of the CII will forward it to DHS." In section 29.5(b)(1), the proposed rule provided that CII would receive the protections of the CII Act only when the information was submitted either "directly to the IAIP [Preparedness] Directorate or indirectly to the DHS IAIP Directorate by submitting it to any Federal agency which then * * * forwards the information to the DHS IAIP Directorate." Other provisions of the proposed rule specifically required submittals to be made to the PCII Program Manager, either directly or indirectly.

DHS responded to the public comments on indirect submission received in the February 2004 Interim Final Rule. The preamble stated that, in light of substantial concern about allowing indirect submissions, DHS had removed references to indirect submissions from the rule and made clear that submissions must be made to the PCII Program Manager or the PCII Program Manager's designees. At the same time, DHS noted that it had received comments voicing support for indirect submissions. These comments favored the NPRM original intent, which was to facilitate information sharing with the Federal government through established relationships between owners of the nation's critical infrastructure and those Federal agencies that are sector leaders for particular infrastructure. Accordingly, after the PCII Program had become operational, and pending further analysis, the final rule might allow for indirect submissions. The February 2004 Interim Rule invited additional public comment.

Twenty additional sets of comments on this subject were received. Nine commenters opposed allowing indirect submissions, citing such considerations as the restrictions imposed on the use of PCII, concerns about the protection of submitted CII within agencies other than DHS, the potential for confusion as to what other agencies may do with information in their possession, and the risk of an appearance that PCII had been misused. Six other commenters considered indirect submissions problematic and believed that permitting such submissions would require additional clarification or a system of checks and balances. On the other hand, five organizations warned that not allowing indirect submissions would run contrary to their normal information flow with Federal agencies other than DHS.

Upon considering these comments, DHS has concluded that certain Federal personnel outside the Program Manager's Office at DHS ("Program Office"), including certain DHS field representatives and certain personnel in other federal agencies, should be permitted to receive and forward CII to the Program Manager, but that (absent a categorical inclusion, discussed below at section III.F.) only the PCII Program Office within DHS will be authorized to make the decision as to whether to validate a submission as PCII. The PCII Program Manager will authorize personnel in Federal governmental entities other than the PCII Program Office to accept a submission on behalf of the Program Office, but only when such personnel are trained to ensure compliance with the requirements of this final rule. The PCII Program Manager will normally take this step only when the particular governmental entity: (1) Has appointed a PCII Officer; (2) has the necessary staff, who are trained in PCII procedures; (3) has implemented measures to comply with this final rule; and (4) has agreed that the PCII Program Office may at any time verify that agency's compliance with the Final Rule and other program requirements. *See* section 29.5. Note that this final rule does not restrict the authority of the Secretary or the PCII Program Manager to designate officials to receive CII or take other actions in exigent circumstances.

B. Definitional Issues Affecting Qualifying Information

According to section 214(a)(1) of the CII Act (6 U.S.C. 133(a)(1)), "critical infrastructure information" that is "voluntarily submitted" to a "covered Federal agency" (*i.e.*, DHS) for its use for the specified purposes, when accompanied by an "express statement," qualifies for CII Act protections. Section 212(3) of the CII Act (6 U.S.C. 131(3)) defines "critical infrastructure information" to mean, in pertinent part, "information not customarily in the public domain," and section 212(7) of the CII Act (6 U.S.C. 131(7)) defines "voluntary." In the final rule, changes have been made to two definitions that are relevant to these statutory provisions, and corollary definitions have been added.

(1) In the Public Domain

In the preamble to the February 2004 Interim Rule, DHS declined to interpret further the meaning of "information not customarily in the public domain." Three commenters on the February 2004 Interim Rule urged that this phrase be defined. In response, in section 29.2(d), DHS has defined "in the public domain" in part as "information lawfully, properly and regularly disclosed generally or broadly to the public." This definition draws in part on section 214(c) of the CII Act (6 U.S.C. 133(c)), which stipulates that nothing in section 214 constrains the collection of critical infrastructure information "including any information lawfully and properly disclosed generally or broadly to the public * * *." The new definition further identifies certain types of information that are considered not to be in the public domain—specifically, "information regarding systems, facilities, or operational security, or that is proprietary, business sensitive, or which might be used to identify a submitting person or entity."

(2) Voluntary or Voluntarily

The definition of "voluntary" in section 29.2 of this rule implements section 212(7)(A) of the CII Act (6 U.S.C. 131(7)(A)), which provides that a submittal of CII is not "voluntary" if such information is provided pursuant to the exercise of legal authority by DHS (the "covered agency") to compel access to or submission of the information. Four commenters argued for a broader disqualification of information submitted to other Federal agencies pursuant to such agencies' exercise of their legal authority. The language of sections 212(2) and 212(7)(A) of the CII Act (6 U.S.C. 131(2) and 131(7)(A)) do not support such a reading and DHS has not adopted it.

Whether information provided to the PCII Program manager is "voluntarily submitted" is to be determined at the time CII is submitted. The terms "submitted" and "relied upon" in section 212(7)(B)(ii) (6 U.S.C. 131(7)(B)(ii)) are both retrospective in nature. Both employ the past tense and both apply to actions before the date that information is submitted to the PCII

[2] For ease of reference, all references in this final rule to sections or paragraphs without full citation refer to sections and paragraphs of promulgated 6 CFR part 29.

Program Manager. As discussed below in section III, the provision in section 29.6(f) of the February 2004 Interim Rule allowing a change of status from "Protected" to "non-Protected" based on a subsequent requirement that the information be submitted to DHS has been eliminated. This does not mean that DHS could not obtain related CII available under other DHS legal authority later in time. It does mean, however, that the specific documents voluntarily submitted as PCII will not be publicly released. *See* section 214(c) of the CII Act (6 U.S.C. 133(c)).

Section 212(7)(B)(ii) of the CII Act (6 U.S.C. 131(7)(B)(ii)), excludes from the definition of "voluntary," information or statements "submitted or relied upon as a basis for making licensing or permitting determinations, or during regulatory proceedings." Neither the term "licensing or permitting determinations" nor "regulatory proceedings" is defined in the CII Act, and the CII Act does not state explicitly to whom the information or statements must have been submitted or which agency relied upon them. One commenter urged greater precision in the definition of "voluntary," and many commenters expressed concern over the potential impact of the PCII Program in a "regulatory" context.

DHS agrees that the terms should be defined with greater precision. It is clear throughout the statute that the terms "voluntary" and "voluntarily" refer only to submissions intended to reach DHS. *See* section 212(2) of the CII Act (6 U.S.C. 131(2)) ("covered Federal Agency" means the Department of Homeland Security); sections 212(7)(A), and 214(a)(1) of the CII Act (6 U.S.C. 131(7)(A), 133(a)(1)). Section 212(7)(B)(ii) of the CII Act (6 U.S.C. 131(7)(B)(ii)), incorporates the concept of "voluntary submissions," which, by its definition, involves only submission to DHS. Subsection 212(7)(b)(ii) limits only the scope of a voluntary submission to DHS. Thus, it is reasonable and appropriate to interpret the terms "licensing or permitting determinations" and "regulatory proceedings" in section 212(7)(B)(ii) as referring to such activities within DHS and DHS has done so. This is fully consistent with other provisions of the CII Act (sections 212(c) and 212(d)). Any broader interpretation would be inconsistent with Congress' purpose in creating the Act and impossible to administer effectively. Indeed, it is difficult to imagine how DHS could feasibly determine if and when any "information or statements" in CII had been previously submitted to or relied upon by any Federal agency other than DHS or any State, local or tribal entity in any public or private proceeding throughout time.

Further, the definition has been altered to reflect that submissions may be accepted from a "single state or local governmental entity; or a private entity or person; or by an ISAO acting on behalf of its members or otherwise" to address confusion expressed by potential submitters based on unnecessarily narrow constructions of the definition of a submitter.

C. Protected and Non-Protected Information

Several issues have arisen as to what portions or aspects of submitted information should enjoy the protections of the CII Act, and under which circumstances information should enjoy protection.

(1) Portion Marking

The preamble to the February 2004 Interim Rule reported that although six public comments advocated a requirement for marking those portions of submitted information that are entitled to protection under the CII Act, DHS had concluded that "portion marking" should not be required. One commenter on the February 2004 Interim Rule contested this position. DHS has considered these comments but has not altered its conclusion. Accordingly, no portion marking will be required.

(2) Definition of PCII

The CII Act defines CII in section 212(3) (6 U.S.C. 131(3)). DHS believes that any information, statements or other material reasonably necessary to explain the CII, put the CII in context, or describe the importance or use of the CII are appropriately within the scope of the protections intended by the CII Act. Accordingly, the definition of "Protected Critical Infrastructure Information," or "PCII," in section 29.2(g) has been modified to reflect this clarification.

(3) Source of the Information

The definition of "Protected Critical Infrastructure Information," or "PCII" in section 29.2 of the February 2004 Interim Rule provides that the "identity of the submitting person or entity" enjoys the protections of the CII Act in parity with the information submitted. Two comments expressed concern about the "anonymity" of those on whose behalf an Information Sharing and Analysis Organization (ISAO) might submit CII. DHS recognizes that information may be submitted on behalf of others by an ISAO or trade association. DHS agrees and section 29.2 has been amended to clarify that the Act's protections extend to the identities of those persons or entities on whose behalf the information was submitted and to any other information that could be used to discover such identities. Section 29.8(e), relating to disclosure of information to appropriate entities or to the general public, has been conformed.

(4) Interplay of Sections 214(a)(1)(C) and 214(c) of the CII Act

Questions have also arisen regarding the meaning of section 214(a)(1)(C) of the CII Act (6 U.S.C. 133(a)(1)(C)): PCII "shall not, without written consent of the person or entity submitting such information, be used directly * * * in any civil litigation * * * if such information is submitted [to DHS] in good faith." The issue is whether information in the hands of submitters will, by virtue of voluntary submission to DHS under this provision, be unavailable for use in civil litigation. When CII is submitted and validated for protection under the Act, the information and documents provided, and drafts and copies thereof retained by the submitter(s) or person working with the submitter(s), as well as any discussions with DHS regarding the CII, shall be considered PCII and cannot be the subject of civil discovery or other direct use in any civil litigation without the submitter's consent. DHS interprets the statutory phrase "any civil action" in section 214(a)(1)(C) of the CII Act to include civil litigation in any form or forum whether the United States is or is not a party. DHS disagrees with the notion, suggested by some, that the statutory language would permit civil discovery of such information while prohibiting its use as evidence at trial. This dichotomy makes little sense. "Discovery" of the information in a civil action, with all it entails, is in fact "direct" use of the information. The Act is structured to spur owners of CII and others to evaluate and share CII vulnerabilities and other sensitive information with the Department. Creating a civil discovery loophole to the protections of the Act would impede such cooperation and be fundamentally inconsistent with the language and purposes of the Act.

It is also important to focus on section 214(c) of the CII Act (6 U.S.C. 133(c)). That provision indicates that the Act shall not "be construed to limit or otherwise affect the ability of a State, local, or Federal government entity [or private litigant] * * * to obtain critical infrastructure information in a manner not covered by" section 214(a) (6 U.S.C. 133(a)). While PCII, including the

opinions, evaluations, conclusions or analyses that were submitted, may not be used directly in civil litigation, independently existing factual information obtained independently by a civil litigant from sources other than the PCII can present a different question under section 214(c).

(5) Good Faith Submission of CII

Section 29.2(n) was inserted in response to a commenter's request for a definition of "good faith." This new section provides that any information that could be reasonably considered CII information, as defined in the regulations, is submitted in good faith. The subsequent validation of such information as PCII by the PCII Program Office, or the inclusion of such information in a category of pre-validated information, definitively establishes the submission as having been made in good faith.

(6) Communications With the Submitting Person or Entity

Another matter that the February 2004 Interim Rule did not address is communications of the PCII Program Office, or of other authorized recipients of PCII, with the submitting person or entity about the submittal or the submitted information. Part of the purpose of the CII Act is to encourage frank and open discussion with DHS regarding CII. It would defeat the purpose of the Act to declare such exchanges as outside the context of PCII. Certain communications are specifically intended to perform the functions enumerated in sections 29.6(d), (e)(2) and (f), 29.8(e), and 29.9(c), or to inquire whether the submitting person or entity consents to disclosures of the submitted information. Changes to sections 29.8(c) and 29.8(d)(2), and new section 29.8(f)(1)(i)(B) fill the void by authorizing the disclosure of PCII by Federal government officers, employees, and contractors, as well as State, local, and tribal governmental entities in order to facilitate communications with a submitting person or an authorized person on behalf of a submitting entity, about a CII submission by that person or entity.

D. Loss of Protected Status

Section 29.6(f) of the February 2004 Interim Rule responded to comments by providing for changes from "Protected" to "non-Protected" status when the submitting person or entity requested the change in writing, or when the PCII Program Manager or his or her designee determined that "the information was customarily in the public domain, is publicly available through legal means, or is required to be submitted to DHS by Federal law or regulation." Two commenters sought clarification of or a change to this section.

Two of these criteria allowing a loss of protected status have been removed by this final rule. First, the test that would allow a loss of protected status because the submitted information "is publicly available through legal means" has been deleted because the CII Act does not provide for a change in status on this ground. Second, as noted above in the discussion of the definition of "voluntary or voluntarily," the test that would allow a loss of protected status because the submitted information "is required to be submitted to DHS by Federal law or regulation" has been eliminated. This change has been made because the definitional exclusion in section 212(7)(A) of the CII Act (6 U.S.C. 131(7)(A)), and the section 29.2 definition of "voluntary or voluntarily" refers expressly to the time of submittal and is thus retrospective only. This does not, of course, prevent DHS from using current or future authority to mandate submission of any information. However, prior voluntary submissions under the CII Act may only be utilized in accordance with the Act's provisions.

E. Sharing of PCII With Foreign Governments

Ten commenters expressed concerns about the February 2004 Interim Rule's provision on "Disclosure to foreign governments" in section 29.8(j). Some pointed to an ambiguity as to whether this subsection was intended to allow the sharing of PCII with foreign governments, without the consent of the submitting person or entity, to an extent greater than would result from the issuance of advisories, alerts and warnings under section 214(g) of the CII Act. Commenters argued that if that was the intent, it was unauthorized by the CII Act.

DHS envisions situations in which international cooperation is required to combat terrorism, and PCII may form part of a warning to a foreign governmental entity. In these cases, appropriate cooperation may be accomplished as a warning under section 214(g) of the CII Act. Accordingly, former section 29.8(j) is unnecessary and has been omitted.

F. Emergency Disclosure of PCII

One commenter noted that exceptions should be drafted into the final rule that allow for the disclosure of specific information when there is an emergency that threatens widespread injury or loss of life, and that such disclosure must not be contingent on the prior written consent of the submitter. In response to this comment, DHS has modified section 29.8(e) to permit the use of PCII in advisories, alerts, and warnings without the consent of the submitting person or entity, but prior to doing so, DHS must "take appropriate actions to protect * * * information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain" (section 214(g) of the CII Act (6 U.S.C. 133(g))).

III. Other Changes to the Rule by Section

A. Purpose and Scope: Section 29.1

The February 2004 Interim Rule provided that warnings could be issued by DHS that were predicated upon CII submissions provided that the "identity" of the submitter was protected and the disclosure did not result in the public dissemination of the submitter's business proprietary/sensitive information (*i.e.*, information that is not "customarily available" in the public domain). The requirement to protect the "identity" of the disclosure has been broadened to protect the "source" of information, as well as information that might be used to identify the submitting person or entity. This broader formulation tracks the language in section 214(g)(1) of the CII Act (6 U.S.C. 133(g)(1)). It also recognizes that there may be instances in which PCII is provided to DHS by an ISAO or trade association. In such a case, confidentiality should extend to both the submitter of the information (the ISAO or trade association) and to the individual that provided the CII to the ISAO for submission. This has become particularly important with the development of collaboration with industry-wide working groups and ISAOs. The phrase "otherwise not appropriately in the public domain" was drawn from section 214(g)(2) of the CII Act (6 U.S.C. 133(g)(2)), and replaces "customarily available." This change is intended to conform the language in this final rule to the statute and to be more protective of an owner or operator's proprietary or business confidential information. Then relevant portions of the revised definition of "in the public domain" in section 29.2, discussed in detail in section II above, has been added to this section.

With respect to the "Scope" of the PCII rule set forth in section 29.1(b), five commenters asked for clarification of the interrelationship between the procedures established by this rule and the requirements for the handling of other types of homeland security

information, such as Sensitive Security Information (SSI). This rule covers CII voluntarily submitted to DHS when accompanied by the statutory express statement. While other Federal agencies are not required to participate in the PCII Program, those that do desire to participate must first undergo appropriate training programs and take necessary steps to adhere to the statute and these regulations to enable the owners of the information to receive the full protections for their CII provided for in the CII Act. When information that is voluntarily submitted to the Federal government meets the definition of SSI in 49 CFR part 1520 and is also designated as CII by the PCII Program Office, it will be marked and protected in accordance with these procedures as PCII, but can also enjoy SSI protection. To provide greater clarity, however, section 29.1(b) has been revised and simplified to reflect that these rules apply to anyone authorized to handle, use, or store PCII or that otherwise receives PCII.

B. Definitions: Section 29.2

Five commenters addressed one or more definitional questions. The comments suggested changes to defined terms and also noted that some important terms were not defined at all.

Critical Infrastructure and *Critical Infrastructure Information.* Several comments asked for a more explicit definition of these terms. The terms are defined in statutory language and no changes were made. For clarity, the statutory references on which section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101), was based have been included.

Protected Critical Infrastructure Information Program, or *PCII Program.* The previously defined term "Critical Infrastructure Information Program" has been replaced with the more descriptive term "Protected Critical Infrastructure Information Program," or "PCII Program."

Information Sharing and Analysis Organization, or *ISAO.* Two comments concerning the anonymity of those on whose behalf an ISAO might submit are discussed in section II.C.(2) above. An additional comment specifically asked for clarification that ISAOs have the capability to make CII submissions on behalf of their sector participants. That comment does not require a change in the definition. The definition of the terms "voluntary or voluntarily" and "Protected Critical Infrastructure Information," discussed below, make clear that ISAOs may submit CII on behalf of members.

Protected Critical Infrastructure Information, or *PCII.* This definition has been changed to make clear that the identities of both the original providers and subsequent submitters of information are included within PCII when an ISAO or trade association has submitted the CII for validation as PCII. The definition was also expanded to include any information that is necessary to explain or provide context for the PCII. In response to a comment, the last sentence of the definition in the February 2004 Interim Rule has been moved to section 29.6(b) because it contained a policy statement rather than an element of a definition.

Purposes of the CII Act. This term, which conforms with the usage at 6 CFR 29.5(a), is more apt than the previously defined "purpose of CII."

The terms "*In the public domain,*" "*Regulatory proceeding,*" "*State,*" "*Submitted in good faith*" and "*Voluntary or voluntarily*" are discussed in detail in Section II.

C. Effect of the Provisions: Section 29.3

Several commenters expressed concern that PCII could be used for purposes other than securing critical infrastructure, such as regulating workplace safety or monitoring compliance with environmental laws. Congress was very clear on this point in the CII Act, specifying a very narrow range of appropriate uses for PCII. Information in the PCII submission may be employed * * * regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery or reconstitution or other information purpose * * * Section 214(a)(1) of the CII Act (6 U.S.C. 133(a)(1)). Indeed, the statute expressly forbids use of PCII, and sets forth a criminal sanction, for purposes other than those specified in the Act. *See* section 241(a)(1)(D) of the CII Act (6 U.S.C. 133(a)(1)(D)) (noting also appropriate use "in furtherance of a criminal investigation or in the prosecution of a criminal act," or when shared subject to these requirements with specified persons in the legislative branch); section 214(f) (6 U.S.C. 133(f)) (penalties). Section 213(a)(1)(E) expressly forbids state and local governments from disclosing or using PCII material "other than for the purposes of protecting critical infrastructure or protected systems * * *"). *Id.*

These and other provisions of the CII Act are unambiguous; PCII may not be disseminated to other federal, state or local agencies for other regulatory purposes. Nor may any recipient of PCII utilize any information in the PCII for other regulatory purposes. The PCII Program Office will impose appropriate restrictions on all recipients of PCII, and will require appropriate training and oversight to ensure compliance with these legislative mandates.

Certain commenters have also suggested that an individual with collateral regulatory responsibility (*e.g.* worker health and safety) would not be able to segregate knowledge gained from PCII information (once learned) from his day-to-day duties on non-security issues, and thus would "inevitably" use such PCII information for non-security purposes. The PCII Program Office is aware of this concern and will take it into account when determining the appropriate persons with whom to share particular PCII. A person proposing to submit CII may consult with the PCII Program Office regarding appropriate restrictions applicable to use of the particular potential submission prior to making that submission.

D. PCII Program Administration: Section 29.4

Three commenters addressed the provisions of this section. Only one paragraph was changed. Paragraph (e) was modified from the February 2004 Interim Rule to make clear that the "development" of the Protected Critical Infrastructure Information Management System (PCIIMS) is the responsibility of the PCII Program Manager.

Three commenters suggested that the PCIIMS contain only what could be called the tracking data and that the actual PCII should be kept elsewhere. The suggestions will not be adopted. The tracking data may include information that identifies the submitter, and to the extent that it does, it is included in the revised definition of PCII (section 29.2) under the CII Act. DHS has an obligation to safeguard all PCII. Accordingly, DHS will maintain PCII according to a distributed model with information stored in a number of databases including the PCIIMS.

E. Requirements for Protection: Section 29.5

Eleven commenters addressed various aspects of the requirements for protection, and a substantial number of changes have been made to section 29.5.

(1) Express Statement on the Information

As the comments suggest, the "information and records" provided as PCII are occasionally not easily susceptible to labeling with an "express statement." required for a proper submission. For that reason, the final rule provides for the use of a separate,

written "express statement" as set forth in paragraph (a)(3)(i).

(2) Oral Statements

Two comments were received regarding oral submissions during an ongoing crisis. These comments suggested that, where there might be many submissions, either the requirements for a written follow-up could be waived or PCII status could be assigned once and maintained throughout the crisis. DHS agrees with this suggestion and the rule has been changed to expand this capacity to the extent practical. The requirement for both an express statement and a certification statement has not been changed. However, the time in which these statements are required has been changed to "a reasonable period", as determined by the PCII Program Manager on a case-by-case basis, after CII submission, in whatever form. Further, DHS has added a section to make clear that electronic submissions are authorized and to establish appropriate procedures for such submissions.

(3) Certification Statement

Three commenters noted the requirement for a certification statement is not statutory. The certification statement is considered necessary, however, for effective program management and the rule continues to require a certification statement in paragraph (a)(4). The commenters suggested that there may be a public burden in submitting such a statement, and DHS has, in response, significantly simplified the submission requirements. The only information required in the certification statement is the submitter's contact information and any language considered necessary by the PCII Program Manager.

One commenter suggested that submitters be required to identify the steps that the submitter itself takes to protect the CII. The commenter suggested this information would assist the PCII Program Manager in determining a more appropriate and accurate determination of status. DHS has not adopted the suggestion.

One commenter suggested that the certification statement should be treated as PCII. The identifying information within the certification statement will be treated as PCII. Some substantive requirements of the certification statement have changed, however. The certification has been modified to incorporate provisions that the PCII Program Office has found necessary from an operating standpoint. For instance, PCII Program Office needs to know with whom it is dealing and how to contact responsible individuals. One commenter was concerned that unauthorized individuals might submit information on behalf of an entity, and suggested that, as a result, DHS establish parameters as to who is eligible to submit on behalf of an institution. DHS declines to do so. Even if parameters were established, there would be no practical way for DHS to determine whether the submitting individual is authorized by the entity to do so.

A commenter suggested DHS should provide forms for the PCII Program. Forms are not currently provided, and DHS does not believe that specific forms are needed. DHS has posted guidelines for submitters on the DHS Web site to assist potential submitters.

(4) Submission to the Program

The second sentence in paragraph (b) of the February 2004 Interim Rule relating to submissions to DHS components other than the Preparedness Directorate has been deleted as unnecessary. The PCII Program Manager or the Program Manager's designees should receive submittals of CII, as discussed above in Section II.A. This process effectively responds to a commenter that questioned the internal DHS receipt of CII.

Another commenter asked for special consideration for CII inadvertently submitted to the wrong agency or person. DHS believes its process is straightforward and further consideration for inadvertent submission is unnecessary. DHS will make available to potential submitters the means for submitting CII, and those means will be consistent with the protections of the Act.

A commenter suggested that it would be helpful if DHS could make advance determinations that any record falling within a certain class or category would be validated once and not every time a submission is made. As discussed below, DHS has added a new section 29.6(f) that addresses this issue and would be pleased to confer with any potential submitter regarding a possible submission.

F. Acknowledgment of Receipt, Validation, and Marking: Section 29.6

Section 29.6 was revised extensively in response to the comments received from the twelve commenters on this section and in light of operational decisions made by DHS.

(1) Presumption of Protection

Three commenters expressed their support for the presumption of protection afforded by this provision. To conform to the definition of PCII in section 29.2, new language clarifies that voluntarily submitted CII is PCII when submitted with an *express statement* even if the certification statement required by section 29.5(a)(4) is not initially received. *See also* section 29.6(d). If the information is deficient, the PCII Program Manager will attempt to contact the submitter to afford the submitter an opportunity to rectify the error or withdraw the submission and may properly label the submission him or herself.

(2) Marking

One commenter suggested that submitters be required to mark portions of submissions. DHS does not agree for reasons articulated elsewhere.

In response to another comment, language has been added to the marking statement contained in paragraph (c) to highlight the criminal and administrative penalties that could result from unauthorized release. This statement was omitted from the February 2004 Interim Rule provision.

The last sentence of marking statement included in paragraph (c) addresses what could otherwise be an alternative interpretation based on a literal reading that the regulation requires the submitter to maintain the submitted information in accordance with the procedures and requirements established by DHS rather than in accordance with its own procedures. That is not intended.

(3) Acknowledgement

A change to paragraph (d) adjusts the February 2004 Interim Rule statement regarding what is required before a submission receives the presumption of protection. Since submitted information need only be accompanied by an "express statement" in order to enjoy the presumption of protection, it is unnecessary to provide a certification before the PCII Program Manager or the PCII Program Manager's designee acknowledges receipt and takes action.

(4) Determinations of Non-Protected Status

Nine commenters addressed the handling and disposition of information that is found ineligible for protection under the CII Act, proposing the required destruction or the required return of the information; compliance with the submitter's instructions; or assurance that the information will continue to be treated confidentially and withheld from disclosure under the FOIA. As stated in the preamble to the February 2004 Interim Rule, DHS will

return submissions in almost all cases when it does not qualify as PCII.

The added words, "within thirty calendar days of making a final determination," provide a new time limit for disposition of non-validated CII submissions, which is consistent with the period employed in the last sentence of the subparagraph. The 30-day period will run from the date of the notification rather than from the date of receipt of the notification by the submitter. The changes also supply a step previously missing from the language in the February 2004 Interim Rule regarding this provision, *i.e.*, that the PCII Program Office will make the initial determination final.

A commenter suggested that a 30-day time period for the Program Office to acknowledge receipt of a PCII submission was excessive; another requested the establishment of a time period to complete the validation process. Neither suggestion will be adopted. The volume of submissions is unpredictable, and 30 days to acknowledge receipt is a reasonable period. Recognizing the importance of timeliness, the PCII Program Manager will ensure that all processing is efficiently performed.

While notification to the submitter may, at the PCII Program Office's option, contain an explanation of why submitted information is not considered to be PCII under paragraph (e)(2)(ii), DHS does not accept the suggestion of two commenters that such an explanation be made obligatory. Additionally, paragraph (e)(2)(i)(A) has been modified to reflect the possible need to ask the submitter to provide the statement called for by section 29.5(a)(4), or any of the certifications that the statement is required to include, in order to perfect a submission.

Further, a new paragraph has been added at section 29.6 to allow for "categorical inclusions" in response to comments. This provision clarifies the Program Manager's authority to establish categories of information for which PCII status will automatically apply without a separate act of validation by the PCII Program Office.

(5) Changes From Protected to Non-Protected Status

Changes to paragraph (g) regarding a change in status from protected to non-protected are explained above in Section II. In response to a comment, this section has also been changed to specify that the procedures in paragraph (e)(2) of this section will be used prior to final determination of a change of status. As stated in the discussion of section 29.3(b) above, proposals that DHS either continuously review or establish a fixed schedule for regularly reviewing all PCII have been rejected.

G. Safeguarding of PCII: Section 29.7

Nine commenters addressed safeguarding issues in section 29.7, and two changes were made. In paragraph (b), the phrase "in accordance with procedures prescribed by the PCII Program Manager" was added in response to several comments asking for greater specificity in procedures for use and storage. The second change deletes a phrase in the February 2004 Interim Rule at the end of the paragraph that three commenters interpreted as giving the PCII Program Manager the discretion to establish "tiered" levels of security.

One commenter asked for a definition of "official duties" as that term is used in paragraph (c) regarding reproduction of PCII. Because the recipients of PCII are diverse, no general definition of "official duties" applicable to all is appropriate.

Two commenters believed paragraph (d) should specify that disposal should be in accordance with the Federal Records Act, 44 U.S.C. 3301. This section applies to Federal as well as other entities and DHS believes that requiring non-Federal entities to adhere to the Federal Records Act would be unnecessarily burdensome.

Two commenters suggested that paragraph (f) require transmission by secure *and encrypted* means. Another commenter asked for examples of what might be considered secure means. The PCII Program Manager will, as the rule states, determine the method of secure transmission. The method of transmission will not be the same in all cases. Encryption may be practical in some cases but not in others.

H. Disclosure of PCII: Section 29.8

This section was revised extensively based on comments received from sixteen commenters and on the operating experience of the PCII Program Office.

In response to two comments, a clarifying cross-reference in paragraph (a) was inserted in order to avoid giving this subsection an unintended legal effect that renders the subsequent provisions superfluous. Other language was deleted from this provision in the February 2004 Interim Rule because it was duplicative.

Four commenters proposed the involvement of submitters in DHS' information sharing decisions. DHS has not accepted these suggestions. Another commenter's objection to provisions requiring the submitter's consent to further disclosures of PCII likewise was rejected. DHS must make disclosure decisions based in the interests of the United States as a whole, including the interests of the submitters and the specific reasons and events that may warrant disclosure.

DHS is clarifying the distinction in paragraph (b) between how PCII may be used by the Federal government, and how it may be used by State, local, and tribal agencies. The CII Act limits the purposes for which State, local and tribal governments may use PCII and how State, local and tribal governments may share PCII. According to sections 214(a)(1)(E)(ii) and (iii) of the CII Act (6 U.S.C. 133(a)(1)(E)(ii) and (iii)), PCII may not be used by those governments for purposes other than protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act, and an agency of those governments may not further disclose the information without the consent of the submitter. These limitations are echoed in paragraphs (d)(1) and (3) of the February 2004 Interim Rule. The revision of this subsection brings the State, local and tribal sharing provisions into conformity with the statute and the other related rule provisions. The final sentence alters the requirement that State, local and tribal government entities enter into written agreements with the PCII Program Manager, specifying that they must instead enter into arrangements with the PCII Program Manager. This change was made to promote flexibility and, in exigent circumstances, a speedy sharing of information.

In response to eight commenters who expressed concern over possible unauthorized State, local or tribal government disclosures of PCII that might be provided to them, or who urged the adoption of strict controls on the sharing of such information with State, local and tribal governments, these arrangements, except in exigent circumstances will be very specific, will require safeguarding, handling, violation reporting, and other procedures consistent with this rule, and will further provide for compliance monitoring. In most cases DHS anticipates that these arrangements will be in the form of a Memorandum of Agreement (MOA) that will also recognize the preeminence of PCII status under the CII Act and these regulations in relation to any State, territorial, or tribal public disclosure laws or policies. Further, DHS has added language that makes clear that PCII may not be used for regulatory purposes.

In paragraph (c), the first change clarifies that State, local and tribal

contractors can receive PCII under the same conditions as Federal contractors. As in the case of Federal contractors, State, local, and tribal contractors are agents of a governmental entity, carrying out the functions on behalf of the government in furtherance of its mission and under its direction. Therefore, DHS does not consider State, local and tribal contractors to be precluded from receiving PCII as "any other party;" rather, DHS considers them an extension of the State, local or tribal governmental entity.

The second change is to employ a term defined in section 29.2, to replace the subjective term, "purposes of DHS" with the term "purposes of the CII Act." This change also better lends itself to PCII Program Office certifications of contractors to Federal agencies other than DHS. All contractor employees working on PCII Program matters and having access to PCII, rather than the more abstract "identified category" of employees, will be required to sign a nondisclosure agreement (NDA). Also added is a provision that the NDAs will be in a form prescribed by the PCII Program Manager. Based on PCII Program Office operating experience, reference to "contractor" signature of NDAs has been deleted; contractors will continue to be obliged to agree, by contract, to comply with all programmatic requirements.

Additionally, as discussed above in section II.C, a change was made to permit employees of Federal, State, local, and tribal contractors who are engaged in the performance of services in support of the purposes of the CII Act, to communicate with a submitting person or an authorized person of a submitting entity about their submittal or information when authorized by the PCII Program Manager or a PCII Program Manager's designee. The previous prohibition against disclosure to any of the contractors' components and the reference to "additional employees" posed an unnecessary operating difficulty for contractors, which was noted by one commenter. These provisions have been replaced by the more comprehensible but sufficiently strict prohibition on disclosing to "any other party." This is the term used in section 29.8(d)(1), which prohibits State, local, and tribal governments from making disclosures to "any other party not already authorized to receive such information."

A commenter suggested that a PCII Officer certify the distribution of PCII to Federal contractors on a specific PCII case-by-case basis rather than based on a certification that the contractor was performing services on behalf of DHS. This suggestion will not be adopted. Such a requirement could be burdensome, and moreover, is unnecessary. PCII will only be distributed as required for the contractor's use. The single certification does not entitle the contractor to all PCII, but only PCII the governmental agency determines the contractor needs.

Another commenter asked for clarification of what type of language would constitute the authorization from the submitter to enable sharing of PCII. The relevant question is how DHS will ask for permission, and DHS envisions that the request will be in writing, state the tracking number previously provided to the submitter, identify the requester and the intended recipient, and ask for a response within a certain number of days.

Consistent with the changes discussed above, a change was made in paragraph (d)(1) to eliminate the idea that consent to further disclosure could be made by someone "on whose behalf" information was submitted.

A comment questioned the statement in the preamble to the February 2004 Interim Rule that State, local and tribal governments "will be asked to track further disclosures" and suggested the requirement to track should remain with DHS. As the comment noted, any further distribution by State, local, and tribal governments requires submitter permission, a process administratively handled by DHS. DHS will impose a tracking requirement on State, local and tribal governments and will also have its own records of permissions in the PCIIMS.

Changes in paragraph (e) of this section have been explained in detail in section II above. An additional change to paragraph (e) not discussed above is that the language now allows not only the Directorate for Preparedness, but also other Federal agencies, as well as State, local and tribal government entities, to use PCII in preparing advisories and similar communications. The list of things to be protected from disclosure has been rephrased in the disjunctive, correcting the unduly restrictive conjunctive phrasing, which was noted by one commenter. The final change adds language that permits Federal, State, local and tribal governmental entities to contact submitters directly to confer if there is a question about the PCII to be used in the advisory, alert, or warning.

A comment suggested that paragraph (f)(1)(i), which limits use or disclosure of PCII by Federal employees except as authorized, is important enough to warrant its own rule provision. The comment was considered; however, further changes were not deemed necessary. However, in reviewing the paragraph it is clear that sections of the CII Act other than 214(a)(1)(D) and (E) (6 U.S.C. 133(a)(1)(D), (E)), for example, were applicable to the general category of "Exceptions for disclosure." The language in the subparagraph was therefore modified to make clear that it applied to entities and persons other than officers and employees of the United States.

Language was added to make paragraph (f)(1)(i)(A) consistent with the position that State, local, and tribal investigations or prosecutions should be coordinated by a Federal law enforcement official. It also recognizes that PCII could be used in furtherance of a foreign government investigation or prosecution, and imposes, for any disclosure to the foreign government, the same requirement for coordination by a Federal law enforcement official.

Paragraph (f)(1)(i)(C) has been limited to the disclosure of information by an officer or employee of the United States, as this paragraph fits clearly within the confines of section 214(a)(1)(D) of the CII Act (6 U.S.C. 133(a)(1)(D)).

Section (f)(3) of the 2004 Interim Final Rule referred to the Whistleblower Protection Act and has been omitted because is merely restates the law of the land. Section (f)(4) of the February 2004 Interim Rule has been deleted because it was deemed unnecessary.

DHS has modified the language in paragraph (g) to more accurately reflect the intention of the statutory language in section 214(a)(1)(E)(i) of the CII Act.

As discussed in Section II, paragraph (j) has been deleted in its entirety. Further, paragraph (k) has been deleted because it improperly rested sole authority to request submitter consent for further dissemination in the PCII Program Manager, thus limiting flexibility and effectiveness, especially in exigent circumstances.

I. Investigation and Reporting of Violation of PCII Procedures: Section 29.9

Six comments expressed concern that there were no provisions for the imposition of penalties or sanctions on State, local and tribal government employees or on contractors. The provisions of subsection (d) reflect the language of section 214(f) of the CII Act (6 U.S.C. 133(f)). This section applies unambiguously only to officers and employees of the United States. DHS has no authority to make these provisions applicable to anyone else. However, DHS will place in the MOAs for State, local and tribal governments, when used, or when an arrangement

other than an MOA is used, then to the extent practicable, language that will require the State, local, or tribal government to consider breaches of the agreements by employees as matters subject to the criminal code or to the applicable employee code of conduct for that jurisdiction. While States do not have laws that were written specifically with PCII in mind, they do have laws that govern theft, conspiracy, trade secrets, and the like, which could apply to employees and to contractors as well. The CII Act does not limit any other enforcement mechanism; the CII Act adds a specific criminal enforcement provision applicable to Federal employees.

A commenter suggested that this section should specifically require that the DHS Inspector General, the PCII Program Manager, or the Preparedness Security Officer investigate unauthorized disclosures by State, local and tribal governments. As previously noted, the relevant MOAs or alternative arrangements will generally provide for DHS to monitor all State, local and tribal governments with respect to their compliance with the guidance regarding handling PCII.

A commenter asked whether DHS had considered the applicability of the Privacy Act of 1974, 5 U.S.C. 552a, to any part of the submissions process. DHS has considered and continues to consider the interrelationship between the CII Act and the Privacy Act, and, through the Program Office and the DHS Privacy Officer, will ensure that the PCII program conducts all activities related to the PCII Program in conformance with the Privacy Act.

IV. Revision of Part 29

After considering all of the comments and the changes warranted, DHS determined that the entire part should be revised rather then making individual amendments to the specific sections and paragraphs. Individual amendments to each section and paragraph would have created a very large number of instructions to the **Federal Register** and rendered the amended regulation difficult, if not impossible, to understand without reading the amendments side-by-side with the current regulations. Accordingly, DHS has repromulgated all of the provisions of part 29, whether amended by this final rule or as in the February 2004 Interim Rule, to assist the reader.

V. Consideration of Various Laws and Executive Orders

A. Administrative Procedure Act

DHS has determined that good cause exists to make this regulation effective upon publication in the **Federal Register** under 5 U.S.C. 553(d)(3). This final rule clarifies ambiguities in the February 2004 Interim Rule that were identified by the public comments and has the advantage of taking into consideration operating experience with submitters gained since the February 2004 Interim Rule became effective on February 20, 2004. DHS believes that submitters are more likely to provide information that qualifies for protection under the CII Act of 2002 when the final rule goes into effect. Such PCII would help DHS implement security measures and issue warnings. After considering the likelihood that valuable information is now being withheld because of concern and confusion as to how it might be handled under the February 2004 Interim Rule, and the possibility that this information could be useful in deterring or responding to a security incident, the Department has concluded that good cause exists for making the regulation effective immediately.

B. Executive Order 12866 Assessment

DHS is required to implement this rule under the Critical Infrastructure Information Act of 2002, Title II, Subtitle B, of the Homeland Security Act of 2002 (6 U.S.C. 211 *et seq.*). This rule is considered by DHS to be a significant regulatory action under Executive Order 12866, 58 FR 51735 (Oct. 4, 1993), Regulatory Planning and Review, section 3(f). Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review.

DHS has performed an analysis of the expected costs and benefits of this final rule. A similar analysis was performed before the February 2004 Interim Rule was made effective. This new analysis considers comments received regarding staff costs and storage assumptions. Consideration of these comments does not change the previous conclusions.

The final rule affects persons and entities in the private sector that have CII they wish to share with DHS. The final rule also affects State, local and tribal governments with which DHS has signed agreements detailing the procedures on how PCII must be safeguarded, used, and destroyed when it is no longer needed.

Private sector submitters of CII must determine first whether to participate and if so, develop and follow internal procedures for submissions that comply with this regulation. Recipients of PCII must follow the procedures established in this regulation and as specified in agreements with the PCII Program Manager.

Costs

DHS believes private entities that submit CII will not incur significant costs. For submitters of CII other than individuals, there will likely be a one-time decision process to determine whether participation is appropriate, and if so, the establishment of internal operating procedures. A legal review of those submitters' procedures would likely be undertaken internally to ensure that they result in submissions that will receive the protections of the CII Act. The costs to develop the procedures would be a non-recurring expense and it is unlikely that a separate legal review would be required for each submission. Individuals who might want to submit CII will probably read the applicable procedures posted on the DHS Web site and have no non-recurring costs. Recurring expenses for submitting entities could include the cost of transmitting the CII, office supplies, costs associated with internal marking of retained copies of CII, and the expense of making available a point of contact with DHS to discuss the entity's submission. The non-recurring costs described will be different for each entity and also depend on how frequently submissions are made, but it is unlikely an entity will be required to increase its workforce. The costs are expected to be only a slight increment to ongoing total costs and managerially insignificant, perhaps even unidentifiable.

Costs for State, local and tribal governments that are the recipients of PCII will include the appointment of a PCII Officer to ensure safeguarding and destruction in accordance with these procedures and in the required written agreements. The position of PCII Officer for State, local, and tribal governments is not anticipated to be a full time position, although it could be. Should the position evolve into a full time one for a State, the costs should not exceed $150,000 per year per State. In the unlikely event all 50 States had full time PCII Officers, these costs would be approximately $7,500,000 per year. These costs are based on DHS estimates based on equivalent Federal positions and costs. A PCII Officer will be required to become familiar with procedures and be responsible for the training of others. DHS will develop training material and provide trainers for this effort. DHS anticipates that States will, to a large extent, appoint a

PCII Officer whose responsibilities will include overseeing local and tribal government participation. Thus, in most cases it will not be necessary for local and tribal governments to appoint PCII Officers. DHS believes that the costs to State, local and tribal governments other than those associated with PCII Officers will include storage capabilities, supplies, general overhead expenses and record keeping systems. These costs are variable and will depend on the volume of PCII received. The total of these costs is not expected to be significant.

Benefits

This program will permit the private sector to provide CII to DHS with confidence that it will not be inappropriately released to the public. The expected benefit of this program is centralized knowledge of the country's critical infrastructure everyone uses to conduct the daily affairs of life. As noted above, 85% of critical infrastructure is not possessed by the United States Government. Destruction of this infrastructure, or interruptions in its operating capability, could be catastrophic. With such knowledge comes the ability to issue warnings, to conduct analyses of systemic weaknesses, and to take actions to prevent terrorist acts. If the information provided results in but one thwarted terrorist act, or perhaps deters even the attempt, the benefit has been realized. Monetarily, the benefit might be calculated as the avoidance of the reconstruction cost of the facility damaged and the loss in commercial activity attributable to the lost facility. Not all the benefits of this regulation can be easily quantified as the benefits of this rule include preventing a terrorist event and the probability and consequences from that event are extremely difficult to predict. Given the relatively small implementation costs, DHS believes the potential benefits outweigh costs by a large margin.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. DHS has reviewed this final rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Many of the entities expected to voluntarily submit CII to DHS will be providers of infrastructure and protected systems. Typically, infrastructure providers are large public utilities or companies and providers of protected systems are large companies that will not meet the definition of small businesses for purposes of the RFA. It is possible that small non-profit organizations or any other small entities that provide critical infrastructure, such as telephone or electric cooperatives, might from time to time provide CII. The costs to send the CII to DHS are expected to be small and depend in large measure on the frequency of submissions. It is unlikely that a small utility cooperative, or any other small entities, will send CII on any ongoing basis, and hence any costs will not have a significant impact on any organization that chooses to participate. Small governmental jurisdictions are expected to depend on the State government for warnings and analysis and generally not appoint PCII Officers or establish separate programs. Those small jurisdictions will likely be only receivers, not providers, of information that is produced and distributed by the PCII Program Office and this rule will have no significant impact.

D. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

E. Small Business Regulatory Enforcement Act of 1996

This rule is not a major rule, as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the United States economy of $100 million or more, result in a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

F. Executive Order 13132—Federalism

The preamble to the February 2004 Interim Rule requested comment on the federalism impact of the February 2004 Interim Rule. No comments were received.

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This rulemaking, as required by the underlying statute, preempts State, local and tribal laws that might otherwise require disclosure of PCII and precludes use of PCII in certain State civil actions unless permission of the submitter is obtained. This preemption is expected to inure to the benefit of the States by making it possible for PCII that is provided to the Federal Government to be shared with the States. The rule does not impose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation requirements of Executive Order 13132 do not apply.

G. Executive Order 12988—Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520 (PRA), a Federal agency must obtain approval from the OMB for each collection of information it conducts, sponsors, or requires through regulations. This rule does not contain provisions for collection of information, does not meet the definition of "information collection" as defined under 5 CFR part 1320, and is therefore exempt from the requirements of the PRA. Accordingly, there is no requirement to obtain OMB approval for information collection.

I. Environmental Analysis

DHS has analyzed this regulation for purposes of the National Environmental Policy Act and has concluded that this rule will not have any significant impact on the quality of the human environment.

List of Subjects in 6 CFR Part 29

Confidential business information, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons discussed in the preamble, 6 CFR part 29 is revised to read as follows:

PART 29—PROTECTED CRITICAL INFRASTRUCTURE INFORMATION

Sec.

29.1 Purpose and scope.
29.2 Definitions.
29.3 Effect of provisions.
29.4 Protected Critical Infrastructure Information Program administration.
29.5 Requirements for protection.
29.6 Acknowledgment of receipt, validation, and marking.
29.7 Safeguarding of Protected Critical Infrastructure Information.
29.8 Disclosure of Protected Critical Infrastructure Information.
29.9 Investigation and reporting of violation of PCII procedures.

Authority: Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); 5 U.S.C. 301.

§ 29.1 Purpose and scope.

(a) *Purpose of this Part.* This Part implements sections 211 through 215 of the Homeland Security Act of 2002 (HSA) through the establishment of uniform procedures for the receipt, care, and storage of Critical Infrastructure Information (CII) voluntarily submitted to the Department of Homeland Security (DHS). Title II, Subtitle B, of the Homeland Security Act is referred to herein as the Critical Infrastructure Information Act of 2002 (CII Act). 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, DHS 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 government pursuant to section 214(a) through (g) of the CII Act. As required by the CII Act, these rules establish procedures regarding:

(1) The acknowledgement of receipt by DHS 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, appropriate sharing of such information with State and local governments pursuant to section 214(a) through (g) of the HSA.

(4) The issuance of advisories, notices and warnings related to the protection of critical infrastructure or protected systems in such a manner as to protect 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.* The regulations in this Part apply to all persons and entities that are authorized to handle, use, or store PCII or that otherwise accept receipt of PCII.

§ 29.2 Definitions.

For purposes of this part:

(a) *Critical Infrastructure* has the meaning stated in section 2 of the Homeland Security Act of 2002 (referencing the term used in section 1016(e) of Public Law 107–56 (42 U.S.C. 5195c(e)).

(b) *Critical Infrastructure Information*, or *CII*, has the same meaning as established in section 212 of the CII Act of 2002 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, local, or tribal 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.

(c) *Information Sharing and Analysis Organization*, or *ISAO*, has the same meaning as is established in section 212 of the CII Act of 2002 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 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 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 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 (c)(1) and (2) of this section.

(d) *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.

(e) *Local government* has the same meaning as is established in section 2 of the Homeland Security Act of 2002 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.

(f) *Program Manager's Designee* means a Federal employee outside of the PCII Program Office, whether employed by DHS or another Federal agency, to whom certain functions of the PCII Program Office are delegated by the Program Manager, as determined on a case-by-case basis.

(g) *Protected Critical Infrastructure Information*, or *PCII*, means validated CII, including information covered by 6 CFR 29.6(b) and (f), 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 DHS, for its use regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other appropriate

purpose, and any information, statements, compilations or other materials reasonably necessary to explain the CII, put the CII in context, describe the importance or use of the CII, when accompanied by an express statement as described in 6 CFR 29.5.

(h) *Protected Critical Infrastructure Information Program*, or *PCII Program*, means the program implementing the CII Act, including the maintenance, management, and review of the information provided in furtherance of the protections provided by the CII Act.

(i) *Protected system* has the meaning set forth in section 212(6) of the CII Act, 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.

(j) *Purposes of the CII Act* has the meaning set forth in section 214(a)(1) of the CII Act and includes the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose.

(k) *Regulatory proceeding*, as used in Section 212(7) of the CII Act and these rules, 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.

(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 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 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 ppropriate 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 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. 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 shall 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 shall 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

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 shall 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 shall establish security requirements designed to protect information to the maximum extent practicable, and consistent with the 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 Protected Critical Infrastructure Information.

(a) *Authorization of access.* The Under Secretary for Preparedness, the Assistant Secretary for Infrastructure Protection, or either's designee may choose to provide or authorize access to PCII under one or more of the subsections below when it is determined that this 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 Manager or the PCII Program Manager's designees may provide PCII to an employee of the Federal government, provided, subject to subsection (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 an investigation or the 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 criminal code or to the applicable 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 contractors may be made when necessary for an appropriate purpose under the CII Act, and only after the PCII Program Manager or a PCII 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 shall safeguard PCII in accordance with these procedures and shall 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 the 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 shall not further disclose PCII to any other party not already authorized to receive such information by the PCII Program Manager or PCII Program Manager's Designee, without the prior written approval of the PCII Program Manager or the 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" shall not share that information with any other party not already authorized to receive such information by the PCII Program Manager or 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 the PCII Program Manager's designees, who shall be 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, Under Secretary for Preparedness, Assistant Secretary for Cyber Security and Telecommunications, or Assistant Secretary for Infrastructure Protection. Such exigent circumstances exist only when approval of the Secretary, the Under Secretary for Preparedness, Assistant Secretary for Cyber Security and Telecommunications, or the Assistant Secretary for Infrastructure Protection cannot be obtained within a reasonable time necessary to issue an effective advisory, alert, or warning. In issuing advisories, alerts and warnings, DHS shall 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 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 shall 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 an investigation or the 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 the 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 DHS 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 Inspector General.

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

(h) *Ex parte communications with decisionmaking officials.* Pursuant to section 214(a)(1)(B) of the Homeland Security Act of 2002, PCII is not subject to any agency rules or judicial doctrine regarding ex parte communications with a decisionmaking official.

(i) *Restriction on use of PCII in civil actions.* Pursuant to section 214(a)(1)(C) of the Homeland Security Act of 2002, PCII shall 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, local, or tribal law.

§ 29.9 Investigation and reporting of violation of PCII procedures.

(a) *Reporting of possible violations.* Persons authorized to have access to PCII shall 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 the PCII Program Manager's designees. Suspected violations may also be reported to the DHS Inspector General. The PCII Program Manager or the PCII Program Manager's designees shall in turn report the incident to the appropriate Security Officer and to the DHS Inspector General.

(b) *Review and investigation of written report.* The PCII Program Manager, or the appropriate Security Officer shall notify the DHS 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 shall be reported to the Department of Justice, Criminal Division, through the DHS Office of the General Counsel. The DHS Inspector General also has authority to conduct such investigations, and shall report any evidence of wrongdoing to the 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 has occurred, the PCII Program Manager or the PCII Program Manager's designees shall 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 section 214(f) of the CII Act, 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 section 892 of the Homeland Security Act, provided, however, that any such decision by the PCII Program Manager may be appealed to the Office of the Under Secretary for Preparedness.

Michael Chertoff,

Secretary.

[FR Doc. 06–7378 Filed 8–31–06 8:45 am]

BILLING CODE 4410–10–P

PROTECTED CRITICAL INFRASTRUCTURE INFORMATION

Requirements for Use

Nondisclosure

This document contains PCII. In accordance with the provisions of 6 C.F.R. Part 29, it is exempt from release under the Freedom of Information Act (5 U.S.C. 552) and similar State and local disclosure laws. Unauthorized release may result in criminal and administrative penalties. It is to be safeguarded and disseminated in accordance with the Critical Infrastructure Information Act of 2002, 6 U.S.C. §§ 131 et seq., the implementing Regulation at 6 C.F.R. Part 29 and PCII Program requirements.

By reviewing this cover sheet and accepting the attached PCII you are agreeing not to disclose it to other individuals without following the access requirements and to abide by the guidance contained herein. Your acceptance provides immediate access only to the attached PCII.

If you have not completed PCII user training, you are required to send a request to pcii-training@dhs.gov within 30 days of receipt of this information. You will receive an email containing the PCII user training. Follow the instructions included in the email.

Access

Individuals eligible to access the attached PCII must be Federal, State or local government employees or contractors and must meet the following requirements:

Assigned to homeland security duties related to this critical infrastructure; and

Demonstrate a valid need-to-know.

The recipient must comply with the requirements stated in the Critical Infrastructure Information Act of 2002 found at 6 U.S.C. § 131 et seq. and the implementing Regulation at 6 C.F.R. Part 29.

Handling

Storage: When not in your possession, store in a secure environment such as in a locked desk drawer or locked container. **Do not leave this document unattended.**

Transmission: You may transmit PCII by the following means to an eligible individual who meets the access requirements listed above. In all cases, the recipient must accept the terms of the Non-Disclosure Agreement before being given access to PCII.

Hand Delivery: Authorized individuals may hand carry material as long as access to the material is controlled while in transit.

Email: Encryption should be used. However, when this is impractical or unavailable you may transmit PCII over regular email channels. If encryption is not available, send PCII as a password protected attachment and provide the password under separate cover. **Do not send PCII to personal, non-employment related email accounts.** Whenever the recipient forwards or disseminates PCII via email, place that information in an attachment.

Mail: USPS First Class mail or commercial equivalent. Place in an opaque envelope or container, sufficiently sealed to prevent inadvertent opening and to show evidence of tampering, and then placed in a second envelope that has no marking on it to identify the contents as PCII. Envelope or container must bear the complete name and address of the sender and addressee. Envelope will have no outer markings that indicate the contents are PCII and must bear the following below the return address: **"POSTMASTER: DO NOT FORWARD. RETURN TO SENDER."** Adhere to the aforementioned requirements for interoffice mail.

Fax: You are encouraged, but not required, to use a secure fax. When sending via non-secure fax, coordinate with the recipient to ensure that the faxed materials will not be left unattended or subjected to unauthorized disclosure on the receiving end.

Telephone: You are encouraged to use a Secure Telephone Unit/Equipment. Use cellular phones only in exigent circumstances.

Reproduction: Ensure that a copy of this sheet is the first page of all reproductions containing PCII. Clear copy machine malfunctions and ensure all paper paths are checked for PCII. Destroy all unusable pages immediately.

Destruction: Destroy (i.e., shred or burn) this document when no longer needed. For laptops or CPUs, delete file and empty recycle bin.

Sanitized Products

You may use PCII to create a work product. The product must not reveal any information that:

- Is proprietary, business sensitive, or trade secret;
- Relates specifically to, or identifies the submitting person or entity (explicitly or implicitly); and
- Is otherwise not appropriately in the public domain.

Derivative Products

Mark any newly created document containing PCII with "Protected Critical Infrastructure Information" on the top and bottom of each page that contains PCII. Mark "(PCII)" beside each paragraph containing PCII. Place a copy of this page over all newly created documents containing PCII. The PCII Tracking Number(s) of the source document(s) must be included on the derivatively created document in the form of an endnote.

For more information about derivative products, see the PCII Work Products Guide or speak with your PCII Officer.

Tracking Number:

PROTECTED CRITICAL INFRASTRUCTURE INFORMATION

EXHIBIT F

2010 BUFFER ZONE PROTECTION PROGRAM REIMBURSEMENT FORM

AWARD NUMBER: 2010-BF-T0-0020

PERFORMANCE PERIOD: 6/1/10 - 2/28/13

Chief Executive Office/County Disaster Administrative Team

COUNTY OF LOS ANGELES

Thank you for participating in the Buffer Zone Protection Program. In order to complete your claim, please follow the checklist on the first tab of this workbook and attach the required supporting documents for all items for which you are requesting reimbursement.

Please submit invoices as soon as expenses are incurred and the required invoice and other supporting documentation is available. Do NOT accumulate and submit all claims and invoices on the final due date. Failure to submit your claim in a timely manner with the required supporting documents could result in unreimburseable expenses and/or reallocated awards.

DATE	TAXPAYER ID#

MAKE CHECKS PAYABLE TO:

MAILING ADDRESS

CITY, ZIP

PHONE	E-mail
AUTHORIZED SIGNATURE	AUTHORIZED SIGNER NAME/TITLE

Under Penalty of Perjury I certify that:

- I am the duly authorized officer of the claimant herein.
- This claim is in all respect true, correct, and all expenditures were made in accordance with applicable laws, rules, regulations and grant conditions and assurances.

Please fax or e-mail reimbursement requests to:
Norm Braverman Fax (213) 687-3765
E-Mail:nbraverman@ceo.lacounty.gov

California Emergency Management Agency
Equipment Inventory Ledger

Project	Equipment Description	AEL #	AEL Title	Funding Source	Invoice #	Vendor	Total Cost General		Acquired Date (physically received)	ID Tag #	Condition & Dispostion	Deployed Location (address required)
							$-					
	TOTAL CLAIMED AMOUNT						**$ -**					