

# Fact Sheet

## **Protected Critical Infrastructure Information (PCII) Program Issuance of the Final Rule, Procedures for Handling Critical Infrastructure Information**

The Department of Homeland Security (DHS) issued the Final Rule on Procedures for Handling Critical Infrastructure Information on Friday, September 1, 2006. This rule finalizes the procedures for the Protected Critical Infrastructure Information (PCII) Program in governing the receipt, validation, handling, storage, marking and use of critical infrastructure information voluntarily submitted to DHS.

### **What is the history of the Final Rule?**

The Final Rule is the capstone to a series of legislative and regulatory actions that shaped the PCII Program. Congress passed the Critical Infrastructure Information Act of 2002 as part of the Homeland Security Act. A 90-day public comment period followed under the Notice of Proposed Rulemaking. The Interim Rule was issued in February 2004, when the PCII Program Office opened. The program operated under the Interim Rule while the Department completed the Final Rule.

### **What is the purpose of the PCII Program and what protections does it provide?**

It is estimated that over 85 percent of the critical infrastructure upon which our national security, economy, and public welfare depend is owned and operated by the private sector. The PCII Program was created to encourage the private sector to voluntarily share security-related information about this infrastructure by providing special protection. Information submitted, if it satisfies the requirements of the CII Act, is protected from:

- Freedom of Information Act disclosure;
- State and local disclosure laws; and
- Use in civil litigation.

Additionally, PCII cannot be used as the basis for a regulatory action.

### **How does the Final Rule affect the PCII Program?**

The Final Rule reinforces many of the safeguarding measures put in place by the Interim Rule and reflects a careful study of comments received from the public. The Final Rule makes the PCII Program more responsive to the submitters of critical infrastructure information and the users that rely upon it to secure the homeland.

Some of the key effects of the Final Rule are:

- *Expansion of the definition of PCII, granting protection to information even if in the hands of the submitter.*

The Final Rule makes clear that critical infrastructure information submitted and validated for protection under the CII Act of 2002, the information and documents prepared, and drafts and copies retained by the submitter, and any discussions with DHS regarding the CII, shall be considered PCII and cannot be used directly in any civil litigation without the submitter's consent.

- ***Fewer circumstances under which PCII can lose its protected status, providing greater assurance for submitters.***

Whether CII provided to the PCII Program Manager is protectable will be determined at the time of submission. In response to submitters' concerns about the future status of their information, the Final Rule addresses criteria that required the removal of protected status.

- ***Categorical inclusion of classes of CII, allowing for presumptive validation and more certainty for submitters.***

The Final Rule invests the PCII Program Manager with the authority and flexibility to designate certain types of infrastructure information as presumptively valid PCII to accelerate the validation process. The PCII Program Manager may establish categories of information for which PCII status will automatically apply.

- ***Submission of CII to other Federal agencies, providing for greater intake capability and greater convenience for submitters.***

The Final Rule identifies procedures for indirect submissions to DHS through DHS field representatives and other Federal agencies. Federal agencies other than DHS may be designated to receive CII on behalf of DHS, but only the PCII Program Manager is authorized to make the decision to validate a submission as PCII.

- ***State and local contractors permitted to receive PCII, providing for greater value and flexibility for our State and local partners.***

The Final Rule 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 the governmental entity, carrying out the functions on behalf of the government in furtherance of its mission and under its direction.

For more information about the PCII Program, please visit [www.dhs.gov/pcii](http://www.dhs.gov/pcii) or contact the PCII Program Office by calling (202) 360-3023, or via email at [pcii-info@dhs.gov](mailto:pcii-info@dhs.gov).