

May 17, 2004

Ms. Janice Pesyna
Office of the General Counsel
Department of Homeland Security
Washington, DC 20528

Re: Comments to Procedures for Handling Critical Infrastructure Information; Interim Rule

The American Gas Association (AGA) appreciates the opportunity to comment on the Department of Homeland Security's (DHS) Procedures for Handling Critical Infrastructure Information (CII), Interim Rule. AGA submits these comments on behalf of the nation's natural gas utilities in support of DHS' interim rule and proposes a few modifications for consideration.

AGA is a trade association composed of 192 local natural gas utilities that serve customers in all fifty of the United States. AGA member companies deliver natural gas to more than 52 million homes, businesses and industries throughout the United States. The nation's energy utilities that comprise the AGA membership continue to examine their security practices, perform vulnerability assessments, and make appropriate enhancements to their security programs.

AGA has reviewed the interim rule and believes it follows the intent and goals of the Critical Infrastructure Information Act of 2002. We support the goal of the interim rule to increase the level of information sharing between the public and private sectors and believe the Act and the interim rule are necessary first steps in meeting this goal. The key element missing in the interim rule that is necessary to foster private sector participation is the establishment of additional procedures for notifying submitters of the distribution of information they provided. Additionally, we encourage DHS to carefully consider and address the following concerns:

1. Section 29.5 (a) (3)(ii) *Requirements for Protection*. This section outlines the process for oral submissions and states that a submitter has 15 days to request CII classification. It is our understanding that until the written statement is received by DHS, the oral submission is not afforded CII protection. However, during times of high terrorist alert, disaster or emergency, the submitter may not have the luxury to provide a written statement. The rule as written may conversely deter oral submissions. We recommend that the request for CII classification be required at the time of oral submittal and followed up in writing within 15 days. This circumvents any lag time during which the submitted information might not receive due protection.
2. Section 29.6 (e) (2)(E)(ii) *Acknowledgement of Receipt, Validation, and Marking*. This section addresses the use of submitted information that is determined by DHS to not meet the criteria for CII protection. Concern is raised regarding the unchecked discretion of the Program Manager to distribute and/or destroy the submitted information regardless of the appeal of the submitter to have the information destroyed or held by DHS without protection. We recommend that the Program Manager (or designee) be required to

contact the submitter and act in accordance to the submitter's request for information handling (i.e., destroy or keep at DHS without CII protection).

3. Section 29.7 (b) *Use and Storage*. This section, which touches on the manner in which the person in possession of the protected CII is to use and store the information, needs to provide further guidance to the Program Manager as to what methods are appropriate for securing the information.
4. Section 29.8 (j) *Disclosure to Foreign Governments*. AGA strongly believes that neither the Homeland Security Act nor the Critical Infrastructure Information Act authorizes the release of Protected CII to foreign governments. AGA proposes that this section be deleted in its entirety.
5. Section 29.9 (c) *Notification to Originator of Protected CII*. Since the protected information pertains to assets owned by the voluntary submitter of the information, if the information is provided to any third party, the submitter of the information must be notified. AGA and the industry strongly recommend that this section be changed so that the submitter is notified *every time* there is a disclosure of CII documents, including to law enforcement. A possible approach would be for DHS to employ the electronic management system (planned for tracking the source of the information submitted) with this notification task.
6. Since our industry has been requested to submit critical infrastructure information by other DHS entities and federal agencies focused on homeland security (i.e., Transportation Security Administration, Coast Guard, Department of Energy, Department of Transportation), we request DHS to immediately develop and incorporate protection rules for indirect submittals through other federal agencies. In addition, DHS must review and address the consistency in protection with PCII and the other rules for protecting sensitive information being followed by other government entities (i.e., Sensitive Security Information (SSI) by TSA).

AGA supports the DHS development and implementation of the Protected Critical Infrastructure Information Program. Our industry remains committed to securing its systems and facilities and working with DHS to secure the infrastructures that may impact national security. The sharing of critical infrastructure information is a key element of joint federal government and private sector partnership. It is of paramount importance the information submitted by owners of critical infrastructure is protected, handled properly and only shared on a "need to know" basis and also that the recipients of the shared information can guarantee information protection. Without such assurances from the federal government, industry, which is responsible for protecting the assets it owns, will be averse to submitting critical infrastructure information to DHS.

Thank you for your consideration. We would be pleased to provide you with further comments or clarifications upon request.

Respectfully submitted,

American Gas Association

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