

American Gas Association.txt

Subject: AGA Comments - Procedures for Handling Critical Infrastructure Information  
Date: Fri, 13 Jun 2003 10:12:17 -0400  
From: "Gardner, Gary" <GGardner@aga.org>  
To: "RegComments, CII" <CII.RegComments@HQ.DHS.GOV>  
CC: "Lewis, Jane" <JLewis@aga.org>,  
"Traweek, Lori" <LTraweek@aga.org>,  
"Shaffer, Lyman" <lhs1@pge.com>

To: Associate General Counsel (General Law)  
Department of Homeland Security, Washington, DC

In response to the April 15, 2003, Department of Homeland Security Notice of Proposed Rulemaking to establish for Federal agencies the uniform procedures to implement Section 214 of the Homeland Security Act of 2002 regarding the receipt, care, and storage of Critical Infrastructure Information voluntarily submitted to the Federal Government, the American Gas Association (AGA) respectfully submits the attached electronic document which includes comments that support DHS' proposed regulations and offers a few modifications to the proposal.

If you have any questions, please let us know.

Sincerely,

Gary W. Gardner  
Chief Information Officer  
American Gas Association  
400 North Capitol Street, NW  
Washington, D.C. 20001  
202-824-7270  
ggardner@aga.org

DHS\_Procedures for CII\_AGA Comments.doc

Name: DHS\_Procedures for  
CII\_AGA Comments.doc  
Type: WINWORD File  
(application/msword)  
Encoding: base64  
Description: DHS\_Procedures for  
CII\_AGA Comments.doc

**UNITED STATES OF AMERICA  
DEPARTMENT OF HOMELAND SECURITY**

**Procedures for Handling Critical                    )       FR Doc. 03-9126**  
**Infrastructure Information                         )       Filed 4-14-03**

**COMMENTS OF  
THE AMERICAN GAS ASSOCIATION**

On Tuesday, April 15, 2003, the Department of Homeland Security (DHS) issued a Notice of Proposed Rulemaking<sup>1</sup> to establish for Federal agencies the uniform procedures to implement Section 214 of the Homeland Security Act of 2002 regarding the receipt, care, and storage of Critical Infrastructure Information (CII) voluntarily submitted to the Federal Government. The protection of critical infrastructure reduces the vulnerability of the United States to acts of terrorism. The American Gas Association (AGA) submits these comments supporting DHS' proposed regulations and seeking a few modifications to the proposal.

**I.       AGA's Interest in this Proceeding**

AGA is a trade association composed of 190 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. Such enhancements include supplementing current emergency plans with terrorist risk elements, strengthening physical barriers,

---

<sup>1</sup> 68 Fed. Reg. 6 CFR Part 29, RIN 1601-AA14 (April 15, 2003).

tightening control access, adjusting frequency of patrols, and confirming response and recovery actions with local law and emergency officials. Over the past year, AGA members have worked closely with the Department of Transportation (DOT) and the Department of Energy (DOE) in the development of security guidelines, partnered with the Office of Homeland Security in establishing the President's national physical infrastructure protection plan, conducted a regional planning study to determine the impact of major pipeline system outages, and teamed with DOT, DOE, the Federal Energy Regulatory Commission (FERC) and the National Association of Regulatory Utility Commissioners (NARUC) on numerous initiatives such as cost recovery, Freedom of Information Act issues, anti-trust concerns, terrorism insurance and the establishment of the DHS.

## **II. Comments**

AGA has read and supports the comments of the American Petroleum Institute (API) and the Science Applications International Corporation (SAIC). We encourage DHS to carefully consider the important points raised in those submissions and to revise the proposed rule accordingly. In addition to the comments submitted by API and SAIC, AGA has a few additional concerns enunciated below.

### **A. Proposed Section 29.3(a)**

AGA recognizes that the proposed process to protect critical infrastructure information is applicable only to that critical infrastructure information which is voluntarily submitted to the Department of Homeland Security. There exists the possibility, however, that information required to be submitted to a Federal agency could also contain critical infrastructure information. There must be processes in place to protect

these mandated submissions as well. DHS should accordingly encourage other agencies to adopt similar protections for any information that is required to be submitted that may contain critical infrastructure information. The Federal Energy Regulatory Commission (FERC) recently issued a rule to this effect. See Order No. 630, Critical Energy Infrastructure Information Final Rule, 102 FERC ¶ 61,190 (2003). DHS should encourage other agencies to follow FERC's lead.

### **B. Proposed Section 29.8 Disclosure of Information**

The proposed rules permit DHS to “choose to provide or authorize access to protected CII” to Federal, state and local governments and to federal contractors for purposes of securing the CI and protected systems, analysis, warning, interdependency study, recovery, reconstitution or for another information purpose relating to homeland security.” This disclosure provision is overly broad and on its face would permit disclosure of CII to too many entities for too many vague purposes. DHS should tighten this language. Additionally, this provision gives DHS the ability to distribute CII to other government agencies (federal, state or local), Congress, or government contractor without company permission or knowledge. The proposed regulation should be revised to provide for company permission and or knowledge prior to any such sharing.

### **C. Proposed Section 29.5 Labeling of information and DHS coordination**

Proposed section 29.5 (c) states that "Information that is not submitted to the CII Program Manager, either directly by the submitter or indirectly through another Federal agency by request of the submitter, will not qualify for protection under the CII Act of 2002". DHS should clarify that an entity submitting CII can “request” another Federal agency to submit the information to the CII Program Manager for a CII determination

simply by following the labeling requirements of §29.5(b)(3)(i). In other words, if information submitted to any government agency bears the label "contains critical infrastructure information" the agency receiving the information should automatically submit the information to the CII Program Manager for a determination and should treat the information as CII. The presumption should be that any page marked as containing CII must be protected from disclosure.

### **III. Conclusion**

AGA supports the Department of Homeland Security's promulgation of the proposed rule for procedures for handling critical infrastructure information. Our industry remains committed to securing their systems and working with DHS to secure the infrastructures that may have impact to national security. The sharing of critical infrastructure information is obviously a key element of any joint federal government and private sector partnership. It is of utmost importance that the information be kept protected and handled properly.

Respectfully submitted,

American Gas Association

*/s/ Gary W. Gardner*

By:

---

Gary W. Gardner  
Chief Information Officer  
American Gas Association  
400 North Capitol St, NW  
Washington, DC 20001  
Phone: 202-824-7270  
Email: ggardner@aga.org

Dated: June 13, 2003