

Board of Governors.txt

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Subject: Comments on notice of proposed ruling  
Date: Mon, 16 Jun 2003 18:25:51 -0400  
From: <Steve.Malphrus/BOARD/FRS@frb.gov>  
To: "RegComments, CII" <CII.RegComments@HQ.DHS.GOV>  
CC: <Elaine.Boutilier@frb.gov>

The attached file contains comments from the Board of Governors of the Federal Reserve System. The original document has been put in the mail.

(See attached file: Homeland security - comments on proposed ruling.doc)

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proposed  
Name: Homeland security  
comments on  
ruling.doc  
Type: WINWORD File  
Homeland security - comments on proposed ruling.doc  
(application/msword)  
Encoding: base64  
Description: Homeland security  
-  
proposed  
comments on  
ruling.doc

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June 16, 2003

Associate General Counsel (General Law)  
Department of Homeland Security  
Washington, DC 20528

Re: RIN 1601-AA14

Dear Sir or Madam:

This is in response to the notice of proposed rulemaking published on April 15, 2003 (68 FR 18524) by the Department of Homeland Security (DHS) 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 Board of Governors of the Federal Reserve System (the Board) would like to submit the following comments on the proposed rule.

1. Information Obtained by Federal Banking Agencies. As an initial matter, it is important to note that federal bank regulatory agencies, such as the Board, routinely receive and review information falling within the definition of CII as part of their supervisory oversight of the business continuity and information security plans of financial institutions as well as other work with payment and settlement systems. Some of this information is voluntarily submitted by financial market participants and is not submitted "pursuant to any legal requirement." Nonetheless, such information is vital for the Board to keep abreast of developments in the financial markets in order to carry out its regulatory and monetary policy responsibilities. The Board recommends that the rule clarify that information voluntarily submitted to an agency shall not be treated as Protected CII, unless it was provided to the agency by DHS and designated as Protected CII. It is our understanding that information that is submitted directly to DHS as Protected CII may be separately provided voluntarily to another federal agency without the Protected CII designation, and that the other federal agency will be under no obligation to treat such separately provided information as Protected CII. There are other existing means for protecting the information if it needs confidential treatment, and the Board has been satisfied with these protections.

2. Indirect Submission of Protected CII. We recommend that the rule be changed to limit the designation of information as Protected CII solely to information submitted by a private party directly to DHS. According to section 214 of the Critical Infrastructure Information Act of 2002, Protected CII is CII that is voluntarily submitted to DHS for use

by DHS regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, and that is accompanied by an express claim for CII protection. Because Protected CII is intended to be used only by DHS, submission of that information should go directly to DHS. We think that the indirect submission of Protected CII through other agencies will lead to confusion both to the public concerning the purpose of such a submission and to the agency regarding the treatment of that information during the interim between submission and a determination by DHS. It may also hinder an agency's ability to use vital information to carry out its statutory responsibilities during that time period.

If you have any questions regarding these comments, please contact Elaine Boutilier, Managing Senior Counsel, at (202) 452-2418.

Sincerely,

A handwritten signature in black ink, appearing to read "Staci L. Peterson". The signature is written in a cursive, flowing style.