

Newspaper Association of America.txt  
Subject: Comments re Procedures for Handling Critical Infrastructure Information  
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To: "RegComments, CII" <CII.RegComments@HQ.DHS.GOV>

Attached are comments by the Newspaper Association of America to the Department's NPRM on Procedures for Handling Critical Infrastructure Information.

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June 16, 2003

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

RE: Procedures for Handling Critical Infrastructure Information  
RIN 1601-AA14

Dear Associate General Counsel:

The Newspaper Association of America respectfully submits these comments in response to the Department of Homeland Security's notice of proposed rulemaking on its new Procedures for Handling Critical Infrastructure Information.

The Newspaper Association of America represents more than 2,000 daily and weekly newspapers in the United States and Canada. Most NAA members are daily newspapers, accounting for 87 percent of the U.S. daily circulation. A major emphasis of the Association and its members is ensuring access to information held by the government. Through the years we have actively worked to strengthen and protect the Freedom of Information Act.

Access to information is a cornerstone of our democracy and the Freedom of Information Act provides the framework through which the public can gain access to information the government collects. The Freedom of Information Act appropriately provides safeguards including provisions that protect personal privacy, national security and corporate trade secrets. When the Homeland Security Act was enacted, it encouraged corporations to voluntarily submit critical infrastructure information to the Department so that the Department could assess potential security threats. To encourage submission, the Act specifically stipulates that voluntarily submitted critical infrastructure information is to be treated as exempt under the Freedom of Information Act. Given the unique nature of the information the government hopes to collect, coupled with the inability of the public to access this information, we urge the Department to move cautiously in implementing critical infrastructure information regulations. We believe the proposed regulations do not uniformly take this cautious approach and respectfully make the following recommendations.

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First, we urge the Department to amend Section 29.1(b) and Section 29.2(i) of the proposed rules to clarify that only the Department of Homeland Security and no other federal agency shall be the recipient of voluntarily submitted critical infrastructure information. Specifically, the second sentence addressing indirect submission of critical infrastructure information of Section 29.2 should be deleted. Section 29.1 should clarify what it means by “receive” so that it is not interpreted to mean that companies can submit critical infrastructure information to any Federal agency.

Not only would such changes provide clear guidance to submitters, it also limits the possibility that information that may be accessible under the Freedom of Information Act be unintentionally determined by another federal agency to be voluntarily submitted critical infrastructure information.

Second, we urge the Department to further clarify its definitions of “critical infrastructure information” or “CII” and “voluntary or voluntarily.” With respect to CII, we believe that Department should define what is “not customarily in the public domain.” If a definition is not possible, the Department should establish clear evaluation procedures that will allow CII program managers to ensure that what is being submitted warrants such secrecy.

Under the proposed definition of voluntary or voluntarily, we are concerned that the definition is too broad and encompasses potentially too much information. As presently drafted the only information that is not voluntary is that which the Department has exercised legal authority to obtain. The concern is that by limiting what is not voluntary to Department authority, the Department may be inadvertently allowing submitters to voluntarily provide information that is collected by other federal agencies. We propose amending the definition so that voluntary is defined as “submitted in the absence of authority to compel access or submission of the information.”

We commend the Department for including in its proposed regulations Section 29.3(a). This section clearly establishes that submitters should not use CII as means by which to avoid other laws or regulations. This section, together with the proposed changes listed previously, will provide the appropriate framework within which critical infrastructure information should be provided to the Department.

Finally, with respect to the proposals on disclosure, we urge the Department to allow for the unauthorized disclosures of voluntarily submitted critical infrastructure information to Congress, other agencies or the public when it is reasonably believed that there is “evidence of mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety affecting or relating to the protection of the critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, or reconstitution.” Sec. 29.8(f)(2)(ii). As proposed, the Department would only allow for unauthorized disclosure to the Department’s Inspector General or an employee chosen by the Secretary. Limiting whistleblower disclosures to

Newspaper Association of America  
Page Three

those immediately in charge of a program undermines the value of whistleblowing to uncovering activities that may be detrimental to the public.

As the Department moves forward in this area, we urge that it do so with care especially when it concerns critical infrastructure information, the vulnerability of which is of utmost importance to the public.

Thank you.

Sincerely,

/s/ Paul J. Boyle

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/s/ E. Molly Hemsley

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