

Port Authority of New York and New Jersey.txt
Subject: Comments on Proposed Rule: 6 CFR Part 29 -- Procedures for Handling
Critical Infrastructure Information
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The Port Authority of NY & NJ's Office for Operations and Emergency Management, which has organizational responsibilities for Critical Infrastructure Information, has requested that I submit its comment and questions regarding the above proposed rule to your office for consideration.

<<Associate General Counsel-Ellington.doc>>

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The Security Manager's Office in the Port Authority of N.Y. & N.J.'s Office of Operations and Emergency Management does have a few specific comments/questions regarding the Department of Homeland Security's pending rules, 6 CFR Part 29, Procedures for Handling Critical Infrastructure Information, as published in the Federal Register on Tuesday, April 15, 2003 and request that they be submitted as is appropriate. Our comments/ questions are as follows:

1. There does not appear to be a provision in the proposed rules that requires a notification to the originator of CII if DHS submits its sensitive data to another entity for any reason. Since the originator submitted the CII in good faith to DHS, might it be appropriate that there be provision made for notifying the originator, should the information be transmitted beyond DHS . It would also be helpful to provide a mechanism allowing the originator to request that it be advised as to the agencies within DHS, which have been given the originator's sensitive information. .
2. In Section 29.1(b) the Scope indicates that the procedures apply to "----- and local governments and government authorities -----". The Port Authority of New York and New Jersey as a bi-state (interstate) public agency would fall under the definition of local government in Section 29.2(e), but it is not clear as to what "express agreement" means in the context of this section. Is a formal written agreement contemplated and is, or will, a sample be made available for comment? Should this phrase, or the process contemplated, be defined or otherwise clarified with the context of the proposed rules.

3. In Section 29.2(e)(1) it is suggested that the words “and their respective agents, servants, employees or contractors” be added after the words local government. This language would comport with the practices of many of these entities insofar as recognizing who they would often have working on these critical infrastructure matters and would help to make clear that they will continue to be able to do so. If it is not meant to include contractors of state and local governments, can consideration be given to including them.
4. Section 29.4(c) indicates that “other entities” could or in fact does include State agencies and the defined local governmental entities as being required to appoint a CII officer. However, the intent and meaning is not entirely clear. It might be appropriate to define the entities or type entities that are to be so obligated.
5. Section 29.8(b) is somewhat unclear, especially in its last sentence. Can it be assumed that each state government and local government entity must enter into an “express agreement” with DHS in order to share CII information/documentation between or among these agencies? If so, is there a contemplated form of agreement available for comment, or are they to be negotiated on an individual basis? Are state/local agreements required between the agencies in order to share this information?
6. Section 29.8(c) refers to “Disclosure of Information to Federal Contractors”. The question arises as how are non “Federal contractors” treated as far as disclosure of CII is concerned. It can be anticipated that the State agencies and defined local government entities would want to disclose CII information to one or more of their contractors performing security services. Is there a mechanism contemplated for doing so, such as a provision in the referenced ‘express agreement’, which these entities are required to give.
7. Section 29.8(i) would seem to indicate that “protected CII” would be protected from disclosure in “civil actions”. Does this mean that it is expected that such

information would be protected from a subpoena in any proceeding or a court order issued by a state or federal court in a civil action? If so, how is it contemplated that this will be achieved?

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