



**American Water Works
Association**

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May 17, 2004

Department of Homeland Security
Office of the General Counsel
ATTN: Janice Pesyna
Washington, DC 20528

RE: Procedures for Handling Critical Infrastructure Information; Interim Rule

Dear Sir/Madam:

The American Water Works Association (AWWA) appreciates the opportunity to review the proposed Procedures for Handling Critical Infrastructure Information (CII) (69 FR 8074), published on February 20, 2004. AWWA is an international non-profit, scientific and educational society dedicated to the improvement of drinking water quality and supply. AWWA's over 57,000 members represent the full spectrum of the drinking water community: treatment plant operators and managers, public health officials, scientists, academicians, and others who hold a genuine interest in water supply and public health. Our membership includes more than 4,700 utilities that supply roughly 80 percent of the nation's drinking water.

AWWA's member utilities need to protect sensitive information while balancing their role as a public service provider. Most recently this issue was addressed under the Public Health and Bioterrorism Preparedness and Response Act of 2002, which requires community water systems serving greater than 3,300 people to prepare vulnerability assessment and submit them to the Environmental Protection Agency (EPA). This legislation protects vulnerability assessments from being subject to Freedom of Information Act (FOIA) requests. Many States have also taken action to protect the vulnerability assessment from water utilities as reported by National Conference of State Legislatures (NCSL) in a September 2003 report "Protecting Water System Security Information". AWWA has been a strong supporter of such exemptions to protect the integrity of the water systems and public safety.

While AWWA recognizes the need for DHS to review this type of information, we continue to recommend that drinking water systems only share information like the vulnerability assessment under very closely controlled conditions. A review of the rule as currently proposed raises significant concerns regarding the ability of DHS to maintain control and protect such information from public access. For example, the proposed language in 6 CFR 29.8 permits DHS to share protected CII with other Federal, State, local entities under certain preset conditions. However, once the information is outside DHS control, the protections afforded that information may no longer apply under State and local laws. Furthermore, it is not clear that the entity providing the information will have a voice in determining how, when or with whom such CII is shared, much less be notified of the sharing. This represents a critical weakness in the intent of

the CII rule and one that will likely prevent water utilities from providing information that would not otherwise be collected. Likewise, the penalty for violating the rule governing the use of CII are a weak deterrent relative to the possible consequence of such information be used to plan and execute a malevolent act.

Based on the issues outlined above, AWWA has cautioned water utilities against sharing CII with outside parties. The most appropriate entities with whom this information should be shared are local emergency responders for emergency planning purposes only.

If you have any questions about these comments, please feel free to call me or Kevin Morley in our Washington Office at 202-628-8303.

Sincerely,



Thomas W. Curtis
Deputy Executive Director

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