MEMORANDUM FOR: SEE DISTRIBUTION

Subject: Freedom of Information Act (FOIA) Requests for Critical Infrastructure Information (CII)

The Homeland Security Act of 2002, Public Law 107-296, established the Department of Homeland Security (DHS). A provision within the legislation established a new Exemption 3 Statute for applicable protection of CII. This Exemption 3 statute applies only to DHS and until further notice, may not be used to exempt CII maintained by the Department of Defense (DoD). Further guidance on the Exemption 3 statute was distributed by the Department of Justice (Office Of Information and Privacy) (DOJ (OIP)) on the Internet on FOIA Post at http://www.usdoj.gov/oip/foiapost/2003foiapost4.htm.

The DoD has recognized the need to protect voluntarily submitted CII when these records are requested under the FOIA. Efforts to obtain an Exemption 3 statute unique to DoD are ongoing. Until such time as an Exemption 3 statute for CII that includes the DoD is passed, the following guidance for exempting CII under the provisions of the FOIA is provided:

a. Exemption (b)(1) may be used to exempt classified CII that is determined to be currently and properly classified after review.

b. Exemption (b)(2)High may be used to exempt applicable unclassified CII. Recent guidance issued by DOJ(OIP) concerning the use of the (b)(2) High exemption for CII may be found on FOIA Post at http://www.usdoj.gov/oip/foiapost/2001foiapost19.htm.

c. Exemption (b)(4) may be used to exempt applicable unclassified CII that is voluntarily submitted and the release of which would cause competitive harm.

d. Exemptions (b)(7)(E) and (b)(7)(F) may be used to exempt applicable law enforcement information.

Additional guidance or changes will be forwarded as it becomes available.

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Director
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