



January 15, 2010

Office of Chief Counsel
Federal Emergency Management Agency
500 C Street, S.W., Room 840
Washington, DC 20472-3100

VIA FEDERAL E-RULEMAKING PORTAL (www.regulations.gov)

Re: *Voluntary Private Sector Accreditation and Certification Preparedness Program*
Docket ID FEMA-2008-0017

To the Office of Chief Counsel:

The Interstate Natural Gas Association of America ("INGAA") submits this comment letter pursuant to the notice issued in the referenced docket by the Federal Emergency Management Agency ("FEMA") on October 15, 2009, and published in the *Federal Register* on October 16, 2009, (the "Notice")¹ modified by the comment period extension notice issued November 3, 2009, and published in the November 4, 2009, issue of the *Federal Register*.² INGAA is a non-profit trade association that represents interstate natural gas transmission pipelines.

The Notice announced that FEMA intends to adopt three standards for its Voluntary Private Sector Accreditation and Certification Preparedness Program, commonly known as "PS-Prep." INGAA does not take issue with the three proposed standards or object to their adoption by FEMA. Still, FEMA should address the following four points before moving further on the PS-Prep program.

1. *Consistent with keeping PS-Prep a voluntary program, as directed by Congress, FEMA should expressly and strongly emphasize that neither program participation nor the accreditation or certification standards establish an enforceable duty, a standard of care or any other basis for imposing civil liability.*

Congress established PS-Prep as a voluntary program,³ and consistent with that mandate FEMA should declare that when it adopts a PS-Prep standard it does not expressly or implicitly sanction that standard as an enforceable duty, a standard of care or some other basis for imposing civil liability. Otherwise, a company that would otherwise choose not to participate may feel compelled to do so just to pre-empt plaintiffs who would use the PS-Prep standards as the yardstick for determining negligence.

2. *Entities that are already subject to comprehensive emergency preparedness regulation under the Pipeline Safety Act, the Chemical Facility Anti-Terrorism Act, the Marine Transportation Security Act, etc., should be able to obtain PS-Prep certification solely by documenting their compliance.*

Interstate natural gas transmission pipelines are already subject to emergency preparedness requirements as part of the comprehensive safety regulations administered by the Pipeline and Hazardous Materials Safety Administration's Office of Pipeline Safety ("OPS"). For example, every pipeline operator is required to "establish written procedures to minimize the hazard resulting from a gas pipeline emergency."⁴ Pipeline emergency plans are subject to extensive and detailed content requirements

¹ 74 Fed. Reg. 53286.

² 74 Fed. Reg. 57186.

³ Notice, 74 Fed. Reg. at 53287 (citing Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53).

⁴ 49 C.F.R. § 192.615.

governing emergency detection; ongoing liaison and crisis communications with first responders and public officials; response time; equipment and personnel availability; emergency shutdown; emergency response planning; employee training; and post-emergency recovery.⁵ Compliance with these requirements is secured through pipeline annual reports,⁶ incident-specific reports and investigations,⁷ and periodic OPS audits. Moreover, should an emergency occur on an interstate natural gas pipeline the operator will have to respond not only to OPS, but also to the Federal Energy Regulatory Commission, which certifies pipeline facilities and regulates their rates.⁸

Given the extensive emergency preparedness requirements already in place, there is no reasonable basis for requiring interstate natural gas transmission pipelines to comply with an additional, redundant, and possibly even conflicting set of standards solely to obtain PS-Prep certification. FEMA should instead extend PS-Prep accreditation to OPS and instruct OPS to grant PS-Prep certification to any pipeline that demonstrates compliance with OPS's emergency preparedness regulations.

The same logic applies to facilities subject to emergency preparedness regulations issued under the Chemical Facility Anti-Terrorism Act⁹ or the Marine Transportation Security Act.¹⁰ FEMA should accredit the regulating agency and instruct the agency to confer PS-Prep certification on entities that comply with the regulating agency's emergency preparedness regulations.

3. *FEMA should reinforce the tie between obtaining PS-Prep certification and obtaining protection under the Supporting Ant-terrorism by Fostering Effective Technologies ("SAFETY") Act of 2002; in fact, entities with PS-Prep certification should be considered pre-qualified for SAFETY Act protection or their SAFETY Act applications should be accorded priority processing.*

In its December 2008 request for recommendations regarding the PS-Prep standards, FEMA noted that "PS-Prep will seek to streamline the process for applying for SAFETY Act protection."¹¹ SAFETY Act protection is valuable to INGAA's members, and they view FEMA's suggested streamlining as a major benefit of PS-Prep certification.¹² INGAA urges FEMA to advance and formalize SAFETY Act streamlining either by considering PS-Prep certified entities pre-qualified for SAFETY Act protection or, at a minimum, by according priority processing to these entities' SAFETY Act applications.

4. *FEMA should examine and address the economic feasibility and cost considerations associated with approving the proposed PS-Prep standards and allowing PS-Prep certification through compliance with current emergency preparedness regulations.*

The successful implementation of any regulatory program, whether voluntary or mandatory, depends heavily on the feasibility and implementation costs associated with the program's standards.

⁵ *Id.*

⁶ 49 C.F.R. § 191.17.

⁷ 49 C.F.R. § 191.15.

⁸ *See generally*, Natural Gas Act, 15 U.S.C. § 717 *et seq.*

⁹ 6 C.F.R. Part 27.

¹⁰ 33 C.F.R. Part 105.

¹¹ *Voluntary Private Sector Accreditation and Certification Preparedness Program*, 73 Fed. Reg. 79140, 79145.

¹² Responding to question 4 in the Notice, 74 Fed. Reg. at 53288, a reason for businesses to seek PS-Prep certification is to access streamlined procedures for obtaining SAFETY Act protection.

FEMA notes that it selected the three standards appearing in the Notice based on their scalability, balance of interest and relevance to the goals of the PS-Prep program. Consistent with fundamental principles of reasoned rulemaking, FEMA should also address whether the three standards it chose are feasible and economically justified.

A feasibility and cost analysis would strongly support allowing PS-Prep certification through compliance with current emergency preparedness regulations. The marginal cost of such certifications would be virtually zero, since both the regulated entities and the regulating agencies would already have been implementing the substantive requirements. The additional costs would be wholly administrative, and minimal at that.

INGAA appreciates the opportunity to comment in this docket and offers its continued assistance in the developing a robust and cost-effective PS-Prep accreditation and certification program.

Respectfully submitted,

A handwritten signature in black ink that reads "Dan Regan" with a long horizontal flourish extending to the right.

Dan Regan

Regulatory Attorney

Terry D. Boss

Senior Vice President for

Environment, Safety and Operations

Interstate Natural Gas Association of America

10 G Street, N.W., Suite 700

Washington, DC 20002

(202) 216-5900