



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

MAY 19 2004

Janice Pesyna
Office of the General Counsel
Department of Homeland Security
Washington, D.C. 20328

Dear Ms. Pesyna:

The United States Department of Agriculture ("USDA") wishes to comment on the Interim Rule regarding "Procedures for Handling Critical Infrastructure Information," published in the Federal Register on February 20, 2004. 69 Fed. Reg. 8074 (2004) ("Interim Rule"). The Department of Homeland Security ("DHS"), with this Interim Rule, has set forth a plan to exempt from disclosure information that if released could create vulnerabilities in the critical infrastructure of the United States.

On December 17, 2003, President George W. Bush issued the Homeland Security Presidential Directive, "Critical Infrastructure Identification, Prioritization, and Protection" ("HSPD 7"). In doing so, the President reiterated the principle that the United States government shall act in a coordinated fashion in assisting in the protection of the United States critical infrastructure. As part of this coordinated approach, the President in HSPD 7 divided the critical infrastructure for the country into several sectors, and in turn designated seven Cabinet Departments as Sector-Specific Agencies, each with "its own unique characteristics and operating models. . . ." HSPD 7, Section 18. The President designated USDA as one of those Sector-Specific Agencies, responsible for the agriculture and food sectors (sharing responsibility regarding the latter sector with the Department of Health and Human Services).

As a Sector-Specific Agency, USDA is "responsible for infrastructure protection activities in [its] designated critical infrastructure sector . . ." HSPD 7, Section 6(g). As part of the infrastructure protection activities enumerated in HSPD 7, USDA must "collaborate with appropriate private sector entities and continue to encourage the development of information sharing and analysis mechanisms." HSPD 7, Section 25. The HSPD goes on to state that Sector-Specific Agencies must collaborate with the private sector, and support mechanisms:

- (a) to identify, prioritize, and coordinate the protection of critical infrastructure and key resources; and
- (b) to facilitate sharing of information about physical and cyber threats, vulnerabilities, incidents, potential protective measures, and best practices.

Janice Pesyna

Page 2

HSPD 7, Section 25. In addition to these activities, USDA annually must "report to the Secretary [of Homeland Security] on [its] efforts to identify, prioritize, and coordinate the protection of critical infrastructure and key resources in [its] respective sectors." HSPD 7, Section 35.

It would be useful in fulfilling their roles as Sector-Specific Agencies under HSPD 7 for Sector-Specific Agencies to receive Protected Critical Infrastructure Information ("Protected CII") directly and to have access to Protected CII in as facile a fashion as possible.

In the Preamble to the Interim Rule, it states that "[t]he purpose of this regulation is to *encourage private sector entities to share information* pertaining to their particular and unique vulnerabilities, as well as those that may be systemic and sector-wide." Interim Rule, at 8074 (emphasis added). USDA echoes the opinion cited in the Preamble to the Interim Rule that "[o]wners and operators of the nation's critical infrastructure have established relationships with other Federal agencies (*e.g.*, agencies that are sector leads for a particular infrastructure) and are comfortable sharing information with those entities." Interim Rule, at 8075. The agriculture and food sectors are already comfortable sharing sensitive information with USDA, but, in large part, have not had any experience with providing information to DHS.

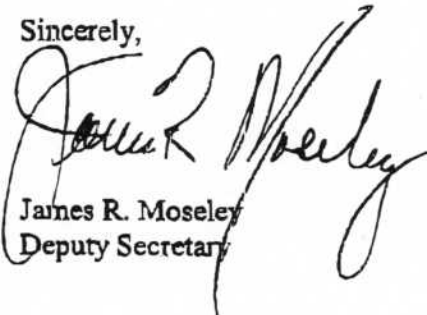
The difficulty with the Interim Rule is that it creates a single agency system with respect to Protected CII in the face of the President's multi-agency approach to the critical infrastructure in HSPD 7. The purposes of the Critical Infrastructure Information Act of 2002 ("the Act") and HSPD 7 can be best achieved if the protections of the Act are accorded when CII is submitted to any Sector-Specific Agency directly. This is best achieved by the Sector-Specific Agencies being designated as Federal covered agencies. If that is not possible, then we request that the Interim Rule be revised to allow Sector-Specific Agencies to act as conduits to DHS for CII submitted to them, with the protections of the Act attaching upon submission to these Agencies. We urge DHS to cast the final rule in light of the obligations placed on Sector-Specific Agencies by President Bush in HSPD 7.

We note that the draft regulations state that Protected CII may only be released to a Federal contractor if, among other things, "the Protected CII Program Manager or a Protected CII Officer certifies that the contractor is performing services in support of the purposes of DHS" Interim Rule, at 8087. In light of the obligations placed on Sector-Specific Agencies, such as the USDA, it is imperative that this disclosure provision be extended to include Federal contractors

Janice Pesyna
Page 3

performing services for Sector-Specific Agencies. Without this expansion, the USDA would be unable to communicate Protected CII to its contractors and, therefore, would be unable to fully "identify, prioritize, and coordinate the protection of critical infrastructure and key resources." HSPD, Section 25.

Sincerely,



James R. Moseley
Deputy Secretary