

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 9

RIN Number 1601-AA12

Restrictions Upon Lobbying

AGENCY: Office of the Secretary, Homeland Security.

ACTION: Interim final rule.

SUMMARY: The interim final rule prohibits use of appropriated funds by recipients of a federal contract, grant, loan, or cooperative agreement to influence any federal agency or Congress in connection with federal awards and establishes the Department of Homeland Security procedures for enforcement of this prohibition.

DATES: This interim final rule is effective March 6, 2003. Written comments may be submitted by April 7, 2003.

ADDRESSES: Submit written comments (preferably an original and three copies) to the Associate General Counsel (General Law), Department of Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Robert Coyle, (202) 282-8410 (not a toll free call).

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2002, the President signed into law the Homeland Security Act (Pub. L. 107-296) ("Act"), which created the new Department of Homeland Security (DHS). Pursuant to the provisions of the Act, the new Department came into existence on January 24, 2003.

In order to establish procedures to facilitate the operations of the new Department, DHS is issuing an initial series of proposed and interim final regulations.

II. The Interim Final Rule

This interim final rule establishes those procedures necessary to fulfill departmental obligations to impose restrictions upon lobbying. Except to the extent a Department component has adopted separate guidance under 31 U.S.C. 1352, the provisions of this subpart shall apply to each component of the Department.

This regulation establishes procedures concerning general prohibitions on lobbying and the use of certain appropriated funds and the appropriate penalties for violations of those prohibitions. The purpose of the

procedures is to ensure that neither the recipients of appropriated funds nor the employees of the Department of Homeland Security inappropriately solicit for action by Congress.

III. Procedural Requirements

Because the DHS came into existence on January 24, 2003, it is necessary to promptly establish procedures to facilitate the operations of the new Department. Furthermore, this interim final rule parallels the existing operational regulations of other cabinet-level agencies to impose restrictions upon lobbying, similar regulations were applicable to components being transferred to DHS from other agencies, and the regulations are only being technically adapted for DHS, imposing no substantive requirement that is different from the existing regulations of other agencies. Accordingly, the Department has determined that notice and public procedure are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). For the same reasons, the Department has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

It has been determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

List of Subjects in 6 CFR Part 9

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

Dated: February 28, 2003.

Tom Ridge,

Secretary of Homeland Security.

Authority and Issuance

For the reasons set forth above, 6 CFR chapter I is amended by adding part 9 to read as follows:

PART 9—RESTRICTIONS UPON LOBBYING

Subpart A—General

Sec.

- 9.1 Conditions on use of funds.
- 9.2 Definitions.
- 9.3 Certification and disclosure.

Subpart B—Activities by Own Employees

- 9.11 Agency and legislative liaison.
- 9.15 Professional and technical services.
- 9.20 Reporting.

Subpart C—Activities by Other than Own Employees

- 9.23 Professional and technical services.

Subpart D—Penalties and Enforcement

- 9.31 Penalties.
- 9.32 Penalty procedures.
- 9.33 Enforcement.

Subpart E—Exemptions

- 9.41 Secretary of Defense.

Subpart F—Agency Reports

- 9.51 Semi-annual compilation.
- 9.52 Inspector General report.

Appendix A to Part 9—Certification

Regarding Lobbying

Appendix B to Part 9—Disclosure Form to Report Lobbying

Authority: Sec. 319, Pub. L. 101-121, 103 Stat. 750 (31 U.S.C. 1352); Pub. L. 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); 5 U.S.C. 301.

Subpart A—General

§ 9.1 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in Appendix A to this part, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in Appendix B to this part, if such person has made or has agreed to make any payment using non appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment