

(6) The need to maintain impartiality between private litigants in cases where a substantial government interest is not implicated;

(7) Whether compliance would have an adverse effect on performance by the Department of its mission and duties; and

(8) The need to avoid involving the Department in controversial issues not related to its mission.

(b) Among those demands and requests in response to which compliance will not ordinarily be authorized are those with respect to which any of the following factors, *inter alia*, exist:

(1) Compliance would violate a statute or a rule of procedure;

(2) Compliance would violate a specific regulation or Executive order;

(3) Compliance would reveal information properly classified in the interest of national security;

(4) Compliance would reveal confidential commercial or financial information or trade secrets without the owner's consent;

(5) Compliance would reveal the internal deliberative processes of the Executive Branch; or

(6) Compliance would potentially impede or prejudice an on-going law enforcement investigation.

§ 5.49 Prohibition on providing expert or opinion testimony.

(a) Except as provided in this section, and subject to 5 CFR 2635.805, Department employees shall not provide opinion or expert testimony based upon information which they acquired in the scope and performance of their official Department duties, except on behalf of the United States or a party represented by the Department of Justice.

(b) Any expert or opinion testimony by a former employee of the Department shall be excepted from 5.49(a) where the testimony involves only general expertise gained while employed at the Department.

(c) Upon a showing by the requestor of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the United States, the appropriate Department official designated in § 5.44 may, consistent with 5 CFR 2635.805, in their discretion and with the concurrence of the Office of the General Counsel, grant special, written authorization for Department employees, or former employees, to appear and testify as expert witnesses at no expense to the United States.

(d) If, despite the final determination of the appropriate Department official designated in § 5.44, a court of

competent jurisdiction or other appropriate authority orders the appearance and expert or opinion testimony of a current or former Department employee, that person shall immediately inform the Office of the General Counsel of such order. If the Office of the General Counsel determines that no further legal review of or challenge to the court's order will be made, the Department employee, or former employee, shall comply with the order. If so directed by the Office of the General Counsel, however, the employee, or former employee, shall respectfully decline to testify.

Dated: January 24, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03-1997 Filed 1-24-03; 11:34 am]

BILLING CODE 4410-10-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 7

RIN 1601-AA02

Classified National Security Information

AGENCY: Office of the Secretary, Homeland Security.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements Executive Order 12958, entitled "Classified National Security Information," as amended, by establishing the initial elements of the Department of Homeland Security's classified national security information regulations.

DATES: This interim final rule is effective January 27, 2003. Written comments may be submitted by February 26, 2003.

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

FOR FURTHER INFORMATION CONTACT: Ellen McClain, (202) 612-1952, not a toll free call.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (Pub. L. 107-296), 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 public interaction with the DHS Office of the Secretary, DHS is issuing an initial series of proposed and interim final regulations.

II. The Interim Final Rule

This interim final rule establishes initial procedures necessary for the DHS to fulfill its obligations under Executive Order 12958, as amended, regarding classified national security information.

Executive Order 12958, as amended, was issued to update and revise the standards and process for classifying, safeguarding and declassifying classified national security information. The rule delegates to the Under Secretary for Information Analysis and Infrastructure Protection responsibility for developing the vast majority of information and internal operating instructions on classified information.

III. Procedural Requirements

Because the DHS came into existence on January 24, 2003, it is necessary to promptly establish initial procedures to facilitate the interaction of the public with the Department. Furthermore, this interim final rule generally parallels the procedures currently used by other agencies to fulfill their obligations under Executive Order 12958, as amended, regarding classified national security information.

Accordingly, the Department has determined that notice and public procedure are impracticable, unnecessary 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.

This rule has been reviewed by the Information Security Oversight Office of the National Archives and Records Administration, pursuant to Executive Order 12958.

List of Subjects in 6 CFR Part 7

Classified information, Organization, functions, and authority delegations.