

one attorney to serve as legal advisor to the Board.

(7) At the conclusion of its review of the case, the Board shall make a written recommendation either to grant or to deny the waiver application. The written recommendation of a majority of the Board shall constitute the recommendation of the Board. Such recommendation shall be promptly transmitted by the Chairman to the Chief, Waiver Review Division.

(8) At the conclusion of its review of the case, the Board shall make a written recommendation either to grant or to deny the waiver application. The written recommendation of a majority of the Board shall constitute the recommendation of the Board. Such recommendation shall be promptly transmitted by the Chairman to the Chief, Waiver Review Division.

Dated: February 23, 2007.

Maura Harty,

*Assistant Secretary for Consular Affairs,
Department of State.*

[FR Doc. E7-3871 Filed 3-6-07; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF JUSTICE

28 CFR Parts 0, 5, 12, 17, 65, and 73

[Docket No. NSD 100; AG Order No. 2865-2007]

Office of the Attorney General; National Security Division

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends part 0 of title 28 of the Code of Federal Regulations to reflect the establishment of the National Security Division at the Department of Justice. The National Security Division was created by section 506 of the USA PATRIOT Improvement and Reauthorization Act of 2005 ("the Act"). This rule, which sets forth the Division's organization, mission and functions, amends the Code of Federal Regulations in order to conform the Department's regulations to the Act and to reflect accurately the Department's internal management structure.

This rule also amends the Department's regulations in title 28 other than in part 0 to make nomenclature and organizational changes reflecting the establishment of the National Security Division.

DATES: *Effective Date:* March 7, 2007.

FOR FURTHER INFORMATION CONTACT: Jessie Liu, National Security Division, U.S. Department of Justice, Washington, DC 20530; Telephone (202) 514-1057.

SUPPLEMENTARY INFORMATION: On March 9, 2006, the President signed the USA PATRIOT Improvement and Reauthorization Act of 2005 ("the Act"), Public Law 109-277 (120 Stat. 192). Section 506 of the Act created a new National Security Division (NSD) in the Department of Justice. This rule conforms the Department's regulations to the Act and sets forth the new Division's organization, mission, and functions.

This rule reflects the establishment of the NSD, reporting to the Deputy Attorney General, by consolidating the resources of the Office of Intelligence Policy and Review (OIPR) and the Criminal Division's Counterterrorism and Counterespionage Sections. These organizational changes will strengthen the Department's efforts to combat terrorism and other threats to national security.

Consolidating OIPR and the Criminal Division's Counterterrorism and Counterespionage Sections under the NSD will ensure greater coordination and unity of purpose among the Department's primary organizational units that handle core national security matters. These changes will allow the Department to maximize the effectiveness of prosecutors handling cases in the core national security fields of counterterrorism and counterespionage, who will continue to carry out the same critical functions they handle today. The NSD will be positioned to coordinate all related Department resources and ensure that critical information is shared as appropriate across the Department and the Executive Branch.

The mission of the NSD is to coordinate the Department's efforts in carrying out its core mission of combating terrorism and protecting national security. Among the major functions the NSD will perform are the following:

- Develop, enforce, and supervise the application of all federal criminal laws related to the national counterterrorism and counterespionage enforcement programs, except those specifically assigned to other Divisions;
- Prosecute and coordinate a wide range of criminal prosecutions and investigations targeting individuals and organizations involving terrorist acts at home or against U.S. persons or interests abroad or that assist in the financing of or providing support to those acts;
- Administer the Foreign Intelligence Surveillance Act;
- Supervise sensitive areas of law enforcement related to the activities of

the National Security Division, except tasks assigned to other Divisions;

- Advise, assist, coordinate with, and train those in the law enforcement community, including federal, state, and local prosecutors, investigative agencies and foreign criminal justice entities (provided that any training of foreign criminal justice entities should be conducted in coordination with the Criminal Division), in matters related to the Division's activities;

- Advise the Attorney General, the Office of Management and Budget, and the White House on matters relating to the national security activities of the United States; and

- Through the Assistant Attorney General for National Security, serve as the Department of Justice's primary liaison to the Director of National Intelligence.

This rule also makes further amendments to the Department's regulations in title 28 other than in part 0 in order to make nomenclature and organizational changes reflecting the establishment of the NSD. Generally, the changes involve either adding the NSD to the list of the Department's components or substituting the NSD in place of either the Criminal Division or the Office of Intelligence Policy and Review. In some instances, the Assistant Attorney General for National Security is substituted for the Assistant Attorney General, Criminal Division or for the Counsel for Intelligence Policy, as appropriate.

This rule only makes changes to the Department's internal organization and structure and does not affect the rights or obligations of the general public.

Administrative Procedure Act—5 U.S.C. 553

This rule is a rule of agency organization and relates to a matter relating to agency management and is therefore exempt from the requirements of prior notice and comment and a 30-day delay in the effective date. *See* 5 U.S.C. 553(a)(2), 553(b)(3)(A).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. Further, a Regulatory Flexibility Analysis was not required to be prepared for this final rule because the Department was not required to

publish a general notice of proposed rulemaking for this matter.

Executive Order 12866—Regulatory Planning and Review

This action has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. This rule is limited to agency organization, management, and personnel as described by section 3(d)(3) of that order and, therefore, is not a “regulation” or “rule” as defined by the order. Accordingly, this action has not been reviewed by the Office of Management and Budget.

Executive Order 13132—Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel, and organizations and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a “rule” as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects

28 CFR Part 0

Authority delegations (Government agencies), Counterterrorism, Crime,

Government employees, Law enforcement, National security information, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Terrorism, Whistleblowing.

28 CFR Part 5

Aliens, Foreign relations, Reporting and recordkeeping requirements, Security measures.

28 CFR Part 12

Crime, Foreign relations, Reporting and recordkeeping requirements, Security measures.

28 CFR Part 17

Classified information, Foreign relations.

28 CFR Part 65

Grant Programs-law, Law enforcement, Emergency assistance, Reporting and recordkeeping requirements.

28 CFR Part 73

Foreign relations, Security measures.

■ Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510, title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

§ 0.1 [Amended]

■ 2. Amend § 0.1 as follows:

■ a. In the list of Offices, remove the title “Office of Intelligence and Policy Review”.

■ b. In the list of Offices, add the title “Executive Office for Immigration Review” after the entry “Community Relations Service”.

■ c. In the list of Offices, add the title “Professional Responsibility Advisory Office” at the end of the list.

■ d. In the list of Divisions, remove the title “Land and Natural Resources Division” and add in its place the title “Environment and Natural Resources Division”.

■ e. In the list of Divisions, add after the newly-renamed entry “Land and Natural Resources Division” the title “National Security Division”.

■ f. In the list of Bureaus, remove the title “Office of Justice Assistance, Research and Statistics (and related

agencies)” and add in its place the title “Office of Justice Programs (and related agencies)”.

■ g. In the list of Bureaus, remove the title “Immigration and Naturalization Service”.

Subpart F–1—[Removed and Reserved]

■ 3. Remove and reserve subpart F–1.

■ 4. Revise paragraph (i) of § 0.55 to read as follows:

§ 0.55 General functions.

* * * * *

(i) All civil proceedings seeking exclusively equitable relief against Criminal Division activities including criminal investigations, prosecutions, and other criminal justice activities (including without limitation, applications for writs of coram nobis and writs of habeas corpus not challenging exclusion, deportation, or detention under the immigration laws), except that any proceeding may be conducted, handled, or supervised by the Assistant Attorney General for National Security or another Division by agreement between the head of such Division and the Assistant Attorney General, Criminal Division.

* * * * *

§§ 0.61, 0.62, and 0.64 [Removed and Reserved]

■ 5. Remove and reserve §§ 0.61, 0.62, and 0.64.

■ 6. Revise § 0.64–1 to read as follows:

§ 0.64–1 Central or Competent Authority under treaties and executive agreements on mutual assistance in criminal matters.

The Assistant Attorney General, Criminal Division, in consultation with the Assistant Attorney General for National Security in matters related to the National Security Division’s activities, shall have the authority and perform the functions of the “Central Authority” or “Competent Authority” (or like designation) under treaties and executive agreements between the United States of America and other countries on mutual assistance in criminal matters that designate the Attorney General or the Department of Justice as such authority. The Assistant Attorney General, Criminal Division, is authorized to re-delegate this authority to the Deputy Assistant Attorneys General, Criminal Division, and to the Director and Deputy Directors of the Office of International Affairs, Criminal Division.

■ 7. Revise § 0.64–2 to read as follows:

§ 0.64–2 Delegation respecting transfer of offenders to or from foreign countries.

The Assistant Attorney General, Criminal Division, in consultation with the Assistant Attorney General for National Security in matters related to the National Security Division's activities, is authorized to exercise all of the power and authority vested in the Attorney General under 18 U.S.C. 4102 that has not been delegated to the Director of the Bureau of Prisons under 28 CFR 0.96b, including specifically the authority to find appropriate or inappropriate the transfer of offenders to or from a foreign country under a treaty as referred to in Public Law 95–144. The Assistant Attorney General, Criminal Division is authorized to redelegate this authority within the Criminal Division to the Deputy Assistant Attorneys General, the Director of the Office of Enforcement Operations, and the Senior Associate Director and Associate Directors of the Office of Enforcement Operations.

■ 8. Revise § 0.64–4 to read as follows:

§ 0.64–4 Delegation respecting temporary transfers, in custody, of certain prisoner-witnesses from a foreign country to the United States to testify in Federal or State criminal proceedings.

The Assistant Attorney General, Criminal Division, in consultation with the Assistant Attorney General for National Security in matters related to the National Security Division's activities, is authorized to exercise all of the power and authority vested in the Attorney General under 18 U.S.C. 3508 that has not been delegated to the Director of the United States Marshals Service under 28 CFR 0.111a, including specifically the authority to determine whether and under what circumstances temporary transfer of a prisoner-witness to the United States is appropriate or inappropriate; to determine the point at which the witness should be returned to the transferring country; and to enter into appropriate agreements with the transferring country regarding the terms and conditions of the transfer. The Assistant Attorney General, Criminal Division is authorized to redelegate this authority within the Criminal Division to the Deputy Assistant Attorneys General and to the Director and Deputy Directors of the Office of International Affairs.

■ 9. Revise § 0.64–5 to read as follows:

§ 0.64–5 Policy with regard to bringing charges under the Economic Espionage Act of 1996, Pub. L. 104–294, effective October 11, 1996.

The United States may not file a charge under 18 U.S.C. 1831 of the

Economic Espionage Act of 1996 (the “EEA”) (18 U.S.C. 1831 *et seq.*), or use a violation under section 1831 of the EEA as a predicate offense under any other law, without the personal approval of the Attorney General, the Deputy Attorney General, the Assistant Attorney General for National Security, or the Assistant Attorney General, Criminal Division (or the Acting official in each of these positions if a position is filled by an Acting official). Violations of this regulation are appropriately sanctionable and will be reported by the Attorney General to the Senate and House Judiciary Committees. Responsibility for reviewing proposed charges under section 1831 of the EEA rests with the Counterespionage Section of the National Security Division, which will consult, as necessary, with the Computer Crime and Intellectual Property Section of the Criminal Division. This regulation shall remain in effect until October 11, 2011.

■ 10. Redesignate subpart M as subpart L and revise the subpart heading to read as follows:

Subpart L—Environment and Natural Resources Division

■ 11. Redesignate subpart N as subpart M.

■ 12. Add a new subpart N consisting of § 0.72 to read as follows:

Subpart N—National Security Division**§ 0.72 National Security Division.**

The following functions are assigned to and shall be conducted, handled, or supervised by the Assistant Attorney General for National Security:

(a) *General functions.*

(1) Advise the Attorney General, the Office of Management and Budget, and the White House, and brief Congress, as appropriate, on matters relating to the national security activities of the United States, and ensure that all of the Department's national security activities are effectively coordinated;

(2) Develop, enforce, and supervise the application of all federal criminal laws related to the national counterterrorism and counterespionage enforcement programs, except those specifically assigned to other Divisions;

(3) Represent the Department on interdepartmental boards, committees, and other groups dealing with national security, intelligence, or counterintelligence matters;

(4) Oversee the development, coordination, and implementation of Department policy, in conjunction with other components of the Department as appropriate, with regard to intelligence,

counterintelligence, or national security matters;

(5) Provide legal assistance and advice, in coordination with the Office of Legal Counsel as appropriate, to Government agencies on matters of national security law and policy;

(6) Administer the Foreign Intelligence Surveillance Act;

(7) Prosecute Federal crimes involving national security, foreign relations, and terrorism, and coordinate the Department's activities and advice on all issues with respect to the Foreign Intelligence Surveillance Act of 1978, as amended, and the Classified Information Procedures Act arising in connection with any such prosecutions;

(8) Prosecute and coordinate prosecutions and investigations targeting individuals and organizations involved in terrorist acts at home or against U.S. persons or interests abroad, or that assist in the financing of or providing support to those acts;

(9) Except in the case of emergencies where there is an immediate threat to life or property, review for concurrence the Department's use of criminal proceedings in connection with all matters relating to intelligence, counterintelligence, or counterterrorism. Such criminal proceedings include, but are not limited to, grand jury proceedings, the filing of search and arrest warrants or applications for electronic surveillance pursuant to 18 U.S.C. 2510 *et seq.* and 18 U.S.C. 2701 *et seq.*, the filing of complaints, the return of indictments, criminal forfeiture proceedings, and appeals;

(10) Evaluate Departmental activities and existing and proposed domestic and foreign intelligence, counterintelligence, or national security activities to determine their consistency with United States national security policies and law;

(11) Formulate policy alternatives and recommend action by the Department and other executive agencies in achieving lawful United States intelligence, counterintelligence, or national security objectives;

(12) Analyze and interpret current statutes, executive orders, guidelines, and other directives pertaining to intelligence, counterintelligence, or national security matters;

(13) Formulate legislative initiatives, policies, and guidelines relating to intelligence, counterintelligence, or national security matters;

(14) Review and comment upon proposed statutes, guidelines, and other directives with regard to national security matters, and, in conjunction with the Office of Legal Counsel, review and comment upon the form and

legality of proposed executive orders that touch upon matters related to the function of this Division;

(15) Provide training for Departmental components on legal topics related to intelligence, counterintelligence, or national security matters;

(16) Advise, assist, coordinate with, and train those in the law enforcement community, including federal, state, and local prosecutors, investigative agencies, and foreign criminal justice entities (provided that any training of foreign criminal justice entities should be conducted in coordination with the Criminal Division);

(17) Provide oversight of intelligence, counterintelligence, or national security matters by executive branch agencies to ensure conformity with applicable law, executive branch regulations, and Departmental objectives and report to the Attorney General on such activities;

(18) Supervise the preparation of the National Security Division's submission for the annual budget;

(19) Serve as primary liaison to the Director of National Intelligence for the Department of Justice;

(20) Represent the Department on the Committee on Foreign Investments in the United States; and

(21) Perform other duties pertaining to intelligence, counterintelligence, counterterrorism, or national security matters as may be assigned by the Attorney General or the Deputy Attorney General.

(b) Functions related to intelligence policy and operations.

(1) Advise and assist the Attorney General in carrying out his responsibilities under Executive Order 12333, "United States Intelligence Activities," and other statutes, executive orders, and authorities related to intelligence, counterintelligence, or national security matters;

(2) Supervise the preparation of certifications and applications for orders under the Foreign Intelligence Surveillance Act of 1978, as amended, and the representation of the United States before the United States Foreign Intelligence Surveillance Court and the United States Foreign Intelligence Court of Review;

(3) Participate in the development, implementation, and review of United States intelligence, counterintelligence, and national security policies, including procedures for the conduct of intelligence, counterintelligence, or national security activities;

(4) Supervise sensitive areas of law enforcement related to the activities of the National Security Division, except for tasks assigned to other Divisions; and

(5) Recommend action by the Department of Justice with regard to applications under the Foreign Intelligence Surveillance Act of 1978, as amended, as well as with regard to other investigative activities by executive branch agencies; and

(6) To the extent deemed appropriate by the Assistant Attorney General for National Security, prepare periodic and special intelligence reports describing and evaluating domestic and foreign intelligence and counterintelligence activities and assessing trends or changes in these activities.

(c) Functions related to counterterrorism.

(1) Participate in the systematic collection and analysis of data and information relating to the investigation and prosecution of terrorism cases;

(2) Coordinate with Government departments and agencies to facilitate prevention of terrorist activity through daily detection and analysis and to provide information and support to the Offices of the United States Attorneys;

(3) Prosecute matters involving counterterrorism;

(4) Prosecute terrorist financing matters, including material support cases, through the Division's counterterrorism programs;

(5) Formulate legislative initiatives, policies, and guidelines relating to terrorism;

(6) Prosecute matters involving torture, genocide, and war crimes to the extent such matters involve the activities of the National Security Division;

(7) Assist in the foreign terrorist organization designation process with the Department of State, the Department of the Treasury, and the components of the Department of Justice; and

(8) Provide legal advice to attorneys for the Government concerning federal national security statutes, including but not limited to: aircraft piracy and related offenses (49 U.S.C. 46501–07); aircraft sabotage (18 U.S.C. 32); crimes against internationally protected persons (18 U.S.C. 112, 878, 1116, 1201(a)(4)); sea piracy (18 U.S.C. 1651); hostage taking (18 U.S.C. 1203); terrorist acts abroad, including murder, against United States nationals (18 U.S.C. 2332); acts of terrorism transcending national boundaries (18 U.S.C. 2332b); conspiracy within the United States to murder, kidnap, or maim persons or to damage property overseas (18 U.S.C. 956); providing material support to terrorists and terrorist organizations (18 U.S.C. 2339A, 2339B, 2339C); and using biological, nuclear, chemical or other weapons of mass destruction (18 U.S.C. 175, 831, 2332c, 2332a).

(d) Functions related to internal security.

(1) Enforcement of all criminal laws relating to subversive activities and kindred offenses directed against the internal security of the United States, including the laws relating to treason, sabotage, espionage, and sedition; enforcement of the Foreign Assets Control Regulations issued under the Trading With the Enemy Act (31 CFR 500.101 *et seq.*); criminal prosecutions under the Atomic Energy Act of 1954, the Smith Act, the neutrality laws, the Arms Export Control Act, the Federal Aviation Act of 1958 (49 U.S.C. 1523) relating to offenses involving the security control of air traffic, and 18 U.S.C. 799 and criminal prosecutions for offenses, such as perjury and false statements, arising out of offenses relating to national security;

(2) Administration and enforcement of the Foreign Agents Registration Act of 1938, as amended; the Act of August 1, 1956, 70 Stat. 899 (50 U.S.C. 851–857), including the determination in writing that the registration of any person coming within the purview of that Act would not be in the interest of national security; and the Voorhis Act (18 U.S.C. 2386);

(3) Administration and enforcement of the Internal Security Act of 1950, as amended;

(4) Conduct of civil proceedings seeking exclusively equitable relief against laws, investigations or administrative actions designed to protect the national security (including without limitation personnel security programs and the foreign assets control program);

(5) Interpretation of Executive Order 10450 of April 27, 1953, as amended, and advising other departments and agencies in connection with the administration of the federal employees security program, including the designation of organizations as required by the order; the interpretation of Executive Order 10501 of November 5, 1953, as amended, and of regulations issued thereunder in accordance with section 11 of that order; and the interpretation of Executive Order 10865 of February 20, 1960;

(6) Conduct of libels and civil penalty actions (including petitions for remission or mitigation of civil penalties and forfeitures, offers in compromise and related proceedings) arising out of violations of the Trading with the Enemy Act, the neutrality statutes, and the Arms Export Control Act;

(7) Enforcement and administration of the provisions of 2 U.S.C. 441e, relating to contributions by foreign nationals;

(8) Enforcement and administration of the provisions of 18 U.S.C. 219, relating to officers and employees of the United States acting as agents of foreign principals; and

(9) Enforcement and administration of criminal matters arising under the Military Selective Service Act of 1967.

(e) *Relationship to other offices.*

Nothing in this subpart shall be construed as affecting the functions or overriding the authority of the Office of Legal Counsel as established by 28 CFR 0.25.

■ 13. Revise § 0.175(a) to read as follows:

§ 0.175 Judicial and administrative proceedings.

(a) When the subject matter of a case or proceeding is within his or her respective jurisdiction, the Assistant Attorney General, Criminal Division, the Assistant Attorney General for National Security, or any Deputy Assistant Attorney General, Criminal Division or of the National Security Division is authorized to exercise the authority vested in the Attorney General by 18 U.S.C. 6003, to approve the application of a U.S. Attorney to a federal court for an order compelling testimony or the production of information by a witness in any proceeding before or ancillary to a court or grand jury of the United States, and the authority vested in the Attorney General by 18 U.S.C. 6004, to approve the issuance by an agency of the United States of an order compelling testimony or the production of information by a witness in a proceeding before the agency, when the subject matter of the case or proceeding is either within the cognizance of the Assistant Attorney General, Criminal Division, the Assistant Attorney General for National Security, or is not within the cognizance of the Divisions or Administration designated in paragraphs (b) and (c) of this section.

* * * * *

PART 5—ADMINISTRATION AND ENFORCEMENT OF FOREIGN AGENTS REGISTRATION ACT OF 1938, AS AMENDED

■ 14. The authority citation for part 5 continues to read as follows:

Authority: 28 U.S.C. 509, 510; Section 1, 56 Stat. 248, 257 (22 U.S.C. 620); title I, Pub. L. 102–395, 106 Stat. 1828, 1831 (22 U.S.C. 612 note).

■ 15. Revise § 5.1 to read as follows:

§ 5.1 Administration and enforcement of the Act.

(a) The administration and enforcement of the Foreign Agents

Registration Act of 1938, as amended (22 U.S.C. 611–621) (Act), subject to the general supervision and direction of the Attorney General, is assigned to, and conducted, handled, and supervised by, the Assistant Attorney General for National Security.

(b) The Assistant Attorney General for National Security is authorized to prescribe such forms, in addition to or in lieu of those specified in the regulations in this part, as may be necessary to carry out the purposes of this part.

(c) Copies of the Act, and of the rules, regulations, and forms prescribed pursuant to the Act, and information concerning the foregoing may be obtained upon request without charge from the National Security Division, Department of Justice, Washington, DC 20530.

■ 16. Amend § 5.2 as follows:

■ a. In paragraph (a), remove the words “Assistant Attorney General” and add, in their place, the words “Assistant Attorney General for National Security”.

■ b. Revise paragraph (d).

■ c. In paragraph (g), remove the words “Criminal Division” and add, in their place, the words “National Security Division”.

■ d. In paragraph (h), remove the words “Criminal Division” in two places and add, in their place, the words “National Security Division”.

■ e. In paragraph (i), remove the words “Criminal Division” and add, in their place, the words “National Security Division”.

■ f. In paragraph (j), remove the words “Assistant Attorney General” and add, in their place, the words “Assistant Attorney General for National Security”.

The revisions read as follows:

§ 5.2 Inquiries concerning application of the Act.

* * * * *

(d) Address. A review request must be submitted in writing to the Assistant Attorney General for National Security, Department of Justice, Washington, DC 20530.

* * * * *

■ 17. Amend § 5.100 by revising paragraphs (a)(3) and (a)(5), removing paragraph (a)(6), and redesignating paragraphs (a)(7) through (a)(13) as paragraphs (a)(6) through (a)(12) to read as follows:

§ 5.100 Definition of terms.

(a) * * *

* * * * *

(3) The term *Assistant Attorney General* means the Assistant Attorney General for National Security,

Department of Justice, Washington, DC 20530.

* * * * *

(5) The term *rules and regulations* includes the regulations in this part and all other rules and regulations prescribed by the Attorney General pursuant to the Act and all registration forms and instructions thereon that may be prescribed by the regulations in this part or by the Assistant Attorney General for National Security.

* * * * *

■ 18. In § 5.501, remove the words “Criminal Division” and add, in their place, the words “National Security Division”.

PART 12—REGISTRATION OF CERTAIN PERSONS HAVING KNOWLEDGE OF FOREIGN ESPIONAGE, COUNTERESPIONAGE, OR SABOTAGE MATTERS UNDER THE ACT OF AUGUST 1, 1956

■ 19. The authority citation for part 12 is revised to read as follows:

Authority: Sec. 5, 70 Stat. 900; 50 U.S.C. 854.

■ 20. Revise § 12.2 to read as follows:

§ 12.2 Administration of act.

The administration of the act is assigned to the National Security Division, Department of Justice. Communications with respect to the act shall be addressed to the National Security Division, Department of Justice, Washington, DC 20530. Copies of the act and the regulations contained in this part, including the forms mentioned therein, may be obtained upon request without charge.

■ 21. Revise 12.20 to read as follows:

§ 12.20 Filing of registration statement.

Registration statements shall be filed in duplicate with the National Security Division, Department of Justice, Washington, DC 20530. Filing may be made in person or by mail, and shall be deemed to have taken place upon the receipt thereof by the Division.

PART 17—CLASSIFIED NATIONAL SECURITY INFORMATION AND ACCESS TO CLASSIFIED INFORMATION

■ 22. The authority citation for part 17 is revised to read as follows:

Authority: 28 U.S.C. 501, 509, 510, 515–519; 5 U.S.C. 301; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 60 FR 40245, 3 CFR, 1995 Comp., p. 391; 32 CFR part 2001.

§ 17.1 [Amended]

- 23. In § 17.1(a) remove the words "Office of Intelligence Policy and Review" and add, in their place, the words "National Security Division".
- 24. Revise § 17.13 to read as follows:

§ 17.13 National Security Division; interpretation of Executive Orders.

(a) The Assistant Attorney General for National Security or a designee shall represent the Attorney General at interagency meetings on matters of general interest concerning national security information.

(b) The Assistant Attorney General for National Security shall provide advice and interpretation on any issues that arise under Executive Orders 12958 and 12968 and shall refer such questions to the Office of Legal Counsel, as appropriate.

(c) Any request for interpretation of Executive Order 12958 or Executive Order 12968, pursuant to section 6.1(b) of Executive Order 12958, and section 7.2(b) of Executive Order 12968, shall be referred to the Assistant Attorney General for National Security, who shall refer such questions to the Office of Legal Counsel, as appropriate.

- 25. Revise § 17.14(b)(1) to read as follows:

§ 17.14 Department Review Committee.

* * * * *

(b)(1) The DRC shall consist of a senior representative designated by the:

- (i) Deputy Attorney General;
- (ii) Assistant Attorney General, Office of Legal Counsel;
- (iii) Assistant Attorney General, Criminal Division;
- (iv) Assistant Attorney General, Civil Division;
- (v) Assistant Attorney General for National Security;
- (vi) Assistant Attorney General for Administration; and
- (vii) Director, Federal Bureau of Investigation.

* * * * *

§ 17.15 [Amended]

- 26. In § 17.15(b), remove the words "Counsel for Intelligence Policy" and add, in their place, the words "Assistant Attorney General for National Security".
- 27. Revise § 17.18(b), (i), (j)(2), and (j)(3) to read as follows:

§ 17.18 Prepublication review.

* * * * *

(b) Persons subject to these requirements are invited to discuss their plans for public disclosures of information that may be subject to these obligations with authorized Department

representatives at an early stage, or as soon as circumstances indicate these policies must be considered. Except as provided in paragraph (j) of this section for FBI personnel, all questions concerning these obligations should be addressed to the Assistant Attorney General for National Security, Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530. The official views of the Department on whether specific materials require prepublication review may be expressed only by the Assistant Attorney General for National Security and persons should not act in reliance upon the views of other Department personnel.

* * * * *

(i) The Assistant Attorney General for National Security or a designee (or, in the case of FBI employees, the Section Chief, Records/Information Dissemination Section, Records Management Division) will respond substantively to prepublication review requests within 30 working days of receipt of the submission. Priority shall be given to reviewing speeches, newspaper articles, and other materials that the author seeks to publish on an expedited basis. The Assistant Attorney General's decisions may be appealed to the Deputy Attorney General, who will process appeals within 15 days of receipt of the appeal. The Deputy Attorney General's decision is final and not subject to further administrative appeal. Persons who are dissatisfied with the final administrative decision may obtain judicial review either by filing an action for declaratory relief, or by giving the Department notice of their intention to proceed with publication despite the Department's request for deletions of classified information and giving the Department 30 working days to file a civil action seeking a court order prohibiting disclosure. Employees and other affected individuals remain obligated not to disclose or publish information determined by the Government to be classified until any civil action is resolved.

(j) * * *

* * * * *

(2) FBI employees required to sign nondisclosure agreements containing a provision for prepublication review pursuant to this subpart shall submit materials for review to the Section Chief, Records/Information Dissemination Section, Records Management Division. Such individuals shall also submit questions as to whether specific materials require prepublication review under such agreements to that Section for resolution. Where such questions raise

policy questions or concern significant issues of interpretation under such an agreement, the Section Chief, Records/Information Dissemination Section, Records Management Division, shall consult with the Assistant Attorney General for National Security, or a designee, prior to responding to the inquiry.

(3) Decisions of the Section Chief, Records/Information Dissemination Section, Records Management Division, concerning the deletion of classified information, may be appealed to the Director, FBI, who will process appeals within 15 working days of receipt. Persons who are dissatisfied with the Director's decision may, at their option, appeal further to the Deputy Attorney General as provided in paragraph (i) of this section. Judicial review, as set forth in that paragraph, is available following final agency action in the form of a decision by the Director, if the appeal process in paragraph (i) of this section is pursued, the Deputy Attorney General.

§ 17.42 [Amended]

- 28. In § 17.42(a), remove the words "Counsel for Intelligence Policy" and add, in their place, the words "Assistant Attorney General for National Security".

PART 65—EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE

- 29. The authority citation for part 65 continues to read as follows:

Authority: The Comprehensive Crime Control Act of 1984, Title II, Chap. VI, Div. I, Subdiv. B, Emergency Federal Law Enforcement Assistance, Pub. L. 98-473, 98 Stat. 1837, Oct. 12, 1984 (42 U.S.C. 10501 *et seq.*); 8 U.S.C. 1101 note; Sec. 610, Pub. L. 102-140, 105 Stat. 832.

- 30. Revise § 65.70(c) to read as follows:

§ 65.70 Definitions.

* * * * *

(c) *Federal law enforcement community.* The term *Federal law enforcement community* is defined by the Act as the heads of the following departments or agencies:

- (1) Federal Bureau of Investigation;
- (2) Drug Enforcement Administration;
- (3) Criminal Division of the Department of Justice;
- (4) Internal Revenue Service;
- (5) Customs Service;
- (6) Department of Homeland Security;
- (7) U.S. Marshals Service;
- (8) National Park Service;
- (9) U.S. Postal Service;
- (10) Secret Service;
- (11) U.S. Coast Guard;
- (12) Bureau of Alcohol, Tobacco, Firearms, and Explosives;

(13) National Security Division of the Department of Justice; and

(14) Other Federal agencies with specific statutory authority to investigate violations of Federal criminal law.

* * * * *

PART 73—NOTIFICATIONS TO THE ATTORNEY GENERAL BY AGENTS OF FOREIGN GOVERNMENTS

■ 31. The authority citation for part 73 continues to read as follows:

Authority: 18 U.S.C. 951, 28 U.S.C. 509, 510.

§ 73.3 [Amended]

■ 32. In § 73.3(a) remove the words “Registration Unit of the Criminal Division” and add, in their place, the words “National Security Division”.

Dated: February 14, 2007.

Alberto R. Gonzales,

Attorney General.

[FR Doc. E7-3755 Filed 3-6-07; 8:45 am]

BILLING CODE 4410-PF-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2530

RIN 1210-AB15

Interim Final Rule Relating to Time and Order of Issuance of Domestic Relations Orders

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Interim final rule with request for comments.

SUMMARY: This document contains an interim final rule issued under section 1001 of the Pension Protection Act of 2006, Public Law 109-280 (PPA), which requires the Secretary of Labor to issue, not later than 1 year after the date of the enactment of the PPA, regulations clarifying certain issues relating to the timing and order of domestic relations orders under section 206(d)(3) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The rule contained in this document provides guidance to plan administrators, service providers, participants, and alternate payees on the qualified domestic relations order (QDRO) requirements under ERISA. The rule is being adopted in response to the specific statutory directive contained in the PPA. Interested persons are invited to submit comments on the interim final

rule for consideration by the Department of Labor in developing a final rule.

DATES: *Effective date:* The interim final rule is effective on April 6, 2007.

Comment date: Written comments on the interim final rule must be received by May 7, 2007.

ADDRESSES: To facilitate the receipt and processing of comments, EBSA encourages interested persons to submit their comments electronically to *e-ORI@dol.gov*, or by using the Federal eRulemaking portal *http://www.regulations.gov* (follow instructions for submission of comments). Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting comments on paper should send or deliver their comments (preferably three copies) to: Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: QDRO Regulation. All comments will be available to the public, without charge, online at *http://www.regulations.gov* and *http://www.dol.gov/ebsa*, and at the Public Disclosure Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Yolanda R. Wartenberg, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210, (202) 693-8510. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

A. Qualified Domestic Relations Order Provisions

Section 206(d)(3) of title I of ERISA, and the related provisions of section 414(p) of the Internal Revenue Code of 1986 (Code), establish a limited exception to the prohibitions against assignment and alienation contained in ERISA section 206(d)(1) and Code section 401(a)(13).¹ Under this limited

¹ The QDRO provisions were added to ERISA and the Code by the Retirement Equity Act of 1984 (REA), Public Law 98-397, 96 Stat. 1438 (1984). Except where no corresponding provision exists, all references to paragraphs of ERISA section 206(d)(3) should be read to refer to corresponding provisions of Code section 414(p). The Secretary of Labor has authority to interpret the QDRO provisions, section 206(d)(3), and its parallel provision at section 414(p) of the Code, and to issue QDRO regulations in consultation with the Secretary of the Treasury. 29 U.S.C. 1056(d)(3)(N). The Secretary of the Treasury has authority to issue rules and

exception, a participant's benefits under a pension plan may be assigned to an alternate payee, defined as the participant's spouse, former spouse, child, or other dependent, pursuant to an order that constitutes a qualified domestic relations order (QDRO) within the meaning of those provisions. Such QDROs, in addition, survive the federal preemption of State law imposed by ERISA section 514(a) by virtue of ERISA section 514(b)(7).

Pursuant to the QDRO provisions, a plan administrator must determine, in accordance with specified procedures, whether an order purporting to divide a participant's benefits under a plan meets the applicable requirements set forth in section 206(d)(3) of ERISA. If the plan administrator determines that the order meets these requirements and is, accordingly, a QDRO within the meaning of section 206(d)(3), the plan administrator must distribute the assigned portion of the participant's benefits to the alternate payee or payees named in the order in accordance with the terms of the order.

Subparagraphs (G) and (H) of ERISA section 206(d)(3) set forth provisions relating to the procedures that a plan must establish, and a plan administrator must observe, in determining whether an order is a QDRO and in administering the plan and the participant's benefits during the period in which the plan administrator is making such a determination. The plan's procedures must be reasonable, must be in writing, must require prompt notification and disclosure of the procedures to participants and alternate payees upon receipt of an order, and must permit alternate payees to designate representatives for notice purposes. In addition, the plan administrator must complete the determination process and notify participants and alternate payees of its determination within a reasonable period after receipt of the order.

Subparagraph (H) of section 206(d)(3) provides specific procedural protection of a potential alternate payee's interest in a participant's benefits during the plan's determination process and for a period of up to 18 months (the 18-month period) during which the issue of the qualified status of a domestic relations order is being determined—whether by the plan administrator, by a court of competent jurisdiction, or

regulations necessary to coordinate the requirements of section 414(p) (and the regulations issued by the Secretary of Labor thereunder) with the other provisions of Chapter I of Subtitle A of the Code. 26 U.S.C. 401(n). The Secretary of the Treasury has been consulted on this interim final rule.