Executive Order 12958, as amended, or DHS implementing directives, or:

(4) Knowingly, willfully, or negligently grant eligibility for, or allow access to, classified information in violation of Executive Order 12958, or its implementing directives, this part, or DHS implementing directives promulgated by the Chief Security Officer.

§ 7.13 Judicial proceedings.

(a) Any DHS official or organization receiving an order or subpoena from a Federal or State court, or an administrative subpoena from a Federal agency, to produce classified information (see 6 CFR 5.41 through 5.49), required to submit classified information for official DHS litigative purposes, or receiving classified information from another organization for production of such in litigation, shall notify the Office of the General Counsel, unless the demand for production is made by the Office of the General Counsel, and immediately determine from the agency originating the classified information whether the information can be declassified. If declassification is not possible, DHS representatives will take appropriate action to protect such information, pursuant to the provisions of this section.

(b) If a determination is made to produce classified information in a judicial proceeding in any manner, the DHS General Counsel attorney, in conjunction with the Department of Justice, shall take appropriate steps to protect classified information in judicial proceedings and retrieve the information when the information is no longer required in such judicial proceedings, in accordance with the Department of Justice procedures, and in Federal criminal cases, pursuant to the requirements of Classified Information Procedures Act (CIPA), Public Law 96–456, 94 Stat. 2025, (18 U.S.C. App.), and the “Security Procedures Established Pursuant to Public Law 96–456, 94 Stat. 2025, by the Chief Justice of the United States for the Protection of Classified Information,” and other applicable authorities.

Subpart B—Classified Information

§ 7.20 Classification and declassification authority.

(a) Top Secret original classification authority may only be exercised by the Secretary of Homeland Security and by officials to whom such authority is delegated in writing by the Secretary. The Chief Security Officer, as the Senior Agency Official, is delegated authority to originally classify information up to and including Top Secret. No official who is delegated Top Secret original classification authority by the Secretary may further delegate such authority.

(b) The Chief Security Officer may delegate Secret and Confidential original classification authority to other officials determined to have frequent need to exercise such authority. No official who is delegated original classification authority by the Secretary or the Chief Security Officer may further delegate such authority.

§ 7.21 Classification of information, limitations.

(a) Information may be originally classified only if all of the following standards are met:

(1) An original classification authority is classifying the information;

(2) The information is owned by, produced by or for, or is under the control of the United States Government;

(3) The information falls within one or more of the categories of information specified in section 1.4 of Executive Order 12958, as amended; and

(4) The original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security and such official is able to identify or describe the damage.

(b) Information shall be classified as Top Secret, Secret, or Confidential in
§ 7.22 Classification pending review.
(a) Whenever persons who do not have original classification authority originate or develop information that they believe requires immediate classification and safeguarding, and no authorized classifier is available, that person shall:
1. Safeguard the information in a manner appropriate for the classification level they believe it to be;
2. Apply the appropriate overall classification markings; and
3. Within five working days, securely transmit the information to the organization that has appropriate subject matter interest and classification authority.
(b) When it is not clear which component would be the appropriate original classifier, the information shall be sent to the Chief Security Officer to determine the appropriate organization.
(c) The organization with classification authority shall decide within 30 days whether to classify the information.

§ 7.23 Emergency release of classified information.
(a) The Secretary of Homeland Security has delegated to certain DHS employees the authority to disclose classified information to an individual or individuals not otherwise routinely eligible for access in emergency situations when there is an imminent threat to life or in defense of the homeland.
(b) In exercising this authority, the delegates shall adhere to the following conditions:
1. Limit the amount of classified information disclosed to a minimum to achieve the intended purpose;
2. Limit the number of individuals who receive it to only those persons with a specific need-to-know;
3. Transmit the classified information through approved communication channels by the most secure and expeditious method possible, or by other means deemed necessary in exigent circumstances;
4. Provide instructions about what specific information is classified and how it should be safeguarded. Physical custody of classified information must remain with an authorized Federal Government entity, in all but the most