

that reference its former street address to reflect the new street address.

**DATES:** This rule is effective September 22, 2022.

**FOR FURTHER INFORMATION CONTACT:**

Karen Levin ([levin.karen@pbgc.gov](mailto:levin.karen@pbgc.gov)), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024-2101; 202-229-3559. If you are deaf or hard of hearing or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

**SUPPLEMENTARY INFORMATION:** Through July 31, 2022, the Pension Benefit Guaranty Corporation (PBGC) resided and accepted mail at 1200 K Street NW, Washington, DC, 20005-4026. On August 1, 2022, PBGC officially relocated to a new street address: 445 12th Street SW, Washington, DC 20024-2101.

PBGC is promulgating these amendments without advance notice or an opportunity for public comment because they fall under the “good cause” exemption of the Administrative Procedure Act at 5 U.S.C. 553(b)(3)(B). PBGC finds that notice and comment are unnecessary because these amendments are merely technical; they effect no substantive changes to any rule. For the same reason, these amendments fall within the “good cause” exception to the delayed effective date provisions of the Administrative Procedure Act and the Congressional Review Act at 5 U.S.C. 553(d)(3), 808(2). Moreover, because these amendments are exempt from the notice and comment procedure of the Administrative Procedure Act under 5 U.S.C. 553(b), PBGC is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604.<sup>1</sup>

PBGC has determined that this action is not a “significant regulatory action” under the criteria set forth in Executive Order 12866.

**List of Subjects**

*29 CFR Part 4000*

Administrative practice and procedure, Pension insurance.

*29 CFR Part 4233*

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

*29 CFR Part 4903*

Claims.

For the reasons given above, PBGC amends 29 CFR parts 4000, 4233, and 4903 as follows.

**PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION**

■ 1. The authority citation for part 4000 continues to read as follows:

**Authority:** 29 U.S.C. 1083(k), 1302(b)(3).

**§ 4000.3 [Amended]**

■ 2. Amend § 4000.3(c)(3) by:

■ a. Removing “1200 K Street, NW, Washington, DC. 20005-4026;” and adding in its place “445 12th Street SW, Washington, DC 20024-2101;”

■ b. Removing “(TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to the appropriate number.)” and adding in its place “(If you are deaf or hard of hearing or have a speech disability, please dial 7-1-1 to access telecommunications relay services.)”.

**PART 4233—PARTITIONS OF ELIGIBLE MULTIEmployer PLANS**

■ 3. The authority citation for part 4233 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1413.

**§ 4233.11 [Amended]**

■ 4. Amend § 4233.11 by removing “1200 K Street NW, Washington, DC 20005-4026,” wherever it appears, and adding in its place “445 12th Street SW, Washington, DC 20024-2101.”

**Appendix A to Part 4233 [Amended]**

■ 5. Amend appendix A to part 4233 by removing “1200 K Street NW, Washington, DC 20005-4026” wherever it appears, and adding in its place “445 12th Street SW, Washington, DC 20024-2101”.

**PART 4903—DEBT COLLECTION**

■ 6. The authority citation for part 4903 continues to read as follows:

**Authority:** 5 U.S.C. 5514; 29 U.S.C. 1302(b); 31 U.S.C. 3701-3719, 3720A; 5 CFR part 550, subpart K; 31 CFR part 285; 31 CFR parts 900-904.

**§ 4903.21 [Amended]**

■ 7. Amend § 4903.21(c) by removing “1200 K Street NW, Washington, DC 20005.” and adding in its place “445 12th Street SW, Washington, DC 20024-2101.”

Issued in Washington, DC, by

**Gordon Hartogensis,**

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2022-19842 Filed 9-21-22; 8:45 am]

**BILLING CODE 7709-02-P**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 97**

[Docket ID: DOD-2018-OS-0103]

RIN 0790-AK11

**Release of Official Information in Litigation and Presentation of Witness Testimony by DoD Personnel (*Touhy* Regulation)**

**AGENCY:** Office of the General Counsel of the Department of Defense (DoD), DoD.

**ACTION:** Final rule.

**SUMMARY:** DoD is finalizing the requirements for submitting subpoenas and litigation requests to the Department as well as the procedures that its personnel will follow to respond. These amendments consolidate component-level requirements and procedures into a single, updated Department-level *Touhy* rule.

**DATES:** This final rule is effective on October 24, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ms. Denise Shellman, 703-571-0793, [denise.v.shellman.civ@mail.mil](mailto:denise.v.shellman.civ@mail.mil).

**SUPPLEMENTARY INFORMATION:**

**A. Background and Legal Basis for This Rule**

The Housekeeping Statute, 5 U.S.C. 301, authorizes agency heads to promulgate regulations governing “the custody, use, and preservation of its records, papers, and property.”

The Supreme Court held in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), that under such authority, agency heads may establish procedures for determining whether to release official information and allow personnel testimony sought through a subpoena or other litigation request. This regulation sets forth DoD’s procedures, which as the Supreme Court explained, are useful and necessary as a matter of internal administration to prevent possible harm from unrestricted disclosures in court.

In DoD Directive 5145.01, “General Counsel of the Department of Defense (GC DoD),” December 2, 2013, as amended (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/514501p.pdf>), and pursuant to 10 U.S.C. 113, the Secretary of Defense has delegated the authority to establish those procedures to the General Counsel.

This rule’s corresponding internal issuance is DoD Directive 5405.2, “Release of Official Information in

<sup>1</sup> See 5 U.S.C. 601(2), 604(a).

Litigation and Testimony by DoD Personnel as Witnesses,” July 23, 1985 (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/540502p.pdf>). When this rule is finalized, DoD Directive 5405.2 will be reissued as DoD Instruction 5405.02, “Release of Official Information in Litigation and Presentation of Witness Testimony by DoD Personnel,” which will be made available at <https://www.esd.whs.mil/Directives/issuances/dodi/>.

**B. Discussion of Comments and Changes**

The proposed rule was published in the **Federal Register** (86 FR 26444–26448) on May 14, 2021, with no public comments received. The rule proposed modifications primarily to clarify and streamline the requirements for the proper submission of subpoenas and litigation requests, the factors that chief legal advisors will consider when responding, and the fees that may be collected to cover associated expenses.

The modifications included:

- Adding in § 97.1 references to 5 U.S.C. 301 and the Supreme Court’s decision in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), to note the legal basis for this rule’s purpose.
- Reorganizing the paragraphs in § 97.2 to provide a more practical order of categories covered by and excluded from the rule.
- Revising in § 97.3 the definition of “personnel” to make clear that the rule covers not only Service members and civilian employees of every DoD component, but also employees of other Federal agencies who are assigned to, detailed to, or otherwise affiliated with a DoD component.
- Adding in § 97.3 the defined term “chief legal advisors” to replace the phrases “appropriate DoD official designated in paragraph (a) of this section” and “appropriate DoD official designated in § 97.6(a),” which are used awkwardly throughout the current rule

to refer to a component’s chief attorney. Also adding in § 97.3 the defined term “court” to replace the awkward phrase “court of competent jurisdiction or other appropriate authority” throughout the rule. These changes allow for cleaner sentences and result in a more straightforward rule that is easier to follow.

- Moving the definition of “disclosure” from § 97.6 to § 97.3, the Definitions section, so that the reader may find it easily. For the same reason, separating the defined terms “litigation” and “litigation request,” which appear together in the current rule under the definition of “litigation.”

- Dividing the Responsibilities section into two separate sections (GC DoD and DoD Component heads); dividing the Procedures section into five separate sections (authorities, factors to consider, requirements and determinations, fees, and expert or opinion testimony); and subdividing the five new Procedures sections to list separately each item that requesting parties, personnel, and chief legal advisors must take into account. These formatting changes result in a more streamlined rule that is easier to use.

While no public comments were received, DoD is making two administrative revisions in this final rule:

- Adding in § 97.8 a factor to consider whether a disclosure would reveal information protected by the Privacy Act.
- Adding a third appendix for litigation requests and demands to the Department of the Army.

The general notice-and-comment requirement of the Administrative Procedure Act does not apply to these administrative revisions. DoD finds for good cause under 5 U.S.C. 553(b)(B) that another round of notice and comment is impracticable and unnecessary. Adding Privacy Act information to the factors to consider simply recognizes an existing obligation set forth in 5 U.S.C. 552a. The

revision also will reinforce DoD components’ compliance with this statute. And similar to the previously published appendices for the Departments of the Navy and Air Force, the Department of the Army appendix simply lists the appropriate offices where parties should submit their requests and demands.

**C. Expected Impact of the Final Rule**

As no public comment was received on this analysis, the Department is finalizing this section without change. Consolidating *Touhy* requirements into a single rule, along with updating the rule to make it clearer and more streamlined, will produce efficiencies and uniformity to the public’s benefit. Less attorney time will be spent searching for only one rule and complying with its requirements. The Department has concluded that attorneys for third-party litigants will save an estimated 30 minutes of research, review, and compliance time per subpoena or litigation request when referring to the CFR for guidance.

For purposes of estimating the cost savings, the Department’s subject matter experts deemed it reasonable to use the mean hourly wage for lawyers as informed by the Bureau of Labor and Statistics, \$69.86.<sup>1</sup> Subject matter experts further advised that at least 80% of subpoenas and litigation requests submitted to DoD involve consultation of the various rules in the CFR.<sup>2</sup> An average of 1,405 requests are received annually across the entire Department, according to Fiscal Year 2016 data. This rule should result in an annual cost savings of approximately \$39,261.32, which is the impacted percentage (80%) of total annual requests (1,405) multiplied by the attorney hours saved per request (0.5) and the mean hourly wage (\$69.86)—in other words, 0.8\*1,405\*0.5\*69.86 = \$39,261.32. These savings are reflected in the chart below.

Rules	Components	Litigation requests in 2016	Impacted requests (%)	Hours saved per request	Lawyers’ hourly wage	Projected cost savings to public
93	NSA	35	80	0.5	\$69.86	\$978.04
97	DoD	20	80	0.5	69.86	558.88
267	NRO	10	80	0.5	69.86	279.44
516G	Army	400	80	0.5	69.86	11,177.60
720, 725	Navy	940	80	0.5	69.86	26,267.36
<b>Total</b>						<b>39,261.32</b>

<sup>1</sup> This information can be found in the website of the Bureau of Labor Statistics under National Wage Data for Lawyers, Occupation Code 23–1011

(available at <https://www.bls.gov/oes/current/oes231011.htm>), last updated in May 2019.

<sup>2</sup> The Department consulted with subject matter experts in the DoD Office of the General Counsel

and offices of chief legal counsels of various components, who provided the estimates of impacted percentage of total requests and of the attorney hours saved per request.

In addition to these cost savings, there will be an unquantified benefit of transparency through access to official information, while safeguarding classified, privileged, and personally identifiable information.

## REGULATORY COMPLIANCE ANALYSIS

### A. Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review”

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Following the requirements of these Executive orders, the Office of Management and Budget has determined that this final rule is not a significant regulatory action under section 3(f) of Executive Order 12866. DoD estimates that the rule would generate \$9,309.05 in annualized cost savings at the 7% discount rate, discounted to a 2016 equivalent, over a perpetual time as discussed in the Expected Impact of the Final Rule section. The present value savings are estimated at \$51,463.58.

### B. Congressional Review Act (5 U.S.C. 801 et seq.)

Pursuant to the Congressional Review Act, this rule has not been designated a major rule, as defined by 5 U.S.C. 804(2).

### C. Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. 601)

The DoD Office of General Counsel certified that this final rule is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601, because it would not have a significant economic impact on a substantial number of small entities. Accordingly, DoD is not required to prepare a regulatory flexibility analysis.

### D. Section 202 of Public Law 104–4, “Unfunded Mandates Reform Act” (2 U.S.C. 1532)

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require the expenditure of \$100 million or more (in 1995 dollars, adjusted

annually for inflation) in any one year. This final rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

### E. Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

It has been determined that 32 CFR part 97 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act.

### F. Executive Order 13132, “Federalism”

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. This final rule will not have a substantial effect on State and local governments.

### G. Executive Order 13175, “Consultation and Coordination With Indian Tribal Governments”

Executive Order 13175 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on one or more Indian tribes, preempts tribal law, or affects the distribution of power and responsibilities between the Federal Government and Indian tribes. This final rule will not have a substantial effect on Indian tribal governments.

### List of Subjects in 32 CFR Part 97

Archives and records, Courts, Information.

■ Accordingly, 32 CFR part 97 is revised to read as follows:

## PART 97—RELEASE OF OFFICIAL INFORMATION IN LITIGATION AND PRESENTATION OF WITNESS TESTIMONY BY DOD PERSONNEL (TOUHY REGULATION)

- Sec.
- 97.1 Purpose.
  - 97.2 Applicability.
  - 97.3 Definitions.
  - 97.4 Policy.
  - 97.5 Responsibilities—GC DoD.
  - 97.6 Responsibilities—DoD Component heads.
  - 97.7 Procedures—authorities.
  - 97.8 Procedures—factors to consider.
  - 97.9 Procedures—requirements and determinations.
  - 97.10 Procedures—fees.
  - 97.11 Procedures—expert or opinion testimony.

Appendix A to Part 97—Litigation Requests and Demands to the Department of the Army

Appendix B to Part 97—Litigation Requests and Demands to the Department of the Navy

Appendix C to Part 97—Litigation Requests and Demands to the Department of the Air Force

Authority: 5 U.S.C. 301, 10 U.S.C. 113.

### § 97.1 Purpose.

This part establishes policy, assigns responsibilities, and prescribes procedures for the release of official information in litigation and the presentation of witness testimony by Department of Defense (DoD) personnel pursuant to 5 U.S.C. 301 and the Supreme Court’s decision in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

### § 97.2 Applicability.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this part as the “DoD Components”).

(b) Is intended only to provide guidance for the internal operations of the DoD, without displacing the responsibility of the Department of Justice to represent the United States in litigation.

(c) Does not preclude official comments on matters in litigation.

(d) Does not apply to the release of official information or the presentation of witness testimony in connection with:

(1) Courts-martial convened by the authority of a Military Department.

(2) Administrative proceedings or investigations conducted by or for a DoD Component.

(3) Security-clearance adjudicative proceedings, including those conducted pursuant to DoD Directive 5220.6, “Defense Industrial Personnel Security Clearance Review Program,” January 2, 1992, as amended (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/522006p.pdf>).

(4) Administrative proceedings conducted by or for the Equal Employment Opportunity Commission or the Merit Systems Protection Board.

(5) Negotiated grievance proceedings conducted in accordance with a collective bargaining agreement.

(6) Requests by Government counsel representing the United States or a Federal agency in litigation.

(7) Disclosures to Federal, State, local, or foreign authorities related to investigations or other law-enforcement activities conducted by a DoD law-enforcement officer, agent, or organization.

(e) Does not affect in any way existing laws or DoD programs governing:

(1) The release of official information or the presentation of witness testimony in grand jury proceedings.

(2) Freedom of Information Act requests submitted pursuant to 32 CFR part 286, even if the records sought are related to litigation.

(3) Privacy Act requests submitted pursuant to 32 CFR part 310, even if the records sought are related to litigation.

(4) The release of official information outside of litigation.

(f) Does not create any right or benefit (substantive or procedural) enforceable at law against the DoD or the United States.

### § 97.3 Definitions.

These terms and their definitions are for the purpose of this part.

*Chief legal advisors.* (1) The General Counsel of the Department of Defense (GC DoD).

(2) The General Counsel of a Military Department.

(3) The Legal Counsel to the Chairman of the Joint Chiefs of Staff.

(4) The Judge Advocate General of a Military Service.

(5) The Staff Judge Advocate to the Commandant of the Marine Corps.

(6) The Staff Judge Advocate to a Combatant Commander.

(7) The General Counsel of the Department of Defense.

(8) The General Counsel of a Defense Agency.

(9) The General Counsel of a DoD Field Activity.

(10) The chief legal advisor of any other organizational entity within the DoD.

*Court.* A Federal, State, or local court, tribunal, commission, board, or other adjudicative body of competent jurisdiction.

*Demand.* An order or subpoena by a court of competent jurisdiction for the production or release of official information or for the presentation of witness testimony by DoD personnel at deposition or trial.

*Disclosure.* The release of official information in litigation or the presentation of witness testimony by DoD personnel.

*Litigation.* All pretrial (*e.g.*, discovery), trial, and post-trial stages of

existing judicial or administrative actions, hearings, investigations, or similar proceedings before a civilian court, whether foreign or domestic.

*Litigation request.* Any written request by a party in litigation or the party's attorney for the production or release of official information or for the presentation of witness testimony by DoD personnel at deposition, trial, or similar proceeding.

*Official information.* All information of any kind and however stored that is in the custody and control of the DoD, relates to information in the custody and control of the DoD, or was acquired by DoD personnel due to their official duties or status.

*Personnel.* (1) Present and former (*e.g.*, retired, separated) Service members, including Service academy cadets and midshipmen.

(2) Present and former (*e.g.*, retired, separated) civilian employees of a DoD Component, including non-appropriated fund activity employees.

(3) Present and former (*e.g.*, retired, separated) employees of another Federal agency assigned to, detailed to, or otherwise affiliated with a DoD Component.

(4) Non-U.S. nationals who perform or have performed services overseas for any of the Military Services in accordance with a status of forces agreement.

(5) Any individuals who perform or have performed services for a DoD Component through a contractual arrangement.

### § 97.4 Policy.

The DoD generally should make official information reasonably available for use in Federal, State, and foreign courts and other adjudicative bodies if the information is not classified, privileged, or otherwise protected from public disclosure.

### § 97.5 Responsibilities—GC DoD.

The GC DoD has overall responsibility for the policy in this part, oversees the implementation of its procedures throughout the DoD, and provides supplemental guidance as appropriate.

### § 97.6 Responsibilities—DoD Component heads.

The DoD Component heads:

(a) Implement the policy and procedures in this part and, through their chief legal advisors, provide guidance for their respective components.

(b) Must issue or update, as appropriate, their respective components' implementing regulations within 180 days of October 24, 2022.

### § 97.7 Procedures—authorities.

(a) In response to a litigation request or demand, and after any required coordination with the Department of Justice, the chief legal advisors (see § 97.3) are authorized to:

(1) Determine whether their respective DoD Components may release official information originated by or in the custody of such components.

(2) Determine whether personnel assigned to, detailed to, or affiliated with their respective DoD Components may be contacted, interviewed, or used as witnesses concerning official information or, in exceptional circumstances, as expert witnesses.

(3) Impose conditions or limitations on disclosures approved pursuant to this paragraph (a) (*e.g.*, approve the release of official information only to a Federal judge for in camera review).

(4) Assert claims of privilege or protection before any court or adjudicative body.

(b) The GC DoD may assume primary responsibility for responding to any litigation request or demand.

### § 97.8 Procedures—factors to consider.

In making a determination pursuant to § 97.7(a), the chief legal advisors will consider whether:

(a) The litigation request or demand is overbroad, unduly burdensome, or otherwise inappropriate under applicable law or court rules.

(b) The disclosure would be improper (*e.g.*, the information is irrelevant, cumulative, or disproportional to the needs of the case) under the rules of procedure governing the litigation from which the request or demand arose.

(c) The official information or witness testimony is privileged or otherwise protected from disclosure under applicable law.

(d) The disclosure would violate a statute, Executive order, regulation, or policy.

(e) The disclosure would reveal:

(1) Information properly classified pursuant to Volume 1 of DoD Manual 5200.01, "DoD Information Security Program: Overview, Classification, and Declassification," February 24, 2012, as amended (available at [https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/520001m\\_vol1.pdf?ver=2018-05-04-091448-843](https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/520001m_vol1.pdf?ver=2018-05-04-091448-843)).

(2) Controlled Unclassified Information pursuant to Volume 4 of DoD Manual 5200.01, "DoD Information Security Program: Controlled Unclassified Information (CUI)," February 24, 2012, as amended (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/>

*dodm/520001-V4p.PDF?ver=2018-05-09-115318-927*).

(3) Technical data withheld pursuant to 32 CFR part 250.

(4) Information protected by the Privacy Act, which may not be disclosed in the absence of written consent, a routine use, or other authority listed in 5 U.S.C. 552a(b).

(5) Information otherwise exempt from unrestricted disclosure.

(f) The disclosure would:

(1) Interfere with an ongoing enforcement proceeding.

(2) Compromise a constitutional right.

(3) Expose an intelligence source or confidential informant.

(4) Divulge a trade secret or similar confidential information.

(5) Be otherwise inappropriate.

#### **§ 97.9 Procedures—requirements and determinations.**

(a) A litigation request or demand must describe, in writing and with specificity, the nature of the official information or witness testimony sought, its relevance to the litigation, and other pertinent details addressing the factors in § 97.8.

(b) Personnel who receive a litigation request or demand must notify their DoD Component's chief legal advisor immediately. Former personnel (*e.g.*, retired Service members, separated employees, past contractors) must notify the chief legal advisor of the component to which they were last assigned.

(c) If another DoD Component or Federal agency originated the responsive information or otherwise has the primary equity with respect to that information, the chief legal advisor will:

(1) Transfer the litigation request or demand (or the appropriate portions) to such other component or agency for action.

(2) Inform the requesting party or issuing court.

(3) In case of conflict, elevate to the GC DoD for resolution.

(d) If the litigation request or demand requires a response before a determination can be made, the chief legal advisor will inform the requesting party or the issuing court that the request or demand is still under consideration. The chief legal advisor also may seek a stay from the court in question until a final determination is made.

(e) Upon making a final determination pursuant to § 97.7(a), the chief legal advisor will inform the requesting party or issuing court.

(f) If the chief legal advisor approves the release of official information or the presentation of witness testimony, personnel will limit the disclosure to

those matters specified in the litigation request or demand, subject to any conditions imposed by the chief legal advisor. Personnel may not release, produce, comment on, or testify about any official information without the chief legal advisor's prior written approval.

(g) If a court orders a disclosure that the chief legal advisor previously disapproved or has yet to approve, personnel must respectfully decline to comply with the court's order unless the chief legal advisor directs otherwise.

#### **§ 97.10 Procedures—fees.**

Parties seeking official information by litigation request or demand may be charged reasonable fees in accordance with Volume 11A, Chapter 4 of DoD 7000.14–R, "Department of Defense Financial Management Regulation: Reimbursable Operations Policy: User Fees," July 2016 (available at [http://comptroller.defense.gov/Portals/45/documents/fmr/current/11a/11a\\_04.pdf](http://comptroller.defense.gov/Portals/45/documents/fmr/current/11a/11a_04.pdf)), to reimburse expenses associated with the Government's response. These reimbursable expenses may include the cost of:

(a) Materials and equipment used to search for, copy, and produce responsive information.

(b) Personnel time spent processing and responding to the request or demand.

(c) Attorney time spent assisting with the Government's response, to include reviewing the request or demand and the potentially responsive information.

#### **§ 97.11 Procedures—expert or opinion testimony.**

(a) Personnel may not present expert or opinion testimony involving official information, except when:

(1) The testimony is presented on behalf of the United States, a Federal agency, or any party represented by the Department of Justice.

(2) The chief legal advisor of the DoD Component with primary equity has granted special written approval upon a showing of exceptional need or unique circumstances, but only if the anticipated testimony is not adverse to the interests of the DoD or the United States and is presented at no expense to the Government.

(b) If a court orders the presentation of testimony disallowed by paragraph (a) of this section, personnel must respectfully decline to comply with the court's order unless the chief legal advisor directs otherwise.

#### **Appendix A to Part 97—Litigation Requests and Demands to the Department of the Army**

A litigation request or demand to the Department of the Army (DA) must be submitted at least 14 days before the desired date to the appropriate disclosure authority:

(a) Staff Judge Advocates (SJAs), chief counsel, and legal advisors are the disclosure authorities for requests and demands involving unclassified information within the custody, control, or knowledge of their respective organizations when the United States has no interest in the litigation. Requests and demands will be processed by local legal offices (in consultation with Litigation Division as needed) subject to the limitations in this appendix.

(b) The General Litigation Branch, Litigation Division, U.S. Army Legal Services Agency (USALSA), 9275 Gunston Road, Fort Belvoir, VA 22060, is the disclosure authority or may delegate disclosure authority for requests and demands involving:

(1) Terrorism, espionage, nuclear weapons, or intelligence sources and methods.

(2) Classified information.

(3) Privileged information.

(4) Technical data pursuant to 32 CFR part 250.

(5) Safety records and information produced by commands, installation safety offices, or the U.S. Army Combat Readiness Command and Safety Center (USACRC).

(6) Expert testimony.

(7) All other matters not listed in this appendix.

(c) Army Medical Center and Command Judge Advocates and supporting SJAs (in consultation with the Defense Health Agency as needed) are the disclosure authorities for requests and demands involving medical records or other information within the custody, control, or knowledge of their respective permanent station hospitals. For requests and demands involving factual testimony by medical providers, Commanders (in consultation with their legal advisors) are the disclosure authorities for their respective Medical Commands when the United States has no interest in the litigation.

(d) The Contract Litigation & Intellectual Property Division, USALSA, 9275 Gunston Road, Fort Belvoir, VA 22060, is the disclosure authority for requests and demands involving:

(1) Patents, copyrights, trade secrets, or trademarks.

(2) Taxation matters.

(3) Bid protests or contract appeals before the Armed Services Board of Contract Appeals (ASBCA) or the Government Accountability Office, except that contracting officers (in coordination with their servicing SJAs and the Division-assigned trial attorney) may release official information for use in litigation before the ASBCA, pursuant to 48 CFR part 5, subpart 5.4 (the Federal Acquisition Regulation (FAR)).

(e) The Procurement Fraud Division, USALSA, 9275 Gunston Road, Fort Belvoir, VA 22060, is the disclosure authority for requests and demands involving procurement fraud matters, including *qui tam* actions.

(f) The Environmental Law Division, USALSA, 9275 Gunston Road, Fort Belvoir, VA 22060, is the disclosure authority for requests and demands involving:

(1) Energy, communication, transportation, or utility service proceedings.

(2) Environmental or natural resources matters, to include water rights and affirmative environmental cost recovery.

(g) The Tort Litigation Branch, Litigation Division, USALSA, 9275 Gunston Road, Fort Belvoir, VA 22060, is the disclosure authority for requests and demands involving medical care cost recovery or property claims brought by the United States.

(h) The Office of the Chief Counsel, U.S. Army Corps of Engineers (USACE), 441 G Street NW, Washington, DC, 20314-1000, is the disclosure authority for requests and demands involving USACE navigation, civil works, Clean Water Act 404 permit authority, environmental response activities, or real property functions.

(i) DA personnel may not release Inspector General (IG) records or present testimony involving information obtained through the performance of IG duties, except with the approval of the Secretary of the Army, The Inspector General (TIG), the TIG Legal Advisor, or the Chief, Litigation Division.

#### Appendix B to Part 97—Litigation Requests and Demands to the Department of the Navy

A litigation request to the Department of the Navy must be submitted to the appropriate determining authority as defined in Secretary of the Navy Instruction 5820.8, "Release of Official Information for Litigation Purposes and Testimony by Department of the Navy Personnel," August 27, 1991, as amended (available at <https://www.secnav.navy.mil/doni/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-800%20Laws%20and%20Legal%20Services/5820.8A%20CH-1.pdf>).

As with all service of process on the Department of the Navy, a demand (subpoena or court order) must be delivered to the Naval Litigation Office using registered or certified mail, a commercial courier service, or a process server. The address for all service of process is: General Counsel of the Department of the Navy, Naval Litigation Office, 720 Kennon St. SE, Room 233, Washington Navy Yard, DC 20374-5013.

Answers to frequently asked questions on *Touhy* requests are available at [https://www.jag.navy.mil/organization/documents/Touhy\\_Requests.pdf](https://www.jag.navy.mil/organization/documents/Touhy_Requests.pdf). Contact the Office of the General Counsel at 202-685-7039 or the Office of the Judge Advocate General at 202-685-5450 with any additional questions.

#### Appendix C to Part 97—Litigation Requests and Demands to the Department of the Air Force

A litigation request or demand to the Department of the Air Force must be submitted to the base-level or servicing Staff Judge Advocate for the installation or organization where the official information or witness is located.

Should the information or witness be located in a Headquarters-level office, the request or demand must be submitted to the Commercial Litigation Field Support Center (for matters involving contracts, acquisition, and procurement) or to the Air Force General Litigation Division (for all other matters). Their addresses are: Commercial Litigation Field Support Center, AFLOA/JAQC, 1500 W. Perimeter Rd., Suite 4100, Joint Base Andrews, MD 20762; Air Force General Litigation Division, AFLOA/JACL, 1500 W. Perimeter Rd., Suite 1370, 1st Floor, Joint Base Andrews, MD 20762.

Dated: September 16, 2022.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2022-0797]

RIN 1625-AA87

#### Security Zones; Corpus Christi Ship Channel, Corpus Christi, TX

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing three temporary, 500-yard radius, moving security zones for certain vessels carrying Certain Dangerous Cargoes (CDC) within the Corpus Christi Ship Channel and La Quinta Channel. The temporary security zones are needed to protect the vessels, the CDC cargo, and the surrounding waterway from terrorist acts, sabotage, or other subversive acts, accidents, or other events of a similar nature. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

**DATES:** This rule is effective without actual notice from September 22, 2022 until September 25, 2022. For the purposes of enforcement, actual notice will be used from September 21, 2022, until September 22, 2022.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander Anthony Garofalo, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361-939-5130, email [Anthony.M.Garofalo@uscg.mil](mailto:Anthony.M.Garofalo@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

CFR Code of Federal Regulations  
COTP Captain of the Port Sector Corpus Christi  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code

## II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish these security zones by September 21, 2022 to ensure security of these vessels and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to provide for the security of the vessel.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with the transit of the Motor Vessel (M/V) CELSIUS CAROLINA when loaded will be a security concern within a 500-yard radius of the vessel. This rule is needed to provide for the safety and security the vessel, their cargo, and surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other events of a similar nature while they are transiting within Corpus Christi, TX, from September 21, 2022 until September 25, 2022.

## IV. Discussion of the Rule

The Coast Guard is establishing four 500-yard radius temporary moving security zones around M/V CELSIUS CAROLINA. The zone for the vessel will