

amounts less than this would have a present value smaller than the required amount of \$262,344, and thus would fail to satisfy the minimum present value requirement of section 417(e)(3).

\* \* \* \* \*

(8) \* \* \*

(vi) *Applicability date for provisions reflecting PPA '06 updates and other rules.* Paragraphs (d)(1) through (4) of this section apply to distributions with annuity starting dates in plan years beginning on or after the date regulations that finalize these proposed regulations are published in the **Federal Register**. Prior to this applicability date, taxpayers must continue to apply the provisions of § 1.417(e)-1(d) as contained in 26 CFR part 1 as in effect immediately before publication of those final regulations, except to the extent superseded by statutory changes and guidance of general applicability relating to those statutory changes.

(9) *Relationship with section 411(d)(6)*—(i) *In general.* A plan amendment that changes the interest rate or the mortality assumptions used for the purposes described in paragraph (d)(1) of this section (including a plan amendment that changes the time for determining those assumptions) is generally subject to section 411(d)(6). However, for certain exceptions to the rule in the preceding sentence, see paragraph (d)(7)(iv) of this section, § 1.411(d)-4, Q&A-2(b)(2)(v) (with respect to plan amendments relating to involuntary distributions), and section 1107(a)(2) of the Pension Protection Act of 2006, Public Law 109-280, 120 Stat. 780 (2006) (PPA '06) (with respect to certain plan amendments that were made pursuant to a change to the Internal Revenue Code by PPA '06 or regulations issued thereunder).

(ii) *Section 411(d)(6) relief for change in time for determining interest rate and mortality table.* Notwithstanding the general rule of paragraph (d)(9)(i) of this section, if a plan amendment changes the time for determining the applicable interest rate (and, if the amendment changes the stability period described in paragraph (d)(4)(iii) of this section, the time for determining the applicable mortality table), including an indirect change as a result of a change in plan year, the amendment will not be treated as reducing accrued benefits in violation of section 411(d)(6) merely on account of this change if the conditions of this paragraph (d)(9)(ii) are satisfied. If the plan amendment is effective on or after the date the amendment is adopted, any distribution for which the annuity starting date occurs in the one-year period commencing at the time the amendment is effective must be

determined using the interest rate and mortality table provided under the plan determined at either the date for determining the interest rate and mortality table before the amendment or the date for determining the interest rate and mortality table after the amendment, whichever results in the larger distribution. If the plan amendment is adopted retroactively (that is, the amendment is effective prior to the adoption date), the plan must use the interest rate and mortality table determination dates resulting in the larger distribution for distributions with annuity starting dates occurring during the period beginning with the effective date and ending one year after the adoption date.

\* \* \* \* \*

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2016-27907 Filed 11-23-16; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 267

[Docket ID: DOD-2016-OS-0079]

RIN 0790-AJ51

#### **Production of Official Records or Disclosure of Official Information in Proceedings Before Federal, State or Local Governmental Entities of Competent Jurisdiction**

**AGENCY:** National Reconnaissance Office, Department of Defense.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule sets forth procedures for the National Reconnaissance Office (NRO) personnel to follow for the release of official information by NRO personnel in legal proceedings, through testimony, production of documents, or otherwise.

**DATES:** Comments must be received by January 24, 2017.

**ADDRESSES:** You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>.

Follow the instructions for submitting comments.

- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive,

Mailbox #24, Alexandria, VA 22350-1700.

*Instructions:* All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Lisa Miller, (703) 808-1060.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Pursuant to DoD Directive 5105.23, "National Reconnaissance Office (NRO)," effective October 29, 2015 (available at <http://www.dtic.mil/whs/directives/corres/pdf/510523p.pdf>), the NRO was designated as a Defense Agency. This proposed regulation aligns with comparable regulations for other defense agencies. This rulemaking discusses procedures for NRO personnel to follow when asked to provide official testimony in a legal proceeding. It also informs members of the public of the procedures for official NRO documents, files, records or information or official testimony which could include:

(1) Any material contained in the files of the NRO;

(2) Any information relating to, or based upon, material contained in the files of the NRO, including but not limited to summaries of such information or material, or opinions based on such information or material; or

(3) Any information acquired by any person while such person was performing official duties while detailed to the NRO, assigned to the NRO, or due to that person's official status or association with the NRO. These procedures also apply to subpoenas *duces tecum* for any document within the NRO's possession and to requests for official certification of copies of any documents.

These procedures discussed in this proposed rule apply to information requests associated with:

(1) State court proceedings, to include grand jury proceedings.

(2) Federal civil proceedings where the United States, NRO, or any other Federal Agency is not a party to the case; and

(3) State and local legislative and administrative proceedings.

**Authority**

The authority for promulgation of this regulatory action is 50 U.S.C. 3003(4)(f) and 10 U.S.C. 424(b)(2), and Executive Order 12333, “*United States Intelligence Activities*”, as amended, with particular reference to Section 1.4 (f) and (g) and Section 1.6 (d), (e) and (h).

Congress, when enacting the National Security Act of 1947 (“the Act”), intended to provide a comprehensive program for the future security of the United States, and provide for the establishment of integrated policies and procedures for the departments, agencies, and functions of the Government relating to the national security. The Act was designed to provide a Department of Defense, including the three military Departments of the Army, the Navy (including naval aviation and the United States Marine Corps), and the Air Force under the direction, authority, and control of the Secretary of Defense. The Act also provided for the establishment of unified or specified combatant commands. The National Reconnaissance Office is identified as an “intelligence agency” under the National Security Act of 1947, as amended, (50 U.S.C. 3003(4)(f)).

An exemption for specified intelligence agencies from the disclosure of organizational and personnel information is provided in 10 U.S.C. 424(b)(2). This exemption provides that, except as required by the President, no provision of law shall be construed to require the disclosure of: (1) The organization or any function of an organization of the Department of Defense (specifically the Defense Intelligence Agency, National Reconnaissance Office and the National Geospatial Intelligence Agency); or (2) the number of persons employed by, or assigned or detailed to, any such organization or the name, official title, occupational series, grade, or salary of any such person.

**Costs and Benefits**

This proposed rule would benefit the public and the United States Government by providing clear procedures for members of the public and Government employees to follow when official testimony or official documents, records, files or information are sought from NRO or from NRO personnel in connection with legal proceedings.

**Regulatory Analysis****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. This proposed rule has been designated a “significant regulatory action,” although not economically significant because the rulemaking does not have an annual effect on the economy of \$100 million or more, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

**Unfunded Mandates Reform Act (2 U.S.C. Ch. 25)**

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2016, that threshold is approximately \$146 million. This rulemaking would not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

**Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. Ch. 6)**

The Department of Defense certifies that this proposed rule is not subject to the Regulatory Flexibility Act (5 U.S.C. Ch. 6) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule would provide clarity to U.S. Government personnel and outside counsel on the proper rules and procedures to serve process on U.S. Government officials in their official capacity and to obtain official U.S. Government testimony or documents for use in legal proceedings. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

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

It has been determined that this rulemaking does not impose reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

**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 rulemaking would not have a substantial effect on the States; the relationship between the National Government and the States; or the distribution of power and responsibilities among the various levels of Government.

**List of Subjects in 32 CFR Part 267**

Legal proceedings, Testimony, Documentation.

Accordingly, 32 CFR part 267 is proposed to be added to read as follows:

**PART 267—PRODUCTION OF OFFICIAL RECORDS OR DISCLOSURE OF OFFICIAL INFORMATION IN PROCEEDINGS BEFORE FEDERAL, STATE OR LOCAL GOVERNMENTAL ENTITIES OF COMPETENT JURISDICTION**

- Sec.
- 267.1 Scope and purpose.
  - 267.2 Definitions.
  - 267.3 Policy.
  - 267.4 Procedures.
  - 267.5 Service of process.
  - 267.6 Fees.

**Authority:** 50 U.S.C. 3003(4)(f) and 10 U.S.C. 424(b)(2).

**§ 267.1 Scope and purpose.**

(a) This part establishes policy, assigns responsibilities, and prescribes mandatory procedures governing the release of official information by National Reconnaissance Office (NRO) personnel in legal proceedings, through testimony, production of documents, or otherwise. This part sets forth procedures for NRO personnel to follow if they are subpoenaed to produce or disclose, or to testify with respect to:

(1) Any material contained in the files of the NRO;

(2) Any information relating to, or based upon, material contained in the files of the NRO, including but not limited to summaries of such information or material, or opinions based on such information or material; or

(3) Any information acquired by any person while such person was performing official duties while detailed to the NRO, assigned to the NRO, or due to that person's official status or association with the NRO. These procedures also apply to subpoenas *duces tecum* for any document within the NRO's possession and to requests for official certification of copies of any documents.

(b) These procedures apply to information requests associated with:

(1) State court proceedings, to include grand jury proceedings.

(2) Federal civil proceedings where the United States, NRO, or any other Federal Agency is not a party to the case; and

(3) State and local legislative and administrative proceedings.

(c) These procedures do not apply to:

(1) Congressional requests or subpoenas for testimony or documents; and

(2) Release of official information or testimony by NRO personnel in the following situations, authorized:

(i) Before courts-martial convened by the authority of the Military Departments or in any administrative meetings conducted by a DoD component;

(ii) Pursuant to administrative proceedings conducted by the Equal Employment Opportunity and Diversity Management (EEO&DM) Office;

(iii) In response to requests for records or information from the United States Department of Justice (DOJ) or other federal government counsel representing the United States or the interests of the United States in litigation;

(iv) Pursuant to the disclosure of any information to Federal, State, or local prosecuting or law enforcement authorities in conjunction with an investigation conducted by a DoD criminal investigative organization.

(d) This part is intended to provide guidance for the internal operation of the NRO and to ensure the orderly execution of NRO's mission, not to impede any legal proceeding.

#### § 267.2 Definitions.

For the purpose of this part:

*Demand.* Any subpoena, order, or other legal summons (except garnishment orders) that is issued by a federal, state, or local governmental entity of competent jurisdiction with the authority to require the production, disclosure, or release of official NRO information or for the appearance and testimony of NRO personnel as witnesses.

*Employee or NRO employee.* When used herein refers to NRO personnel, current or former.

*General Counsel.* The NRO General Counsel, to include the Principal Deputy General Counsel, Deputy General Counsel, or Acting General Counsel.

*Litigation.* All pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before civilian courts, commissions, boards or other tribunals, foreign and domestic. This term includes responses to discovery requests, depositions, and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving litigation.

*NRO personnel.* Present and former civilian employees assigned or detailed to NRO, or employed by NRO, and present and former military personnel assigned or detailed to NRO, or employed by NRO. The definition of NRO personnel also includes individuals hired through contractual agreements by or on behalf of NRO.

*Official Information.* All information of any kind, in any storage medium, whether or not classified or protected from disclosure that:

(1) Is in the custody and control of the NRO; or

(2) Relates to information in the custody and control of the NRO; or

(3) Was acquired by NRO personnel as part of their official duties or because of their official status within NRO.

*Production or Produce.* The disclosure of:

(1) Any material contained in the files of NRO; or

(2) Any information relating to, or based upon, material contained in the files of the NRO, including but not limited to summaries of such information or material, or opinions based on such information or material; or

(3) Any information acquired by any person while such person was performing official duties as detailed to the NRO, assigned to the NRO, or due to that person's official status or association with the NRO.

These procedures also apply to subpoenas *duces tecum* for any document within the NRO's possession and to requests for certification of copies of any documents.

*Service of Process.* The delivery of a summons and complaint, or other document the purpose of which is to give notice of a proceeding or to establish the jurisdiction of a court or administrative proceeding, in the

manner prescribed by Rule 4, Federal Rules of Civil Procedure, to an officer or agency of the United States named in court or administrative proceedings.

#### § 267.3 Policy.

(a) No employee shall produce any materials or information in response to a demand without prior authorization as set forth in this part. This part applies to current and to former employees and contractors, in accordance with applicable nondisclosure agreements.

(b) This part is intended only to provide procedures for responding to a demand for production of documents or information, and is not intended to, does not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable by any party against the United States.

(c) Except as permitted by paragraph (d) of this section, no NRO personnel may provide testimony or produce documents in any proceeding referenced in § 267.1(b) of this part concerning information acquired in the course of performing official NRO duties or because of the person's official relationship with NRO, except as specifically authorized by the General Counsel.

(d) With the approval of the General Counsel, on behalf of the Director of NRO, NRO personnel may testify at the request of another Federal agency, or, where it is in the interests of the NRO, at the request of a State or local government or State legislative committee, subject to applicable nondisclosure agreements and in accordance with procedures set forth in this part.

(e) Official information that is not classified or privileged may be made available for use in Federal and State courts, at the discretion of the General Counsel, who may deny requested information or testimony under the procedures set forth in this part, or as otherwise authorized and warranted under applicable law.

#### § 267.4 Procedures.

(a) If official information is sought, through testimony or otherwise, by a litigation demand, the individual seeking such release or testimony must set forth, in writing and with as much specificity as possible, the nature and relevance of the official information sought, and shall send such demand to NRO Office of General Counsel (OGC), National Reconnaissance Office, Chantilly, VA 20151.

(b) Any NRO personnel in receipt of a litigation request or demand for official NRO information or the testimony of NRO personnel as

witnesses shall immediately notify the NRO OGC, National Reconnaissance Office, Chantilly, VA 20151 (703/808-1060), and shall provide a copy of the request or demand to the OGC, which shall follow the procedures set forth in this section.

(c) NRO personnel shall not produce, disclose, release, comment upon, or testify concerning any official information during litigation except as expressly authorized in writing by the General Counsel. In exigent circumstances, the General Counsel may issue oral approval, but a written record of such approval will be made and retained in the OGC.

(d) The NRO OGC and senior NRO officials with responsibility for the information sought in the demand shall determine whether any information, materials, or testimony may properly be produced in response to the demand, provided that the OGC may assert any and all legal defenses and objections to the demand available to NRO prior to the start of any search for information responsive to the demand. NRO may, in its sole discretion, decline to begin any search for information responsive to the demand until a final and non-appealable disposition of any such defenses and objections raised by NRO has been made by the entity or person that issued the demand.

(e) In deciding whether to authorize the release of official NRO information or the testimony of NRO personnel concerning official information (hereafter referred to as "production") pursuant to paragraph (d) of this section, OGC shall consider the following factors, among any other pertinent considerations:

(1) Whether production would be unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand arose;

(2) Whether production would violate a statute, executive order, regulation, or directive;

(3) Whether production would reveal NRO organization, functions, or personnel information protected from disclosure by statute;

(4) Whether production would reveal information properly classified in the interest of national security;

(5) Whether production would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, disclose trade secrets or similarly confidential commercial or financial information without the

owner's consent, or otherwise be inappropriate under the circumstances;

(6) Whether the disclosure would have an adverse effect on performance by the NRO of its official mission and duties, to include:

(i) The need to conserve the time of NRO personnel for the conduct of official business;

(ii) The need to avoid spending the time and money of the United States to serve private purposes;

(iii) The need to avoid involving the NRO in contested issues not related to its official mission.

(f) The NRO OGC is responsible for notifying the appropriate NRO employees and other persons of all decisions regarding responses to demands and providing advice and counsel as to the implementation of such decisions.

(g) If, after NRO personnel have received a litigation request or demand and have in turn notified the OGC in accordance with paragraph (b) of this section, a response to the request or demand is required before instructions from the OGC are received, an attorney from the OGC, or, as appropriate, an attorney from the U.S. Department of Justice (DOJ) representing the NRO, shall appear before and furnish the court or other competent authority with a copy of this part; shall inform the requestor or the court or other authority that the request or demand is being reviewed, and shall respectfully seek a stay of the request or demand pending a final determination by NRO OGC.

(h) If the court of competent jurisdiction or other appropriate authority declines to stay the effect of the request or demand in response to action taken pursuant to paragraph (g) of this section, or if such court or other authority orders that the request or demand must be complied with notwithstanding the final decision of the General Counsel, the NRO personnel upon whom the request or demand was made shall notify the General Counsel of such ruling or order. If the General Counsel determines that no further legal review of or challenge to the ruling or order will be sought, the affected NRO personnel shall comply with the demand or order. If directed by the General Counsel not to comply with the demand, however, the affected NRO personnel shall respectfully decline to comply with the demand. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). In that circumstance, the NRO personnel shall state the following to the Court: "I must respectfully advise the Court that under instructions given to me by the General Counsel of the National Reconnaissance Office, in

accordance with Department of Defense Directive 5405.2 and [this part, (32 CFR part 267), I must respectfully decline to [produce/disclose] that information."

(i) In the event NRO personnel receive a litigation demand for official information originated by another U.S. Government component, the General Counsel shall forward the appropriate portions of the request to the OGC for the other component. The General Counsel shall notify the requestor, court, or other authority of the referral, unless providing such notice would itself disclose classified information. To protect classified information, the General Counsel, in such cases, shall notify the requestor of the referral of the request, or positions thereof, to another government agency without specifying the identity of such agency. The General Counsel shall assist in coordinating responses by the unidentified agency to the request to the extent necessary to protect classified information from unauthorized disclosure.

#### § 267.5 Service of process.

(a) Service of Process Upon the NRO or NRO Personnel Accepted in an Official Capacity Only. This section sets forth mandatory procedures for accomplishing valid service of process by registered or certified mail upon NRO or upon NRO personnel sued or summoned in an official capacity.

(b) Accepting service of process upon NRO personnel in their individual capacities at the workplace is not a function of NRO. Acceptance of service of process in a person's individual capacity is the responsibility of that individual. Consistent with 10 U.S.C. 424, NRO will not provide the name or address of any current or former employee of NRO to individuals or entities seeking to serve process on such employee solely in his or her individual capacity, even where the matter is related to NRO activities.

(c) Service of a summons or complaint upon NRO or service of process upon NRO personnel for official information or testimony must be made by: serving the United States Attorney for the district in which the action is brought, and sending copies of the summons and complaint by registered or certified mail to the Attorney General of the United States and to the General Counsel of the National Reconnaissance Office, 15675 Lee Road, Chantilly, VA 20151-1715. The envelope shall be conspicuously marked "Copy of Summons and Complaint Enclosed." Parties may call the OGC at (703) 808-1060 for guidance.

(d) Only the General Counsel or designee is authorized to accept the copies of the summons or complaint on

behalf of NRO. Individual NRO personnel sued or summoned to provide information or testimony in an official capacity are not authorized to accept service of process. If the General Counsel accepts service of process on behalf of NRO or NRO personnel, in accordance with this paragraph, the documents for which service is accepted shall be stamped: "Service accepted on behalf of the organization in official capacity only."

(1) NRO personnel who receive or who have reason to expect to receive service of process in any capacity concerning a matter that may involve testimony or the furnishing of documents that could reasonably be expected to involve official NRO information shall notify the NRO OGC, (703) 808-1060 before accepting service and before providing the requestor, counsel or other representative of the party who sent the demand with any official NRO information in response to the demand.

(2) If service is sought in an official capacity upon an individual who is alleged to work at NRO Headquarters in Chantilly, Virginia, the process server should call OGC at (703) 808-1060 for guidance.

(i) To protect classified NRO employment associations and/or classified contracts, the Office of General Counsel shall refuse to confirm or deny the existence or the nonexistence of an employment relationship with the specific individual sued or summoned in an official capacity (other than publicly acknowledged senior agency officials of NRO).

(ii) OGC shall direct the process server to follow the procedures set forth in this part to serve process upon the United States Attorney for the judicial district in which the action is brought and to send a copy of such process to NRO OGC by certified or registered mail.

(iii) OGC will notify the person summoned and the appropriate NRO Security Officer of the legal demand.

(e) NRO does not accept personal service of process upon NRO personnel at NRO facilities or on NRO premises, unless expressly directed otherwise by the General Counsel. Process servers will not be allowed to enter NRO facilities for the purpose of serving process upon any NRO personnel solely in his or her individual capacity. The General Counsel, on behalf of the Director of NRO, has sole discretion to authorize acceptance of personal service of process upon the NRO or NRO personnel served in their official capacities, or served upon NRO

personnel in an combined individual and official capacity, and may exercise this discretion in circumstances where serving process on NRO personnel by registered or certified mail is not authorized by law or where, in particular circumstances, the General Counsel determines that acceptance of personal service of process serves the best organizational interests of the NRO.

(1) A process server who arrives at NRO during duty hours without first having contacted the NRO OGC will be referred to the Visitor Center. The Visitor Center is not authorized to and shall not accept service of process upon NRO or on behalf of any alleged NRO personnel. The Visitor Center shall contact OGC.

(i) The General Counsel or designee shall review the service of process at the Visitor Center to assess whether the NRO person is sued or summoned in an official or in an individual capacity. If the person is sued or summoned in an individual capacity, the General Counsel shall refuse to accept service on that basis.

(ii) If the General Counsel determines that service is sought upon NRO or upon an alleged employee of NRO in an official capacity, or if the General Counsel is concerned that official NRO information or documents may be relevant to the subject matter of the proceeding, the General Counsel shall direct the process server to follow the procedures set forth in this part and shall refuse to accept service on the basis of failure to comply with applicable regulations, unless, as an exercise of discretion, OGC determines that acceptance of personal service of process best serves the organizational interests of the NRO.

(iii) If the General Counsel exercises discretion to accept service of process upon NRO or upon NRO personnel in an official capacity, in accordance with this paragraph, the documents for which service is accepted shall be stamped: "Service accepted on behalf of the organization in official capacity only."

(iv) OGC will notify the person summoned and the appropriate NRO Security Officer of the legal demand.

(2) [Reserved]

(f) Litigants may attempt to serve process upon NRO personnel in their official capacities at their residences or other places. Because NRO personnel are not authorized to accept such service of process, such service is not effective under the Federal Rules of Civil Procedure. NRO personnel should refuse to accept service. However, NRO personnel may find it difficult to determine whether they are being sued or summoned in their private or official

capacity. Therefore, NRO personnel shall notify NRO OGC as soon as possible if they receive any summons or complaint that appears to relate to actions in connection with their official duties and shall direct such summons or complaint to the General Counsel so that the General Counsel can determine the scope of service.

(g) The Commander or Chief of Facility at NRO facilities other than NRO Headquarters may accept copies of service of process for himself or herself or for NRO personnel assigned to the installation who are sued or summoned in their official capacities, without officially confirming or denying the existence or nonexistence of an employment or contract relationship with the summoned individual. The Commander or Chief of Facility will accept any such service of process by noting on the return of service form: "Service accepted on behalf of the organization in official capacity only." The Commander or Chief of Facility will then immediately refer the matter to the General Counsel.

(1) No individual will officially confirm or deny that the person sued or summoned is affiliated with NRO as an employee or contractor unless OGC, in coordination with the Commander or Chief of Facility, has first determined both that the individual's association with NRO is unclassified and that such association may be officially and publicly acknowledged in connection with the legal proceeding. If the NRO person's association with NRO is classified, service of process shall not be accepted unless, as an exercise of discretion, OGC determines that acceptance of service of process under the circumstances best serves the organizational interests of the NRO and can be accomplished without officially confirming or denying the classified association at issue. Any such service if accepted must be stamped on the return of service form "Service accepted on behalf of the organization in official capacity only."

(2) Whether service is accepted or refused, the General Counsel will coordinate with NRO security personnel, other federal agencies, or other US Government personnel and contact DOJ for guidance on how to provide information responsive to legal process while protecting classified information from unauthorized disclosure in accordance with legal requirements. If OGC or the Commander or Chief of Facility accepts service "on behalf of the organization in official capacity only" and that service was directed toward an individual whose association with NRO is or was

classified, OGC will work with the party who made the litigation demand and/or the court and DOJ to identify an individual who can provide responsive information or testimony while protecting classified information in accordance with legal requirements, or will move for other appropriate relief as necessary to protect classified information.

(h) If any NRO person is sued or summoned in a foreign court, that person shall provide full documentation of the matter securely to the cognizant Commander or Chief of Facility. The Commander or Chief of Facility will immediately email a scanned copy of the service of process to OGC, and shall send the document securely via an information system approved to handle classified information, marking the email to indicate attorney-client privilege protections as applicable. The person sued or summoned will not complete any return of service forms for the foreign court without first obtaining approval from NRO OGC to the cognizant Commander or Chief of Facility in writing, and shall follow instructions from OGC regarding how to complete the return of service form. OGC will coordinate with DOJ to determine whether service is effective and whether the NRO person is entitled to be represented at Government expense.

(i) The Commander or Chief of Facility will establish procedures at the NRO facility, including a provision for liaison with local staff judge advocates, if any, to ensure that service of process on persons in their individual capacities is accomplished in accordance with local law, relevant treaties, and Status of Forces Agreements. Such procedures must be approved by the General Counsel. Commanders or Chiefs of Facility will designate a point of contact to conduct liaison with the OGC.

(j) Acceptance of service of any summons or complaint by OGC “on behalf of the organization in official capacity only” shall not constitute an official acknowledgement or confirmation by NRO that any individual named in the summons or complaint is, in fact, a current or former employee of NRO. Acceptance of service of process shall not constitute waiver with respect to jurisdiction, propriety or validity of service, improper venue, or any other defense in law or equity available under the laws or rules applicable to the service of process.

#### § 267.6 Fees.

(a) Consistent with the guidelines in DoD 7000.14–R, Vol. 11A, Chap. 4, “User Fees” (available at <http://>

[comptroller.defense.gov/Portals/45/documents/fmr/Volume\\_11a.pdf](http://comptroller.defense.gov/Portals/45/documents/fmr/Volume_11a.pdf)), NRO may charge reasonable fees, as established by regulation and to the extent not prohibited by law, to parties seeking, by request or demand, official information not otherwise available under the DoD Freedom of Information Act, 5 U.S.C. 552. Such fees are calculated to reimburse the Government for the expense of providing such information, and may include:

(1) The costs of time expended by NRO personnel to process and respond to the request or demand;

(2) Attorney time for reviewing the request or demand and any information located in response thereto, and for related legal work in connection with the request or demand; and

(3) Expenses generated by materials and equipment used to search for, produce, and copy the responsive information. See *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340 (1978).

(b) [Reserved]

Dated: November 18, 2016.

**Aaron Siegel,**

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

[FR Doc. 2016–28221 Filed 11–23–16; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG–2016–0968]

RIN 1625–AA09

#### Drawbridge Operation Regulation; Youngs Bay, Astoria, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the operating schedule that governs the Oregon State highway bridge across Youngs Bay foot of Fifth Street (Old Youngs Bay Bridge), mile 2.4, at Astoria, OR. The Oregon Department of Transportation (ODOT) is proposing to change the operating schedule of the Old Youngs Bay Bridge for several months while work is performed on the north bascule lift. This change would allow ODOT to operate the double bascule draw in single leaf mode, one lift at a time, and reduce the vertical clearance of the non-operable half of the span by five feet.

**DATES:** Comments and related material must reach the Coast Guard on or before

December 27, 2016. The Coast Guard anticipates that this proposed rule will be effective from 7 a.m. on March 1, 2017 to 5 p.m. on October 31, 2017.

**ADDRESSES:** You may submit comments identified by docket number USCG–2016–0968 using Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

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**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or email Steven M. Fischer, Bridge Administrator, Thirteenth Coast Guard District Bridge Program Office, telephone 206–220–7282; email [d13bridges@uscg.mil](mailto:d13bridges@uscg.mil).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Table of Abbreviations**

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of Proposed Rulemaking  
§ Section  
U.S.C. United States Code  
ODOT Oregon State Department of Transportation

##### **II. Background, Purpose and Legal Basis**

ODOT owns and operates the Old Youngs Bay Bridge, and proposes a temporary change to the existing operating regulation. The Coast Guard approved a temporary rule change authorizing ODOT to operate the Old Youngs Bay Bridge in single leaf mode from May 2016 through October 2016, document citation 81 FR 28018. No negative impacts were observed during that rule change. The subject proposed regulation will allow the drawtender to open half the draw span in single leaf mode, from 7 a.m. on March 1, 2017 to 5 p.m. on October 31, 2017. ODOT’s proposal would allow the construction workers to utilize a containment system that reduces the non-opening half of the bridge’s vertical clearance by five feet. Marine traffic on Youngs Bay consists of vessels ranging from small pleasure craft, sailboats, small tribal fishing boats, and commercial tug and tow, and mega yachts.

##### **III. Discussion of Proposed Rule**

This proposed rule would temporarily amend 33 CFR 117.899 by adding the south lift only to open in single leaf