

assumed cubic spline for the forward interest rate function can be described as a linear combination of B-splines, with five parameters, which are determined taking into account the two coefficients for the bond-quality adjustment variables described in paragraphs (d)(2)(iii)(B) and (C) of this section and the coefficient for the hump adjustment variable described in paragraph (d)(2)(iii)(D) of this section. The five parameters and three coefficients are determined using the bond data weighted as described in paragraph (d)(2)(iv) of this section. After this weighting of the bond data, the five parameters and three coefficients are chosen to minimize the sum of the squared differences between the bid price for each of the bonds (or ask price for commercial paper) and the price estimated for each of those bonds determined using the specified parameters and coefficients, and taking into account the bond's coupon rate, number of years until maturity, and rating.

(B) *Adjustment factor for share of bonds that are AA-rated.* The first adjustment variable is based on the proportion of bonds that are rated AA within the universe of bonds in the data set that are rated AA or AAA, weighted by par value. In the case of an AAA-rated bond the adjustment variable described in this paragraph (d)(2)(iii)(B) is equal to the product of the proportion described in the preceding sentence and the number of years until maturity for the bond. In the case of an AA-rated bond the adjustment variable described in this paragraph (d)(2)(iii)(B) is equal to the product of (1 – that proportion) and the number of years until maturity for the bond. In the case of an A-rated bond, the adjustment variable described in this paragraph (d)(2)(iii)(B) is set to 0.

(C) *Adjustment factor for share of bonds that are A-rated.* The second adjustment variable is based on the proportion of bonds rated A within the universe of bonds in the data set, weighted by par value. In the case of an AAA-rated bond or an AA-rated bond, the adjustment variable described in this paragraph (d)(2)(iii)(C) is equal to the product of the proportion described in the preceding sentence and the number of years until maturity for the bond. In the case of an A-rated bond the adjustment variable described in this paragraph (d)(2)(iii)(C) is equal to the product of (1 – that proportion) and the number of years until maturity for the bond.

(D) *Hump adjustment variable.* The hump adjustment variable is a mathematical function that is a cubic spline in the interval from 10 years

maturity through 30 years maturity made up of two polynomials with a smooth junction (as described in paragraph (d)(2)(ii)(A) of this section) at 20 years maturity. The spline rises from zero at 10 years maturity to 1.0 at 20 years maturity, then falls back down to zero at 30 years maturity. The hump adjustment variable is zero for maturities less than 10 years and maturities greater than 30 years.

(iv) *Weighting of bond data.* The bond data are weighted in two steps. First, equal weights are assigned to the commercial paper rates at the short end of the curve, and the par amounts outstanding of all the bonds are rescaled so that their sum equals the sum of the weights for commercial paper. Then, the squared price difference for each bond is multiplied by the bond's rescaled par amount outstanding, and the squared difference for each commercial paper rate is multiplied by the commercial paper weight. In the second stage, applicable for bonds with duration greater than 1, the weighted squared price difference for each bond from the first stage is divided by the bond's duration.

(3) *Data used—(i) In general.* Except as otherwise provided in this paragraph (d)(3), the bonds that are used to construct the daily corporate bond yield curve for a business day are bonds with maturities longer than a ½ year, with at least two payment dates, and that:

- (A) Are designated as corporate;
- (B) Have high quality ratings (AAA, AA, or A) as of that business day from the nationally recognized statistical rating organizations;
- (C) Have at least \$250 million in par amount outstanding on at least one day during the month;
- (D) Pay fixed nominal semiannual coupons and the principal amount at maturity; and
- (E) Mature not later than 30 years after that business day.

(ii) *Excluded bonds.* The following types of bonds are not used to construct the daily corporate bond yield curve for a date:

- (A) Bonds not denominated in U.S. dollars;
- (B) Bonds not issued by U.S. corporations;
- (C) Bonds that are capital securities (sometimes referred to as hybrid preferred stock);
- (D) Bonds having variable coupon rates;
- (E) Convertible bonds;
- (F) Bonds issued by a government-sponsored enterprise (such as the Federal National Mortgage Association);
- (G) Asset-backed bonds;
- (H) Callable bonds unless the call feature is make-whole or the call feature

is exercisable only during the last year before maturity;

- (I) Puttable bonds;
- (J) Bonds with sinking funds; and
- (K) Bonds with a par amount outstanding below \$250 million for the day for which the daily yield curve is constructed.

(iii) *Durations equal to or below a ½ year.* The data for durations equal to or below a ½ year that is used to construct the daily corporate bond yield curve consists of AA financial and AA nonfinancial commercial paper rates, as reported by the Federal Reserve Board.

(h) *Applicability date of regulations.* This section applies to months that begin more than 15 days after the date final regulations issued pursuant to these proposed regulations are published in the **Federal Register**. For rules that apply for earlier periods, see § 1.430(h)(2)–1, as it appeared in the April 1, 2022, edition of 26 CFR part 1.

**Douglas W. O'Donnell,**

*Deputy Commissioner for Services and Enforcement.*

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## SELECTIVE SERVICE SYSTEM

### 32 CFR Part 1660

RIN 3240–AA02

#### Release of Official Information in Litigation and Presentation of Witness Testimony by Selective Service System (SSS) Personnel (Touhy Regulation)

**AGENCY:** United States Selective Service System.

**ACTION:** Proposed rule.

**SUMMARY:** The Selective Service System (SSS) is publishing new regulations titled, “Release of official information in litigation and presentation of witnesses testimony by Selective Service System (SSS) personnel” (referred to as *Touhy* regulations). These new regulations will ensure consistent processing of *Touhy* requests; clarify the responsibilities of all parties in the *Touhy* process; and provide additional information about criteria that SSS and its Components should consider in the *Touhy* process.

**DATES:** Comments must be received 60 days from publication date.

**ADDRESSES:** You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title by email to [dlauretano@sss.gov](mailto:dlauretano@sss.gov), or by mail to:

Selective Service System, General Counsel, 1515 Wilson Boulevard, Suite 500, Arlington, Virginia 22209–2425.

*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 <https://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel A. Lauretano, Sr., General Counsel, 703–605–4012, [dlauretano@sss.gov](mailto:dlauretano@sss.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Summary of New Regulatory Provisions and Their Impact**

The SSS is creating its *Touhy* regulations to: (1) Promote consistent processing of *Touhy* requests among the SSS and SSS Components; (2) clarify the responsibilities of all parties in the *Touhy* process; and (3) provide additional information about criteria that SSS should consider in the *Touhy* process. The new regulations set forth the procedures to be followed with respect to a demand seeking official information or employee testimony relating to official information for use in a legal proceeding. The new regulations also set forth certain definitions. The new regulations apply to all SSS personnel (see § 1660.3), in particular, members and personnel of the Office of the Director, National Headquarters Directorates and Offices, Region Offices, the Data Management Center, the National Appeals Board, District Appeals Boards, Local Boards (including panels, multicounty, and intracounty boards), and all other organizational entities within the SSS (referred to collectively in this part as the “SSS Components”).

The new regulations are intended only to provide guidance for the internal operations of the SSS, without displacing the responsibility of the Department of Justice to represent the United States in litigation. The new regulations do not apply to the release of official information or the presentation of witness testimony in connection with:

- (1) Administrative proceedings or investigations conducted by the SSS.
- (2) Security-clearance adjudicative proceedings.
- (3) Administrative proceedings conducted by or for the Equal

Employment Opportunity Commission or the Merit Systems Protection Board.

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

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

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

The new regulations do not affect in any way existing laws or SSS 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 in accordance with 32 CFR part 1662, even if the records sought are related to litigation.

(3) Privacy Act requests submitted pursuant in accordance with 32 CFR part 1665, even if the records sought are related to litigation.

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

The new regulations do not create any right or benefit (substantive or procedural) enforceable by law against the SSS or the United States.

The new regulations define: *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 SSS personnel at deposition or trial.

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

*Legal Advisor includes the Selective Service System (SSS) General Counsel (GC), and any other SSS legal advisors designated by the GC.*

*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 SSS 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 SSS, relates to information in the custody and control of the SSS, or was acquired by SSS personnel due to their official duties or status.

*Personnel.*

(1) Civilian employees of the SSS.

(2) Present and former (e.g., retired, separated) Service members assigned to the SSS.

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

(4) Any individuals who are or were supervised by an SSS official and who perform or have performed services for the SSS through a contractual arrangement.

(5) Any individual that performs or has performed services for the SSS as a volunteer (e.g., (local board, panel, multicounty, intercounty, district appeals board members, state resource volunteers, etc.).

(6) Any individual that performs or has performed the duties as a member of the National Appeals Board.

*SSS Components.* The SSS Components consist of:

(1) The Office of the Director.

(2) National Headquarters Directorates and Offices.

(3) Region Offices.

(4) Data Management Center.

(5) the National Appeals Board.

(6) District Appeals Boards.

(7) Local Boards (including panels, multicounty, and intracounty boards).

(8) All other organizational entities within the SSS.

The new regulations outline the SSS policy to make official factual information, both testimonial and documentary, reasonably available for use in Federal courts, State courts, foreign courts, and other governmental proceedings unless that information is classified, privileged, or otherwise protected from public disclosure. It makes clear that SSS personnel shall not provide such official information, testimony, or documents, submit to interview, or permit a view or visit, without the authorization required by this part. It stresses that SSS personnel shall not provide, with or without compensation, opinion or expert testimony concerning official SSS information, subjects, personnel, or activities, except on behalf of the United States or a party represented by the Department of Justice, or with the written special authorization required by this part. Finally, it provides that upon a showing by a requester of exceptional need or unique circumstances, and that the anticipated testimony will not be adverse to the

interests of the SSS or the United States, the SSS GC may, in their sole discretion, and pursuant to the guidance contained in this part, grant such written special authorization for SSS personnel to appear and testify as expert or opinion witnesses at no expense to the United States.

Parties who submit a litigation request or demand to the SSS must describe, in writing and with specificity:

(1) the nature of the official information or witness testimony sought, its relevance to the litigation, and other pertinent details addressing the factors in § 1660.8.

(2) the litigation request or demand must show whether the request is consistent with the policy and rules of this part.

(3) the litigation request or demand must include copies of the complaint and relevant proceedings and be submitted at least 30 days before the desired date to the Selective Service System, General Counsel, 1501 Wilson Blvd., Suite 800, Arlington, Virginia 22209.

If the litigation request or demand seeks testimony, the identity of the SSS employee whose testimony is sought and a detailed summary about the relevance of the employee's testimony to the underlying legal proceeding;

If the litigation request or demand seeks documents or other materials, a description of the requested official information sought and a detailed summary about its relevance to the underlying legal proceeding;

An explanation of the unavailability of the requested official information or employee testimony through other sources; and

An explanation of how each of the factors set forth in 32 CFR 1660.8 applies to their demand.

The new regulations require that this information must be submitted at least 30 calendar days before the official information or employee testimony is needed and further require the submission of the above information even if parties serve a subpoena on the SSS or a SSS employee. A litigation request or demand will not be granted if a party fails to follow the instructions set forth in the regulations.

SSS personnel who receive a litigation request or demand are to:

(1) Inform their supervisors about the litigation request or demand so the supervisors may inform the SSS GC or other SSS legal advisor; and

(2) Refrain from providing official information and/or testimony in response to the litigation request or demand.

## **B. Background & 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 SSS'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. Currently, the SSS does not have *Touhy* regulations. This proposed rule creates new regulations spanning §§ 1660.1 through 1660.11.

## **C. Expected Impact of the Proposed Rule**

This rule action will not impose any new costs. Creating SSS *Touhy* regulations will clarify and streamline requests and will produce efficiency and uniformity to the public's benefit. Less attorney time will be spent searching for SSS request procedures and complying with its requirements. After reviewing other agency regulations, the SSS concluded that attorneys for third-party litigants will save considerable time in performing research, review, and compliance time per subpoena or litigation request when referring to the Code of Federal Regulations for guidance.

For purposes of estimating the cost savings, the SSS's subject matter experts deemed it reasonable to use the mean hourly wage for lawyers as informed by the Bureau of Labor and Statistics, \$78.74.<sup>1</sup> 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.

## **D. Executive Order (E.O.) 12866, “Regulatory Planning and Review,” E.O. 13563, “Improving Regulation and Regulatory Review,” and Congressional Review Act (5 U.S.C. 801–08)**

E.O.s 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). E.O. 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 E.O.s, the Office of Management and Budget has determined that this proposed rule is not a significant regulatory action under section 3(f) of E.O. 12866 nor a “major rule” as defined by 5 U.S.C. 804(2).

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

SSS certifies that this proposed 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. Therefore, the Regulatory Flexibility Act, as amended, does not require SSS to prepare a regulatory flexibility analysis.

## **F. 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 proposed rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

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

It has been determined that 32 CFR part 1660 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act.

## **H. E.O. 13132, “Federalism”**

E.O. 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 proposed rule will not have a substantial effect on State and local Governments.

## **I. E.O. 11623, Delegation of Authority & Coordination Requirements**

In E.O. 11623, the President delegated to the Director of Selective Service the authority to prescribe the necessary

<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.

rules and regulations to carry out the provisions of the Military Selective Service Act. In carrying out the provisions of E.O. 11623, as amended by E.O. 13286, the Director shall request the views of the Secretary of Defense, the Attorney General, the Secretary of Labor, the Secretary of Health, Education, and Welfare, the Secretary of Homeland Security (when the Coast Guard is serving under the Department of Homeland Security), the Director of the Office of Emergency Preparedness, and the Chairman of the National Selective Service Appeal Board with regard to such proposed rule or regulation, and shall allow not less than 10 days for the submission of such views before publication of the proposed rule or regulation. On June 13, 2023, the SSS completed its coordination requirements, and the Director certifies that he has requested the views of the officials required to be consulted pursuant to subsection (a) of E.O. 11623, considered those views and as appropriate incorporated those views in these regulations, and that none of them has timely requested that the matter be referred to the President for decision.

#### List of Subjects in 32 CFR Part 1660

Government employees, Organization and functions (Government agencies).

■ For the reasons discussed in the preamble, the Selective Service System proposes to amend 32 CFR chapter XVI by adding part 1660 to read as follows:

#### PART 1660—RELEASE OF OFFICIAL INFORMATION IN LITIGATION AND PRESENTATION OF WITNESS TESTIMONY BY SSS PERSONNEL (TOUHY REGULATION)

- Sec.
- 1660.1 Purpose.
  - 1660.2 Applicability.
  - 1660.3 Definitions.
  - 1660.4 Policy.
  - 1660.5 Responsibilities—the Selective Service System (SSS) General Counsel (GC).
  - 1660.6 Responsibilities—the Selective Service System Component Heads.
  - 1660.7 Procedures—authorities.
  - 1660.8 Procedures—factors to consider.
  - 1660.9 Procedures—requirements and determinations.
  - 1660.10 Procedures—fees.
  - 1660.11 Procedures—expert or opinion testimony.

**Authority:** 5 U.S.C. 301; 50 U.S.C. 3809; & E.O. 11623, as amended by E.O. 13286, Feb 28, 2003.

#### § 1660.1 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 Selective Service System (SSS) 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).

#### § 1660.2 Applicability.

This part—

(a) Applies to all SSS personnel (see § 1660.3), in particular, members and personnel of the Office of the Director, National Headquarters Directorates and Offices, Region Offices, Data Management Center, the National Appeals Board, District Appeals Boards, Local Boards (including panels, multicounty, and intercounty boards) and all other organizational entities within the SSS (referred to collectively in this part as the “SSS Components”).

(b) Is intended only to provide guidance for the internal operations of the SSS, 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) Administrative proceedings or investigations conducted by or for a SSS Component.

(2) Security-clearance adjudicative proceedings.

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

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

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

(6) Disclosures to Federal, State, local, or foreign authorities related to investigations or other law-enforcement activities.

(e) Does not affect in any way existing laws or SSS 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 1662, even if the records sought are related to litigation.

(3) Privacy Act requests submitted pursuant to 32 CFR part 1665, 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 SSS or the United States.

#### § 1660.3 Definitions.

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

**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 SSS personnel at deposition or trial.

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

**Legal advisor** means:

(1) The General Counsel of the SSS (SSS GC).

(2) Any Legal Advisor Designated by the SSS GC.

**Litigation.** All pretrial (e.g., discovery), trial, and post-trial stages of existing judicial or administrative actions, hearings, investigations, or similar proceedings before a 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 SSS 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 SSS, relates to information in the custody and control of the SSS, or was acquired by SSS personnel due to their official duties or status.

**Personnel** means:

(1) Employees of the SSS.

(2) Present and former (e.g., retired, separated) Service members assigned to, detailed to, or otherwise affiliated with the SSS.

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

(4) Any individuals who are or were supervised by an SSS official and who perform or have performed services for the SSS through a contractual arrangement.

(5) Any individuals who perform or have performed services for the SSS as a volunteer board member (local, panel, multicounty, intracounty, district appeals).

(6) Members of the National Appeals Board.

**SSS Components.** The SSS Components consist of:

- (1) The Office of the Director.
- (2) National Headquarters Directorates and Offices.
- (3) Region Offices.
- (4) Data Management Center.
- (5) the National Appeals Board.
- (6) District Appeals Boards.
- (7) Local Boards (including panels, multicounty, and intercounty boards).
- (8) All other organizational entities within the SSS.

#### **§ 1660.4 Policy.**

(a) It is the policy of the SSS to make official factual information, both testimonial and documentary, reasonably available for use in Federal courts, State courts, foreign courts, and other governmental proceedings unless that information is classified, privileged, or otherwise protected from public disclosure.

(b) SSS personnel, as defined in § 1660.3, however, shall not provide such official information, testimony, or documents, submit to interview, or permit a view or visit, without the authorization required by this part.

(c) SSS personnel shall not provide, with or without compensation, opinion or expert testimony concerning official SSS information, subjects, personnel, or activities, except on behalf of the United States or a party represented by the Department of Justice, or with the written special authorization required by this part.

(d) Paragraphs (b) and (c) of this section constitute a regulatory general order, applicable to all SSS personnel individually, and need no further implementation. A violation of those provisions is the basis for appropriate administrative procedures with respect to civilian employees. Moreover, violations of this instruction by SSS personnel may, under certain circumstances, be actionable under 18 U.S.C. 207.

(e) Upon a showing by a requester of exceptional need or unique circumstances, and that the anticipated testimony will not be adverse to the interests of the SSS or the United States, the SSS GC may, in their sole discretion, and pursuant to the guidance contained in this part, grant such written special authorization for SSS personnel to appear and testify as expert or opinion witnesses at no expense to the United States.

#### **§ 1660.5 Responsibilities—Selective Service System (SSS) General Counsel (GC).**

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

#### **§ 1660.6 Responsibilities—SSS Component Heads.**

The SSS Component heads implement the policy and procedures in this part and, through the SSS GC or other SSS legal advisor, provide guidance for their respective components.

#### **§ 1660.7 Procedures—authorities.**

(a) In response to a litigation request or demand, and after any required coordination with the Department of Justice, the SSS GC and other SSS legal advisor (see § 1660.3) are authorized to:

(1) Determine whether the respective SSS 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 the respective SSS 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.

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

#### **§ 1660.8 Procedures—factors to consider.**

In making a determination pursuant to § 1660.7(a), the SSS GC and other SSS legal advisor will consider whether:

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

(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 Chapters 21, 22, 6 31, 33, and 35 of title 44, United States Code; Sections 102, 105, 552.7 and 552a8 of title 5, United States Code; Executive Order 12968, “Access to Classified Information,” August 2, 1995, as amended; Intelligence Community Directive 703, “Protection of Classified

National intelligence, Including Sensitive Compartmental Information (SCI),” June 21 20132; Executive Order 12958, “Classified National Security Information,” April 17, 1995, as amended; Presidential Memorandum, “Implementation of the Executive Order, ‘Classified National Security Information,’” December 29, 2009;

(2) Controlled Unclassified Information pursuant to Executive Order 13556, “Controlled Unclassified Information,” November 4, 2010, as amended; 32 CFR part 2002.

(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 law enforcement proceeding.

(2) Compromise a constitutional right of another.

(3) Expose an intelligence source or confidential informant.

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

(5) Be otherwise inappropriate.

#### **§ 1660.9 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 § 1660.8.

(b) A litigation request or demand must be submitted at least 30 days before the desired date to the Selective Service System, General Counsel, 1501 Wilson Blvd., Suite 800, Arlington, Virginia 22209.

(c) Personnel and former personnel (e.g., retired employees and Reserve Service Members, past volunteers) who receive a litigation request or demand must notify the SSS GC or their SSS legal advisor immediately.

(d) If another Federal agency originated the responsive information or otherwise has the primary equity with respect to that information, the SSS GC will:

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

(2) Inform the requesting party or issuing court.

(e) If the litigation request or demand requires a response before a determination can be made, the SSS GC or other SSS legal advisor will inform

the requesting party or the issuing court (through the Department of Justice) that the request or demand is still under consideration. The SSS GC or other SSS legal advisor also may seek a stay from the court in question until a final determination is made.

(f) Upon making a final determination pursuant to § 1660.7(a), the SSS GC or other SSS legal advisor will inform the requesting party or issuing court.

(g) If the SSS GC or other SSS legal advisor approves the release of official information or the presentation of witness testimony, personnel will limit the disclosure to those matters approved by the SSS GC or other SSS legal advisor. Personnel may not release, produce, comment on, or testify about any official information without the prior written approval of the SSS GC or other SSS legal advisor.

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

#### § 1660.10 Procedures—fees.

Parties seeking official information by litigation request or demand may be charged reasonable fees 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.

#### § 1660.11 Procedures—expert or opinion testimony.

In any legal proceeding before the SSS or in which the United States (including any Federal agency or officer of the United States) is a party:

(a) The SSS GC shall arrange for an employee to testify as a witness for the United States whenever the attorney representing the United States requests it.

(b) SSS personnel may testify for the United States both as to facts within their personal knowledge and as an expert or opinion witness. Except as provided in paragraph (c) of this section, SSS personnel may not testify as an expert or opinion witness, with regard to any matter arising out of their official duties or the functions of the

SSS, for any party other than the United States in any legal proceeding in which the United States is a party. SSS personnel who receive a demand to testify on behalf of a party other than the United States may testify as to facts within the employee's personal knowledge, provided that the testimony be subject to the prior written approval of the SSS GC or other SSS legal advisor and to the Federal Rules of Civil Procedure and any applicable claims of privilege, the anticipated testimony is not adverse to the interests of the SSS or the United States Government, and is presented at no cost to the Government.

(c) SSS personnel may testify as an expert or opinion witness on behalf of the SSS or in any legal proceeding conducted by the SSS or the United States.

**Daniel A. Lauretano, Sr.,**

*Selective Service System General Counsel & Federal Register Liaison Officer.*

[FR Doc. 2023-13374 Filed 6-22-23; 8:45 am]

**BILLING CODE 8015-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2023-0297; FRL-11046-01-R1]

#### Air Plan Approval; Rhode Island; Organic Solvent Cleaning Regulation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This SIP amendment consists of revisions to the Rhode Island Air Pollution Control Regulation No. 36, currently codified in Title 250 Department of Environmental Management, Chapter 120 Air Resources, Subchapter 05 Air Pollution Control, Part 36 Control of Emissions from Organic Solvent Cleaning (Part 36). The proposed SIP revisions include minor regulatory changes that were necessary to provide consistency with the federal regulations for National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning. This action is being taken under the Clean Air Act.

**DATES:** Written comments must be received on or before July 24, 2023.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2023-0297 at [https://](https://www.regulations.gov)

[www.regulations.gov](https://www.regulations.gov), or via email to [kosin.michele@epa.gov](mailto:kosin.michele@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

**FOR FURTHER INFORMATION CONTACT:** Michele Kosin, Physical Scientist, Air Quality Branch, Air & Radiation Division (Mail Code 5-MI), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109-3912; (617) 918-1175; [kosin.michele@epa.gov](mailto:kosin.michele@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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