



CHAIRMAN OF THE JOINT CHIEFS OF STAFF NOTICE

DOM/SJS
DISTRIBUTION: JEL

CJCS Notice 5780
24 October 2013

LITIGATION HOLD FOR RECORDS RELATED TO SEQUESTER FURLOUGH

References:

- a. Department of Defense Office of General Counsel Memorandum, 10 October 2013
- b. Federal Rules of Civil and Criminal Procedure, 01 December 2010

1. Purpose.

a. To provide guidance on the requirement to preserve and maintain records relating to potential claims or defenses pertaining to the administrative furlough of Department of Defense (DoD) civilian employees during the final quarter of Fiscal Year 2013 as a result of the 2011 Budget Control Act.

b. This does not pertain to and should not be confused with the Government shutdown that occurred in the first quarter of Fiscal Year 2014.

2. Cancellation. None.

3. Applicability. This notice is applicable to the Joint Staff.

4. Background. It is reasonably foreseeable that the DoD, Military Departments, Defense Agencies, and Field Activities will be named as parties in legal challenges to the administrative furlough of civilian employees arising from the sequester that took place over the summer of 2013.

5. Statutory Requirement.

a. Upon receipt of this Preservation Notice, applicable entities are advised of the legal obligation to preserve and retain any below referenced material in their possession, custody, or control. Destruction of documents, information,

records, and other material described, including destruction that would otherwise take place in the normal course of the disposition of official information or records, is prohibited and may result in disciplinary action.

b. The law requires DoD to preserve or produce the material in whatever form it is generated and maintained.

c. This preservation requirement applies to documents responsive to the stated requests, regardless of any applicable privileges.

d. Additional instructions will be provided if Joint Staff is requested to produce any records.

6. Action or Procedure.

a. Your directorate (including Defense Agencies and Field Activities over which you have cognizance) shall cause a search of your documents/Electronically Stored Information (ESI) for responsive documents and records. If any responsive documents or records (including e-mail) are located, take steps to ensure they are preserved.

b. Your search should be calculated to locate all records, documents, and material in your organization's possession, custody, or control, including any files, holdings, documents, reports, recordings, databases, or other information, whether classified or not, that mention or relate to the categories listed below and in the attachment. This includes documents created before and after the event; but not in relation to the recent government shutdown.

c. Document any search terms/procedures utilized in electronic and hard copy searches and steps taken within your organization to preserve relevant material in the event of future inquiry by the court and/or plaintiffs. Coordinate with your information technology personnel to ensure relevant material is not destroyed during the pendency of this litigation, including overriding normal document destruction policies.

d. Documents/ESI or other material that should be preserved would include information that concerns the following:

(1) The structure of the furlough process.

(2) Guidance for implementing the furlough including the basis for and exceptions to the furlough.

(3) Any order implementing the furlough.

(4) Any evidence and material supporting the furlough.

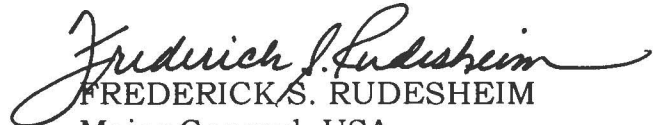
(5) Any documentation supporting or relating to a decision to modify the furlough length or exempt an employee or group of employees from the furlough.

e. Further guidance on the specific processes for the search, collection, and preservation and maintenance of this information is to follow. The Joint Staff point of contact is Ms. Teresa Black, Information Management Division, Joint Secretariat; 703-697-8862, teresa.l.black6.civ@mail.smil.mil.

6. Releasability. This directive is approved for public release; distribution is unlimited. DoD Components (including Combatant Commands), other Federal agencies, and the public may obtain copies of the directive through the Internet from the CJCS Directives Electronic Library at:
http://www.dtic.mil/cjcs_directives.

7. Effective Date. Upon receipt.

For the Chairman of the Joint Chiefs of Staff:


FREDERICK S. RUDESHEIM
Major General, USA
Vice Director, Joint Staff

