

In the United States Court of Federal Claims

AMENDED GENERAL ORDER

Procedures for the Filing, Service, and Management of Highly Sensitive Documents

In response to recent disclosures of wide-spread breaches of both private sector and government computer systems, federal courts are immediately adding new security procedures to protect highly sensitive documents filed with the courts. The court finds that pursuant to Rule 5(d)(3)(A) of the Rules of the United States Court of Federal Claims (RCFC), good cause exists to require all parties to file certain highly sensitive documents outside of the court's electronic filing system. Therefore, effective immediately and until further order of the court,

IT IS ORDERED THAT the filing of certain highly sensitive documents shall be subject to the procedures and requirements set forth below. This General Order supersedes any and all inconsistent provisions in the RCFC or other general orders of this court.

(1) Documents subject to this order:

- a. The following types of documents are deemed highly sensitive documents (HSDs): any document containing information that involves matters of national security, foreign sovereign interests, or cybersecurity; a document that contains government enforcement information; a document describing closely held trade secrets; or a document that implicates the reputational interests of the United States.
- b. The following types of documents generally are not considered HSDs: any document containing proprietary, source-selection, or similar confidential information; any document containing medical records or personal identifiers as defined in RCFC 5.2; and most sealed filings.

- c. Any dispute as to whether a document is an HSD shall be resolved by the presiding judge or, when no presiding judge is assigned, the chief judge.

(2) **Filing of authorized HSDs:** A party filing an HSD pursuant to a court order shall submit to the Clerk of Court's office the HSD, the certificate of service, and a copy of the court order authorizing the treatment of that document as an HSD. To the extent possible, the submission shall be in the form of an electronic copy on a secure electronic device (as described in paragraph (6) below); otherwise, the submission may be in the form of two paper copies.

- a. The secure electronic device (or paper copies) shall be submitted to the Clerk of Court's office in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT." The outside of the envelope shall be affixed with a copy of the HSD's caption page (with highly sensitive information redacted).
- b. The filing party shall serve the HSD on the other parties by any manner specified in RCFC 5(b)(2), except for service via the court's electronic filing system.
- c. The Clerk of Court's office will make an informational docket entry in the court's electronic filing system indicating that the HSD was filed with the court and will maintain the HSD in a secure filing system that is separate from the court's electronic filing system.
- d. Unless otherwise ordered by the court, within seven (7) days of filing the HSD, the filing party shall file a copy of the HSD in the court's electronic filing system, with the highly sensitive information redacted.

(3) **Filing of motions to treat a document as an HSD:** A party shall file a motion to treat a document as an HSD pursuant to the RCFC and Amended General Order No. 2 (reissued March 3, 2021), except that a copy of the proposed HSD shall not be filed electronically in the court's electronic filing system or submitted by e-mail to the pro se case filings e-mail box.

- a. The motion shall explain why the proposed document constitutes an HSD under the criteria set out in paragraph (1) above or why it should otherwise be subject to the heightened protection for HSDs.

- b. As soon as practicable after the motion is filed, the filing party shall submit to the Clerk of Court's office the HSD sought to be filed along with a certificate of service. To the extent possible, the submission shall be in the form of an electronic copy on a secure electronic device (as described in paragraph (6) below); otherwise, the submission may be in the form of two paper copies. The secure electronic device (or paper copies) shall be packaged as specified in paragraph (2) above.
- c. The filing party shall serve the proposed HSD on the other parties as specified in paragraph (2) above.
- d. The court will issue an order on the motion and, if granted, an informational entry will be made on the case docket indicating that the HSD has been filed with the court.
- e. The Clerk of Court's office will maintain the HSD in a secure filing system that is separate from the court's electronic filing system.
- f. Unless otherwise ordered by the court, within seven (7) days of filing the HSD, the filing party shall file a copy of the HSD in the court's electronic filing system, with the highly sensitive information redacted.

(4) **Service of highly sensitive court orders:** If the court determines that a court order contains information reflected in an HSD, the Clerk of Court's office will make an informational docket entry in the court's electronic filing system indicating that the order was filed, will maintain the order in a secure filing system that is separate from the court's electronic filing system, and will serve paper copies of the order on the parties via mail. Within seven (7) days, the presiding judge will file a copy of the order in the court's electronic filing system, with any information from the HSD redacted.

(5) **Removal of existing HSDs from the court's electronic filing system:**

- a. On motion of a party or on its own motion, the court may determine that a document, or any portion of it, that has been filed electronically is highly sensitive and direct that the HSD be removed from the court's electronic filing system and maintained by the Clerk of

Court's office in a secure filing system that is separate from the court's electronic filing system.

- b. A party's motion to remove an HSD from the court's electronic filing system shall explain why such document is highly sensitive under the criteria set out in paragraph (1) above or why it should otherwise be subject to the heightened protection for HSDs.
- c. If an order is issued directing that an HSD be removed from the court's electronic filing system, the Clerk of Court's office will make an informational entry on the case docket indicating that the HSD was removed from the docket and transferred to a secure filing system.
- d. Unless otherwise ordered by the court, within seven (7) days of the issuance of an order directing that an HSD be removed from the court's electronic filing system, the filing party shall re-file a copy of the HSD with the highly sensitive information redacted.

(6) **Secure Electronic Device.** An HSD must be filed using the following protections: (i) an encrypted electronic storage device that meets Federal Information Processing Standard (FIPS) 140-2; (ii) a personal identification number (PIN); and (iii) a mechanism that deletes the data in the HSD after more than ten (10) failed attempts to access it. The required access PIN must be communicated to Clerk of Court's office separately via other secure means such as an encrypted e-mail or secure paper mail. The party must contact the Clerk of Court's office in advance of filing an HSD.

(7) **Questions about HSD Filing Procedures.** Any questions about how an HSD should be filed with the court pursuant to this General Order should be directed to the Clerk of Court's office at (202) 357-6406.

IT IS SO ORDERED.

s/Elaine D. Kaplan
ELAINE D. KAPLAN
Chief Judge

March 9, 2021
Washington, D.C.