

## § 5.42

## 6 CFR Ch. I (1–1–23 Edition)

governs, *inter alia*, responses to discovery requests, depositions, and other pre-trial, trial, or post-trial proceedings, as well as responses to informal requests by attorneys or others in situations involving litigation. However, this subpart shall not apply to any claims against the Department by Department of Homeland Security employees (present or former), or applicants for Department employment, for which jurisdiction resides with the U.S. Equal Employment Opportunity Commission; the U.S. Merit Systems Protection Board; the Office of Special Counsel; the Federal Labor Relations Authority; the Foreign Service Labor Relations Board; the Foreign Service Grievance Board; or a labor arbitrator operating under a collective bargaining agreement between the Department and a labor organization representing Department employees; or their successor agencies or entities.

(e) For purposes of this subpart, official information means all information of any kind, however stored, that is in the custody and control of the Department, relates to information in the custody and control of the Department, or was acquired by Department employees, or former employees, as part of their official duties or because of their official status within the Department while such individuals were employed by or served on behalf of the Department.

(f) Nothing in this subpart affects disclosure of information under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, Executive Order 12958 on national security information (3 CFR, 1995 Comp., p. 333), the Government in the Sunshine Act, 5 U.S.C. 552b, the Department's implementing regulations or pursuant to congressional subpoena. Nothing in this subpart permits disclosure of information by the Department, its present and former employees, or the Secretary, that is protected or prohibited by statute or other applicable law.

(g) This subpart is intended only to inform the public about Department procedures concerning the service of process and responses to demands or requests and is not intended to and does not create, and may not be relied

upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the Department or the United States.

(h) Nothing in this subpart affects the rules and procedures, under applicable U.S. law and international conventions, governing diplomatic and consular immunity.

(i) Nothing in this subpart affects the disclosure of official information to other federal agencies or Department of Justice attorneys in connection with litigation conducted on behalf or in defense of the United States, its agencies, officers, and employees, or litigation in which the United States has an interest; or to federal, state, local, or foreign prosecuting and law enforcement authorities in conjunction with criminal law enforcement investigations, prosecutions, or other proceedings, e.g., extradition, deportation.

### § 5.42 Service of summonses and complaints.

(a) Only the Office of the General Counsel is authorized to receive and accept on behalf of the Department summonses or complaints sought to be served upon the Department, the Secretary, or Department employees. All such documents must be sent by registered or certified mail, to the appropriate address as indicated in appendix A to this subpart. The Office of the General Counsel may also in its discretion accept service of process in person or by registered or certified mail to other addresses, as announced on the DHS website as indicated in appendix A to this subpart. The authorization for receipt shall in no way affect the requirements of service elsewhere provided in applicable rules and regulations.

(b) In the event any summons or complaint described in § 5.41(a) is delivered to an employee of the Department other than in the manner specified in this part, the recipient thereof shall decline to accept the proffered service and may notify the person attempting to make service of the Departmental regulations set forth herein.

(c) Except as otherwise provided §§ 5.42(d) and 5.43(c), the Department is not an authorized agent for service of process with respect to civil litigation

against Department employees purely in their personal, non-official capacity. Copies of summonses or complaints directed to Department employees in connection with legal proceedings arising out of the performance of official duties may, however, be served upon the Office of the General Counsel.

(d) Although the Department is not an agent for the service of process upon its employees with respect to purely personal, non-official litigation, the Department recognizes that its employees should not use their official positions to evade their personal obligations and will, therefore, counsel and encourage Department employees to accept service of process in appropriate cases.

(e) Documents for which the Office of the General Counsel accepts service in official capacity only shall be stamped "Service Accepted in Official Capacity Only". Acceptance of service shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under applicable laws or rules.

[68 FR 4070, Jan. 27, 2003, as amended at 85 FR 22582, Apr. 23, 2020]

**§ 5.43 Service of subpoenas, court orders, and other demands or requests for official information or action.**

(a) Except in cases in which the Department is represented by legal counsel who have entered an appearance or otherwise given notice of their representation, only the Office of the General Counsel is authorized to receive and accept subpoenas (consistent with paragraph (g) of this section) or other demands or requests directed to the Secretary, the Department, or any component thereof, or its employees, whether civil or criminal in nature, for:

(1) Material, including documents, contained in the files of the Department;

(2) Information, including testimony, affidavits, declarations, admissions, responses to interrogatories, or informal statements, relating to material contained in the files of the Department or which any Department employee ac-

quired in the course and scope of the performance of his official duties;

(3) Garnishment or attachment of compensation of current or former employees; or

(4) The performance or non-performance of any official Department duty.

(b) In the event that any subpoena, demand, or request is sought to be delivered to a Department employee other than in the manner prescribed in paragraph (a) of this section, such employee shall, after consultation with the Office of the General Counsel, decline service and direct the server of process to the Departmental regulations. If the subpoena, demand, or other request is nonetheless delivered to the employee, the employee shall immediately forward a copy of that document to the Office of the General Counsel.

(c) Except as otherwise provided in this subpart, the Department is not an agent for service, or otherwise authorized to accept on behalf of its employees, any subpoenas, show-cause orders, or similar compulsory process of federal or state courts, or requests from private individuals or attorneys, which are not related to the employees' official duties except upon the express, written authorization of the individual Department employee to whom such demand or request is directed.

(d) Acceptance of such documents by the Office of the General Counsel does not constitute a waiver of any defenses that might otherwise exist with respect to service under the Federal Rules of Civil or Criminal Procedure or other applicable rules.

(e) Copies of any subpoenas, show cause orders, or similar compulsory process of federal or state courts, or requests from private individuals or attorneys, directed to former employees of the Department in connection with legal proceedings arising out of the performance of official duties shall also be served upon the Office of the General Counsel. The Department shall not, however, serve as an agent for service for the former employee, nor is the Department otherwise authorized to accept service on behalf of its former employees. If the demand involves their official duties, former employees who receive subpoenas, show