



DEPARTMENT OF STATE

22 CFR Part 172

[Public Notice: 10248]

RIN 1400-AE49

Service of Process; Production or Disclosure of Official Information in Response to Court Orders, Subpoenas, Notices of Depositions, Requests for Admissions, Interrogatories, or Similar Requests or Demands in Connection with Federal or State Litigation; Expert Testimony

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State corrects erroneous citations and typographical errors within part 172 by correcting or removing them.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Alice Kottmyer, Attorney-Adviser, 202-647-2318, kottmyeram@state.gov.

SUPPLEMENTARY INFORMATION:

Section 172 of Title 22, Code of Federal Regulations, describes procedures for the public to follow to request testimony or production of documents for litigation (so-called “*Touhy* requests”). See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

In this rulemaking, the Department is replacing the reference to Executive Order 12356 in the first sentence of §172.1(e) to instead reference Executive Order 13526 (75 FR 707), the most

recent executive order relating to classified national security information. Executive Order 12356 was revoked by Executive Order 12958, which in turn was revoked by Executive Order 13526.

The Department also corrects a typographical error in §172.2(c) so that the first sentence references §172.3(c) instead of § 173.3(c). Section 173.3(c) has no connection to service of process, whereas §172.3(c) relates directly to service of process.

The Department deletes the following sentence in §172.5(a): “Where documents or other materials are sought, the party should provide a description using the types of identifying information suggested in 22 CFR 171.10(a) and 171.31.” The two citations are not valid, and are likely artifacts from Part 172 as it existed in the past. The Department does not believe it is necessary to provide alternative citations. First, there are no analogs in the current regulation for the old §§171.10(a) or 171.31. Second, since the sentence immediately preceding the eliminated sentence calls upon requestors to be as specific as possible concerning the nature and relevance of the official information sought, the Department believes that the eliminated sentence is unnecessary.

In §172.5(c), the Department replaces the reference to “§172.2” to refer instead to §172.4, which is the proper section about the Department officials designated to render such decisions.

The Department changes “Respectively” to “Respectfully” in §172.6(a)(4), so that the sentence makes more sense and also conforms with the wording of §172.6(b), which uses “respectfully” in a similar manner.

Finally, the Department corrects an office symbol in §172.2.

Regulatory Analyses

The Department of State is publishing this rulemaking as a final rule, pursuant to 5 U.S.C. 553(b). This rulemaking is a rule of agency organization, procedure, or practice. The effective date of the rule is 30 days after publication, as provided in the Administrative Procedure Act.

The Department further finds that this is not a major rule; is not subject to the Unfunded Mandates Reform Act of 1995; will not have tribal implications as defined by Executive Order 13175; and will not have an impact on a substantial number of small entities under the Regulatory Flexibility Act. This rule is not an economically significant rule under Executive Order 12866, and the Department certifies that the benefits of this rulemaking outweigh any costs, which are minimal for the public. The Office of Information and Regulatory Affairs has designated this rule as “non-significant” as defined by Executive Order 12866. This rule is not an EO 13771 regulatory action because this rule is not significant under EO 12866.

The Department of State has reviewed this rule in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden. This rule will not have substantial direct effect on the states, on the relationships between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The rulemaking does not impose any new information collections subject to the Paperwork Reduction Act.

List of Subjects in 22 CFR Part 172

Administrative practice and procedure, Courts, Government employees.

For the reasons set forth in the preamble, 22 CFR part 172 is amended as follows:

PART 172 – SERVICE OF PROCESS; PRODUCTION OR DISCLOSURE OF OFFICIAL INFORMATION IN RESPONSE TO COURT ORDERS, SUBPOENAS,

**NOTICES OF DEPOSITIONS, REQUESTS FOR ADMISSIONS, INTERROGATORIES,
OR SIMILAR REQUESTS OR DEMANDS IN CONNECTION WITH FEDERAL OR
STATE LITIGATION; EXPERT TESTIMONY**

1. The authority citation for part 172 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1202(f); 22 U.S.C. 2651a, 2664, 3926.

§172.1 [Amended]

2. In §172.1(e), remove the phrase “Executive Order 12356 on national security information (3 CFR, 1982 Comp., p. 166)”, and add in its place, “Executive Order 13526 (3 CFR, 2009 Comp., p. 298)”.

§172.2 [Amended]

3. In §172.2:

a. Remove the phrase “L/EX” and add in its place “L/H-EX”, wherever it occurs.

b. In the first sentence of paragraph (c), remove the citation “and 173.3(c)” and add in its place “and 172.3(c)”.

§172.5 [Amended]

4. In §172.5:

a. Remove the second sentence of paragraph (a).

b. In paragraph (c), remove the citation “§172.2” and add in its place “§172.4”.

§172.6 [Amended]

5. In §172.6(a)(4), remove “Respectively” and add in its place “Respectfully”.

Dated: April 9, 2018.

Alicia Frechette,
Executive Director,
Office of the Legal Adviser and
Bureau of Legislative Affairs.

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