



DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 5

Disclosure of Information in Litigation

AGENCY: Office of the General Counsel, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is revising procedural requirements in regulations related to service of process of summonses, complaints, and subpoenas.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For information about this document, contact Leo (Chip) Boucher, Assistant General Counsel for Administrative Law, (202) 282-9822.

SUPPLEMENTARY INFORMATION:

I. Discussion of the Rule

The Department of Homeland Security (“DHS”) is revising its regulations at 6 CFR part 5, subpart C, Disclosure of Information in Litigation. DHS is making two changes.

First, historically, under these regulations, DHS’s Office of the General Counsel has accepted service of process of summonses and complaints in person or by mail, at “Office of the General Counsel, United States Department of Homeland Security, Washington, DC, 20528.” *See* 6 CFR 5.42(a). The mailing address in the applicable

regulations is unclear and does not include information about service of process with respect to DHS's operational components. In addition, currently, appropriate employees of the Office of the General Counsel are not consistently available to accept in-person service at the relevant address, due to DHS's response to the current national emergency relating to the Coronavirus Disease 2019 (COVID-19) pandemic.

To address these issues, and consistent with rule 4(i)(2) of the Federal Rules of Civil Procedure, DHS is revising its procedures to provide for service of process of summonses and complaints by registered or certified mail to a specific address identified in the regulations. *See* revised 6 CFR 5.42(a); *see also* new appendix A to subpart C of 6 CFR part 5. The rule provides that DHS may also in its discretion accept service of process in person or by other means, as announced on the DHS website. *See* revised 6 CFR 5.42(a). The Office of the General Counsel currently does not accept service of process in person or by such other means. *See* DHS, *Office of the General Counsel, Contact*, <https://www.dhs.gov/office-general-counsel> (last visited Apr. 13, 2020).

Second, this rule also revises applicable procedures to clarify the appropriate address for service of subpoenas. *See* revised 6 CFR 5.43(a); new 6 CFR 5.43(g); *see also* new appendix A to subpart C of 6 CFR part 5. Like the changes described in the preceding paragraph, this rule provides DHS may in its discretion specify alternative means of service of subpoenas on the DHS website. *See* revised 6 CFR 5.43(a); new 6 CFR 5.43(g). Otherwise, the personal service requirement of rule 45(b) of the Federal Rules of Civil Procedure will continue to apply. This change supports DHS's response to the current national emergency; the Office of the General Counsel, for instance, is

currently waiving personal service and accepting subpoenas by email, as announced on <https://www.dhs.gov/office-general-counsel>.

The aforementioned provisions are intended to be severable from the others, such that if any one provision is stayed, enjoined, or vacated by a court of competent jurisdiction, the others will remain in effect.

II. Regulatory History

DHS did not publish a notice of proposed rulemaking for this rule. Under 5 U.S.C. 553(b)(A), this rule is exempt from notice and public comment rulemaking requirements because the change involves rules of agency organization, procedure, or practice. In addition, under 5 U.S.C. 553(b)(B), an agency may waive the notice and comment requirements if it finds, for good cause, that notice and comment is impracticable, unnecessary, or contrary to the public interest. DHS finds that notice and comment is unnecessary under 5 U.S.C. 553(b)(B) because the changes herein are procedural in nature and will have no substantive effect on the public. In addition, to whatever extent existing regulations at 6 CFR 5.42 and 5.43 could be said to require DHS to accept in-person service of process during the current national emergency, DHS has good cause to remove any such requirement to avoid the unnecessary spread of COVID-19. For the same reasons, DHS finds that the delayed effective date provision of 5 U.S.C. 553 does not apply because this rule is not “substantive,” and that even if the provision did apply, good cause exists under 5 U.S.C. 553(d)(3) for making this final rule effective immediately upon publication.

III. Regulatory Analyses

DHS considered numerous statutes and Executive orders related to rulemaking

when developing this rule. Below are summarized analyses based on these statutes and Executive orders.

A. *Regulatory Planning and Review*

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the 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, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* the OMB Memorandum titled “Guidance Implementing Executive Order 13771, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017). This rule involves non-substantive procedural changes; it will not impose any additional costs on the public. The benefit of the non-substantive change that updates internal agency procedures is increased clarity

and accuracy of regulations for the public.

B. Small Entities

This rule is not preceded by a notice of proposed rulemaking. Therefore, it is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Regulatory Flexibility Act does not apply when notice and comment rulemaking is not required.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

D. Environment

DHS reviews proposed actions to determine whether the National Environmental Policy Act (NEPA) applies to them and if so what degree of analysis is required. DHS Directive 023-01 Rev. 01 (Directive) and Instruction Manual 023-01-001-01 Rev. 01 (Instruction Manual) establish the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

The CEQ regulations allow federal agencies to establish, with CEQ review and concurrence, categories of actions (“categorical exclusions”) which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1507.3(b)(2)(ii), 1508.4. For an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is

not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Instruction Manual section V.B(2)(a)-(c).

This rule is a technical amendment that updates internal agency procedures. Specifically, the amendment updates the address and procedures for service of summonses and complaints, and for service of subpoenas, court orders, and other demands or requests for official information from the Department. Therefore, it clearly fits within categorical exclusion A3(a) “Promulgation of rules . . . of a strictly administrative or procedural nature.” Instruction Manual, Appendix A, Table 1. Furthermore, the rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental impacts. Therefore, the amendment is categorically excluded from further NEPA review.

E. Signature

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the *Federal Register*.

List of Subjects in 6 CFR Part 5

Classified information, Courts, Freedom of information, Government employees, Privacy.

For the reason stated in the preamble, DHS amends 6 CFR part 5 as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.*; Pub. L. 107-296, 116 Stat. 2135; 5 U.S.C. 301.

Subpart A also issued under 5 U.S.C. 552

Subpart B also issued under 5 U.S.C. 552a.

2. In § 5.42, revise the paragraph (a) to read as follows:

§ 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.

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3. In § 5.43, revise paragraph (a) introductory text and add paragraph (g) to read as follows:

§ 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:

* * * * *

(g) Subpoenas must be delivered by personal service at the appropriate address as indicated in appendix A to this subpart, consistent with the Federal Rules of Civil Procedure, unless DHS has specified alternative means of service, in its discretion, on the DHS website as indicated in appendix A to this subpart. This paragraph (g) does not apply to other demands or requests for information under paragraph (a) of this section.

4. Add appendix A to subpart C to read as follows:

Appendix A to Subpart C of Part 5—Service of Process of Summonses, Complaints, and Subpoenas

1. Office of the General Counsel - Headquarters

(a) *In general.* Pursuant to § 5.42, the Office of the General Counsel Headquarters may accept service of process on behalf of the Department, including each of its components, regardless of whether such components are otherwise listed in this appendix.

(b) *Service of Process of Summonses and Complaints.* Pursuant to § 5.42, unless an alternative means of service is specified at <https://www.dhs.gov/office-general-counsel>, mail summonses and complaints against the Department or its personnel in their official capacity by registered or certified mail to Office of the General Counsel, U.S. Department of Homeland Security, 2707 Martin Luther King Jr. Ave SE, Washington, DC 20528-0485. To aid in prompt handling of any summons and complaint, parties are encouraged to also email a copy to OGC@hq.dhs.gov.

(c) *Service of Process for Subpoenas.* Pursuant to § 5.43, unless an alternative means of service is specified at <https://www.dhs.gov/office-general-counsel>, deliver service of process to the following address: Office of the General Counsel, U.S. Department of Homeland Security, 2707 Martin Luther King Jr. Ave SE, Gate 1, Washington, DC 20016.

2. U.S. Customs & Border Protection (CBP)

(a) *Service of Process of Summonses and Complaints.* Pursuant to § 5.42, unless an alternative means of service is specified at <https://www.cbp.gov/service-of-process>,

mail summonses and complaints against CBP or its personnel in their official capacity by registered or certified mail to the following address: Office of Chief Counsel, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, Suite 4.4-B, Washington, D.C. 20229. To aid in prompt handling of any summons and complaint, parties are encouraged to also email a copy to CBP-Service-Intake@cbp.dhs.gov.

(b) ***Service of Process for Subpoenas.*** Pursuant to § 5.43, unless an alternative means of service is specified at <https://www.cbp.gov/service-of-process>, deliver service of process to the following address: Office of Chief Counsel, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, Suite 4.4-B, Washington, D.C. 20229. To aid in prompt handling of any subpoena, parties are encouraged to also email a copy to CBP-Service-Intake@cbp.dhs.gov.

(c) ***Field Counsel.*** CBP field counsel may also accept service of process at their normal duty station, in their discretion.

3. Cybersecurity and Infrastructure Security Agency (CISA)

(a) ***Service of Process of Summonses and Complaints.*** Pursuant to § 5.42, unless an alternative means of service is specified at <https://www.cisa.gov/contact-us>, mail summonses and complaints against CISA or its personnel in their official capacity by registered or certified mail to the following address: Office of the Chief Counsel, Cybersecurity and Infrastructure Security Agency, 1616 Fort Myer Drive, Arlington, VA 22209. To aid in prompt handling, parties are encouraged to also email a copy to CISA.OCC@cisa.dhs.gov.

(b) ***Service of Process for Subpoenas.*** Pursuant to § 5.43, unless an alternative means of service is specified at <https://www.cisa.gov/contact-us>, deliver service of process to the following address: Office of the Chief Counsel, Cybersecurity and Infrastructure Security Agency, 1616 Fort Myer Drive, Arlington, VA 22209. To aid in prompt handling, parties are encouraged to also email a copy to CISA.OCC@cisa.dhs.gov.

4. Federal Emergency Management Agency (FEMA)

(a) ***Service of Process of Summonses and Complaints.*** Pursuant to § 5.42, mail summonses and complaints against FEMA or its personnel in their official capacity by registered or certified mail to the following address: Office of the Chief Counsel, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472. To aid in prompt handling of any summons and complaint, parties are encouraged to also email a copy to FEMA-ActionOffice-OCC@fema.dhs.gov.

(b) ***Service of Process for Subpoenas.*** Pursuant to § 5.43, deliver service of process to the address indicated at 44 CFR 5.83. To aid in prompt handling of any summons and

complaint, parties are encouraged to also email a copy to FEMA-ActionOffice-OCC@fema.dhs.gov.

5. Federal Law Enforcement Training Centers (FLETCs)

(a) *Service of Process of Summonses and Complaints.* Pursuant to § 5.42, unless an alternative means of service is specified at <https://www.fletc.gov/about/contact-us>, mail summonses and complaints against FLETC or its personnel in their official capacity by registered or certified mail to the following address: Office of Chief Counsel, Federal Law Enforcement Training Centers, 1131 Chapel Crossing Rd., Bldg. 93, Glynco, GA 31524.

(b) *Service of Process for Subpoenas.* Pursuant to § 5.43, unless an alternative means of service is specified at <https://www.fletc.gov/about/contact-us>, deliver service of process to the following address: Office of Chief Counsel, Federal Law Enforcement Training Centers, 1131 Chapel Crossing Rd., Bldg. 93, Glynco, GA 31524.

6. United States Immigration & Customs Enforcement (ICE)

(a) *Service of Process of Summonses and Complaints.* Pursuant to § 5.42, mail summonses and complaints against ICE or its personnel in their official capacity by registered or certified mail to the following address: U.S. Immigration and Customs Enforcement, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, DC 20536-5900. To aid in prompt handling, parties are encouraged to email a courtesy copy of a summons or complaint properly served in accordance with local rules and this guidance to OPLAServiceIntake@ice.dhs.gov.

(b) *Service of Process for Subpoenas.* Pursuant to § 5.43, deliver service of process to the following address: U.S. Immigration and Customs Enforcement, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, DC 20536-5900. To aid in prompt handling, parties are encouraged to email a courtesy copy to OPLAServiceIntake@ice.dhs.gov.

7. Office of Inspector General (OIG)

(a) *Service of Process of Summonses and Complaints.* Pursuant to § 5.42, unless an alternative means of service is specified at <https://www.oig.dhs.gov/about/contact>, mail summonses and complaints against OIG or its personnel in their official capacity by registered or certified mail to the following address: Office of Inspector General, 245 Murray Lane SW, Stop 0305, Washington DC 20528.

(b) *Service of Process for Subpoenas.* Pursuant to § 5.43, unless an alternative means of service is specified at <https://www.oig.dhs.gov/about/contact>, deliver service of process to the following address: Office of Inspector General, 245 Murray Lane SW, Stop 0305, Washington DC 20528.

8. Transportation Security Administration (TSA)

(a) ***Service of Process of Summonses and Complaints.*** Pursuant to § 5.42, unless an alternative means of service is specified at <https://www.TSA.gov/contacts>, mail summonses and complaints against TSA or its personnel in their official capacity by registered or certified mail to the following address: TSA- Office of Chief Counsel (TSA-2), 601 S. 12th Street, Arlington, VA 20598-6002. To aid in prompt handling of any summons and complaint, parties are encouraged to also email a copy to OCCCommunications@tsa.dhs.gov.

(b) ***Service of Process for Subpoenas.*** Pursuant to § 5.43, unless an alternative means of service is specified at <https://www.TSA.gov/contacts>, deliver service of process to the following address: TSA- Office of Chief Counsel (TSA-2), 601 S. 12th Street, Arlington, VA 20598-6002. Subpoenas or other judicial process directed to TSA or its officers/ employees in an official capacity (not addressed in paragraph (a) of item 7 of this appendix) may also be sent by email to OCCCommunications@tsa.dhs.gov.

(c) ***Field counsel.*** TSA field counsel may also accept service of process at their normal duty station, in their discretion.

9. U.S. Citizenship & Immigration Services (USCIS)

(a) ***Service of Process of Summonses and Complaints.*** Pursuant to § 5.42, unless an alternative means of service is specified at <https://www.uscis.gov/about-us/contact-us>, mail summonses and complaints against USCIS or its personnel in their official capacity by registered or certified mail to the following address: USCIS, Office of the Chief Counsel, 20 Massachusetts Ave. NW, Room 4210, Washington, DC 20529. To aid in prompt handling of any summons and complaint, parties are encouraged to also email a copy to uscis.serviceofprocess@uscis.dhs.gov.

(b) ***Service of Process for Subpoenas.*** Pursuant to § 5.43, unless an alternative means of service is specified at <https://www.uscis.gov/about-us/contact-us>, deliver service of process to the following address: USCIS, Office of the Chief Counsel, 20 Massachusetts Ave. NW, Room 4210, Washington, DC 20529. To aid in prompt handling of subpoenas, parties are encouraged to also email a copy to uscis.serviceofprocess@uscis.dhs.gov.

10. U.S. Coast Guard (USCG)

(a) ***Service of Process of Summonses and Complaints.*** Pursuant to § 5.42, unless an alternative means of service is specified at <https://www.uscg.mil/Resources/Legal/>, mail summonses and complaints against USCG or its personnel in their official capacity by registered or certified mail to the following address: Commandant CG-LCL, US Coast Guard HQ, 2703 Martin Luther King Jr. Ave. SE Stop 7213, Washington DC 20593-7213.

(b) *Service of Process for Subpoenas.* Pursuant to § 5.43, unless an alternative means of service is specified at <https://www.uscg.mil/Resources/Legal/>, deliver service of process to the following address: Commandant CG-LCL, US Coast Guard HQ Visitor Center, Gate 4, 1790 Ash St. SE Washington, DC 20032.

11. United States Secret Service (USSS)

(a) *Service of Process of Summonses and Complaints.* Pursuant to § 5.42, unless an alternative means of service is specified at <https://www.secretservice.gov/contact/>, mail summonses and complaints against USSS or its personnel in their official capacity by registered or certified mail to the following address: Communications Center, 245 Murray Lane SW, Building T5, Washington DC 20223, Attn: Office of Chief Counsel.

(b) *Service of Process for Subpoenas.* Pursuant to § 5.43, unless an alternative means of service is specified at <https://www.secretservice.gov/contact/>, deliver service of process to the following address: Communications Center, 245 Murray Lane SW, Building T5, Washington DC 20223, Attn: Office of Chief Counsel.

Chad R. Mizelle,
Senior Official Performing the Duties of the General Counsel, Department of Homeland Security

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