

§ 172.3

22 CFR Ch. I (4–1–04 Edition)

(e) Documents for which L/EX 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 the laws of rules applicable for the service of process.

§ 172.3 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 L/EX is authorized to receive and accept subpoenas, or other demands or requests directed to the Department, or any component thereof, or its employees, or former employees, whether civil or criminal 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 acquired 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 (including former employees) other than in the manner prescribed in paragraph (a) of this section, such attempted service shall be ineffective. Such employee shall, after consultation with the Office of the Legal Adviser, decline to accept the subpoena, demand or request or shall return them to the server under cover of a written communication referring to the procedures prescribed in this part.

(c) Except as otherwise provided in this part, the Department is not an agent for service, or otherwise author-

ized 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 L/EX 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.

§ 172.4 Testimony and production of documents prohibited unless approved by appropriate Department officials.

(a) No employee of the Department shall, in response to a demand or request in connection with any litigation, whether criminal or civil, provide oral or written testimony by deposition, declaration, affidavit, or otherwise concerning any information acquired while such person is or was an employee of the Department as part of the performance of that person’s official duties or by virtue of that persons’s official status, unless authorized to do so by the Director General of the Foreign Service and Director of Personnel (M/DGP) or the Legal Adviser (L), or delegates of either, following consultation between the two bureaus, or as authorized in § 172.4(b).

(b) With respect to the official functions of the Passport Office, the Visa Office, and the Office of Citizens Services, the Assistant Secretary of State for Consular Affairs or delegate thereof may, subject to concurrence by the Office of the Legal Adviser, authorize employees to provide oral or written testimony.

(c) No employee shall, in response to a demand or request in connection with any litigation, produce for use at such proceedings any document or any material acquired as part of the performance of that employee’s duties or by virtue of that employee’s official status, unless authorized to do so by the Director General of the Foreign Service and Director of Personnel, the