

Shelbyville, IN, Shelbyville Muni, VOR or GPS RWY 18, Amdt 9
 Shenandoah, IA, Shenandoah Muni, VOR/DME OR GPS RWY 12, Amdt 3
 Rochester, NH, Sykhaven, GPS RWY 33, Orig
 Hickory, NC, Hickory Regional, VOR/DME or GPS RWY 6, Orig, Cancelled
 Maxton, NC, Laurinburg-Maxton, VOR/DME-A, Orig-A, Cancelled
 Sanford, NC, Sanford-Lee County Brick Field, VOR/DME-A, Orig-A, Cancelled
 Wilmington, NC, New Hanover County, VOR or TACAN-A, Amdt 2A, Cancelled
 Wilmington, NC, New Hanover County, RNAV RWY 24, Amdt 4A, Cancelled
 Harrison, OH, Cincinnati West, VOR or GPS RWY 18, Amdt 2
 Marysville, OH, Union County, NDB or GPS RWY 27, Amdt 5
 Ardmore, OK, Ardmore Muni, ILS RWY 30, Amdt 3
 Chambersburg, PA, Chambersburg Muni, VOR/DME-A, Amdt 2, Cancelled
 Friday Harbor, WA, Friday Harbor, NDB RWY 34, Orig.

* * * Effective March 2, 1995

Holland, MI, Tulip City, ILS/DME RWY 26, Orig
 Amarillo, TX, Amarillo Intl, GPS RWY 22, Orig

* * * Effective 2 February 1995

Jacksonville, FL, Jacksonville Intl, ILS RWY 7, Amdt 12

* * * Effective Upon Publication

Teterboro, NJ, Teterboro, VOR/DME RWY 24, Amdt 8
 Santa Fe, NM, Santa Fe County Muni, VOR OR GPS RWY 33, Amdt 8
 Castroville, TX, Castroville Muni, NDB OR GPS RWY 33, Amdt 2
 Bluefield, WV, Mercer County, VOR/DME or GPS RWY 23, Amdt 4

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DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 15a

[Docket No. 950126028-5028-01]

RIN 0690-AA22

Testimony by Employees and the Production of Documents in Legal Proceedings

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is revising its regulations which prescribes policies and procedures to be followed with respect to the testimony of Department employees regarding official matters, and the production of Department documents in legal proceedings. These regulations will

serve as a statement of policy and the amendments expand the scope of the existing regulations and provide for more comprehensive standards and guidelines for Department components, employees, former employees, other federal agencies, and the public in general regarding the appropriate procedures concerning testimony and the production of documents.

EFFECTIVE DATE: March 20, 1995.

FOR FURTHER INFORMATION CONTACT: M. Timothy Conner or Donald J. Reed, (202) 482-1067.

SUPPLEMENTARY INFORMATION: Section 301 of Title 5, United States Code, provides that the head of an Executive department may prescribe regulations for the custody, use and preservation of its records. The Supreme Court has upheld the ability of Federal agencies to establish procedures in section 301 regulations governing the production of records and testimony in legal proceedings in which the United States is not a party. *United States ex rel. Touhy v. Ragen*, 340 U. S. 462 (1951).

These rules establish Department of Commerce (DOC) policies and procedures applicable to the production of DOC documents and/or testimony by DOC employees in legal proceedings. Basically, the legal proceedings addressed in the rules are any administrative or judicial activities traditionally conducted within the executive or judicial branches of Federal, state, local or foreign governmental entities in which the United States: (i) Is not a party; (ii) is not represented; (iii) does not have a direct and substantial interest; and (iv) is not providing representation to an individual or entity that is a party.

Similarly, the rules will not cover activities that are not legal proceedings such as Congressional request for records or testimony, or requests for records under the Freedom of Information Act, 5 U.S.C. 552. In addition, the rules will not infringe upon or displace responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States.

Finally, the rules will not remove the need to comply with any applicable confidentiality provisions such as the Privacy Act, The Freedom of Information Act or the Trade Secrets Act. In fact, if the requirements of confidentiality statutes or regulations are not met, records or testimony cannot be provided even where the requirements of these regulations are satisfied.

A notice of proposed rule making was published on September 9, 1994, (59 FR

46598). One comment was received regarding the standing of the individual or business entity, from whom the information was obtained, to contest its production or release. This comment did not require a modification in the final rule. The Department of Commerce's *Touhy* regulations cannot, in and of themselves, provide standing to third parties. *Touhy* regulations only provide a procedure whereby the agency can determine whether any evidentiary privileges or statutory requirements of privacy or confidentiality apply, or if there is any other legal basis for withholding information.

This rule has been determined to be "not significant" for purposes of Executive Order 12866.

The Assistant General Counsel for Legislation and Regulation certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. This is because the rule is established to facilitate the Department's safeguarding, control and preservation of its records, information, papers and property. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 15 CFR Part 15a

Administrative practice and procedure, Courts, Government employees.

For the reasons set out in the preamble Part 15a is revised to read as follows:

PART 15a—TESTIMONY BY EMPLOYEES AND THE PRODUCTION OF DOCUMENTS IN LEGAL PROCEEDINGS

Sec.

- 15a.1 Scope.
- 15a.2 Definitions.
- 15a.3 Demands for testimony or production of documents: Department Policy.
- 15a.4 Demand for testimony or production of documents: Department procedures.
- 15a.5 Procedures when a Department employee receives a subpoena.
- 15a.6 Legal Proceedings between private litigants: Expert and/or opinion testimony.
- 15a.7 Demands or requests in legal proceedings for records protected by confidentiality statutes.
- 15a.8 Testimony of Department employees in proceedings involving the United States.

Authority: 5 U. S. C. 301; 15 U. S. C. 1501, 1512, 1513, 1515 and 1518; Reorganization Plan No. 5 of 1950; 3 CFR, 1949-1953 Comp., p. 1004; 44 U.S.C. 3101.