

FROM	TO	MEA	FROM	TO	MEA
§95.6233 VOR FEDERAL AIRWAY 233 IS AMENDED TO READ IN PART			§95.6419 VOR FEDERAL AIRWAY 419 IS AMENDED TO READ IN PART		

CAPITAL, IL VORTAC	EWITT, IL FIX	2600
EWITT, IL FIX	ROBERTS, IL VORTAC	2600

WESTMINSTER, MD VOR/ DME	MODENA, PA VORTAC	*3000
*2400 - MOCA		

§95.6239 VOR FEDERAL AIRWAY 239
IS AMENDED TO READ IN PART

§95.6429 VOR FEDERAL AIRWAY 429
IS AMENDED TO DELETE

FORNEY, MO VOR	BNTON, MO FIX	2900
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JOLIET, IL VORTAC	VAINS, IL FIX	2500
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§95.6267 VOR FEDERAL AIRWAY 267
IS AMENDED TO READ IN PART

§95.6437 VOR FEDERAL AIRWAY 437
IS AMENDED BY ADDING

BISCAYNE BAY, FL VORTAC	DOUGS, FL FIX	*5000
*2000 - MOCA		

BISCAYNE BAY, FL VORTAC	DOUGS, FL FIX	*5000
*2000 - MOCA		
DOUGS, FL FIX	PAHOKEE, FL VORTAC	1500

§95.6379 VOR FEDERAL AIRWAY 379
IS AMENDED TO READ IN PART

IS AMENDED TO READ IN PART

NOTTINGHAM, MD VORTAC	JETTA, MD FIX	1900
JETTA, MD FIX	GRACO, MD FIX	3000
GRACO, MD FIX	KENTON, DE VORTAC	1800

PAHOKEE, FL VORTAC	MELBOURNE, FL VOR/ DME	3000
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§95.6505 VOR FEDERAL AIRWAY 505
IS AMENDED TO READ IN PART

ALMAY, MN FIX	PRAGS, MN FIX	*4600
*2500 - MOCA		

FROM

TO

MEA

MAA

§95.7042 JET ROUTE NO. 42

IS AMENDED TO READ IN PART

ROBBINSVILLE, NJ VORTAC
LAURN, NY FIX
LA GUARDIA, NY VOR/DME
MARIO, NY FIX

LAURN, NY FIX
LA GUARDIA, NY VOR/DME
MARIO, NY FIX
HARTFORD, CT VORTAC

18000	45000
18000	30000
18000	33000
18000	45000

[FR Doc. 88-24426 Filed 10-20-88; 8:45 am]

BILLING CODE 4910-13-C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1203

Information Security Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1203 by revising § 1203.202 (f) and (g) to reflect the current organizational position titles. Word changes are made to § 1203.604(c)(2)(ii) for clarity.

EFFECTIVE DATE: October 21, 1988.

ADDRESS: Director, NASA Security Office, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Erwin V. Minter, 202-453-2953.

SUPPLEMENTARY INFORMATION: Since this action is internal and administrative in nature and does not affect the existing regulations, notice and public comments are not required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1203

Classified information, Foreign relations.

For reasons set out in the Preamble, 14 CFR Part 1203 is amended as follows:

PART 1203—INFORMATION SECURITY PROGRAM

1. The authority citation for Part 1203 continues to read as follows:

Authority: 42 U.S.C. 2451 et seq. and E.O. 12356.

2. Section 1203.202 is amended by revising paragraphs (f) and (g) to read as follows:

§ 1203.202 Responsibilities

(f) The Senior Security Specialist, NASA Security Office, NASA Headquarters, who serves as a member and Executive Secretary of the NASA Information Security Program Committee, is responsible for the NASA-wide coordination of security classification matters.

(g) The Chief, Information and Physical Security Branch, NASA Security Office, is responsible for establishing procedures for the safeguarding of classified information of material (e.g., accountability, control, access, storage, transmission, and marking) and for ensuring that such procedures are systematically reviewed; and those which are duplicative or unnecessary are eliminated.

3. Section 1203.604 is amended by revising paragraph (c)(2)(ii) to read as follows:

§ 1203.604 Mandatory review for declassification.

(c) * * *

(2) * * *

(ii) The office designated to receive requests for records specifically citing the Freedom of Information Act pursuant to Part 1206 of this chapter.

October 14, 1988.

James C. Fletcher,
Administrator.

[FR Doc. 88-24388 Filed 10-20-88; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Parts 15 and 15a

[Docket No. 81013-8213]

Service of Process and Testimony of Employees of the Department of Commerce and Production of Documents in Legal Proceedings

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is amending 15 CFR Parts 15 and 15a which prescribe policies and procedures to be followed with respect to service of process on the Department and its employees, the testimony of Department employees regarding official matters, and the production of official documents in legal proceedings. These regulations serve as a statement of policy and the amendments broaden the scope of the existing regulations and provide for more comprehensive guidelines for Department components and employees, outside agencies and other persons regarding the appropriate procedures for service of process, testimony and the production of documents.

EFFECTIVE DATE: October 21, 1988.

FOR FURTHER INFORMATION CONTACT: M. Timothy Conner, (202) 377-1067.

SUPPLEMENTARY INFORMATION: Because this rule concerns agency management and personnel, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final regulatory impact analysis has to be or will be prepared.

This rule, relating to agency management and personnel, is exempt from all requirements of section 553 of the Administrative Procedures Act (5 U.S.C. 553) including a delayed effective date and therefore will be effective immediately upon publication in the Federal Register.

Because a notice of proposed rulemaking and an opportunity for public comments are not required to be given for this rule by section 553 of the APA, or by any other law, no regulatory flexibility analysis has to be or will be prepared for purposes of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)).

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

This rule does not contain collections of information for purposes of the Paperwork Reduction Act.

List of Subjects in 15 CFR Parts 15 and 15a

Administrative practice and procedure, Courts, Government employees.

For the reasons set forth in the preamble, 15 CFR Subtitle A is amended as follows:

1. Part 15 is revised to read as follows:

PART 15—SERVICE OF PROCESS

Sec.

15.1 Scope and purpose.

15.2 Definitions.

15.3 Acceptance of service of process.

Authority: 5 U.S.C. 301; 15 U.S.C. 1501, 1512, 1513, 1515, and 1518; Reorganization Plan No. 5 of 1950; 44 U.S.C. 3101.

§ 15.1 Scope and purpose.

(a) This part sets forth the procedures to be followed when a summons or complaint is served on the Department, a component, or the Secretary or a Department employee in his or her official capacity.

(b) This part is intended to ensure the orderly execution of the affairs of the

Department and not to impede any legal proceeding.

(c) This part does not apply to subpoenas. The procedures to be followed with respect to subpoenas are set out in Part 15a.

(d) This part does not apply to service of process made on a Department employee personally on matters not related to official business of the Department or to the official responsibilities of the Department employee.

§ 15.2 Definitions.

For the purpose of this part:

(a) "General Counsel" means the General Counsel of the United States Department of Commerce or other Department employee to whom the General Counsel has delegated authority to act under this part, or the chief legal officer (or designee) of the Department of Commerce component concerned.

(b) "Component" means Office of the Secretary or an operating unit of the Department as defined in Department Organization Order 1-1.

(c) "Department" means the Department of Commerce.

(d) "Department employee" means any officer or employee of the Department, including commissioned officers of the National Oceanic and Atmospheric Administration.

(e) "Legal proceeding" means a proceeding before a tribunal constituted by law, including a court, an administrative body or commission, or an administrative law judge or hearing officer.

(f) "Official business" means the authorized business of the Department.

(g) "Secretary" means Secretary of Commerce.

§ 15.3 Acceptance of service of process.

(a) Except as otherwise provided in this part, any summons or complaint to be served in person or by registered or certified mail or as otherwise authorized by law on the Department, a component or the Secretary or a Department employee in their official capacity, shall be served on the General Counsel of the United States Department of Commerce, Washington, DC 20230.

(b) Any summons or complaint to be served in person or by registered or certified mail or as otherwise authorized by law on the Patent and Trademark Office or the Commissioner of Patents and Trademarks or an employee of the Patent and Trademark Office in his or her official capacity, shall be served on the Solicitor for the Patent and Trademark Office or a Department employee designated by the Solicitor.

(c) Except as otherwise provided in

this part, any component or Department employee served with a summons or complaint shall immediately notify and deliver the summons or complaint to the office of the General Counsel. Any employee of the Patent and Trademark Office served with a summons or complaint shall immediately notify and deliver the summons or complaint to the office of the Solicitor.

(d) Any Department employee receiving a summons or complaint shall note on the summons or complaint the date, hour, and place of service and whether service was by personal delivery or by mail.

(e) When a legal proceeding is brought to hold a Department employee personally liable in connection with an action taken in the conduct of official business, rather than liable in an official capacity, the Department employee by law is to be served personally with process. Service of process in this case is inadequate when made upon the General Counsel or the Solicitor or their designees. Except as otherwise provided in this part, a Department employee sued personally for an action taken in the conduct of official business shall immediately notify and deliver a copy of the summons or complaint to the office of the General Counsel. Any employee of the Patent and Trademark Office sued personally for an action taken in the conduct of official business shall immediately notify and deliver a copy of the summons or complaint to the Office of the Solicitor.

(f) A Department employee sued personally in connection with official business may be represented by the Department of Justice at its discretion. See 28 CFR 50.15 and 50.16 (1987).

(g) The General Counsel or Solicitor or Department employee designated by either, when accepting service of process for a Department employee in an official capacity, shall endorse on the Marshal's or server's return of service form or receipt for registered or certified mail the following statement: "Service accepted in official capacity only." The statement may be placed on the form or receipt with a rubber stamp.

(h) Upon acceptance of service or receiving notification of service, as provided in this section, the General Counsel and Solicitor shall take appropriate steps to protect the rights of the Department, component, the Secretary or Department employee involved.

2. 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 Department policy.

15a.4 Testimony or production of documents: General rule.

15a.5 Testimony of Department employees in proceedings involving the United States.

15a.6 Legal proceedings between private litigants.

15a.7 Procedures when a Department employee receives a subpoena.

Authority: 5 U.S.C. 301; 15 U.S.C. 1501, 1512, 1513, 1515, and 1518; Reorganization Plan No. 5 of 1950; 44 U.S.C. 3101.

§ 15a.1 Scope.

(a) This part prescribes the policies and procedures of the Department with respect to the testimony of Department employees as witnesses in legal proceedings and the production of documents of the Department for use in legal proceedings pursuant to a request, order, or subpoena.

(b) The Secretary is by law responsible for the custody, use, and preservation of all documents and other property of the Department and for the official conduct of Department employees, including the appearance of any Department employee in a legal proceeding.

(c) This part does not apply to any legal proceeding in which a Department employee is to testify, while on leave status, as to facts or events that are in no way related to the official business of the Department.

(d) This part is intended to ensure the orderly execution of the affairs of the Department and not to impede any legal proceeding and in no way affects the rights and procedures governing public access to records pursuant to the Freedom of Information Act or the Privacy Act. See 15 CFR 15a.4.

(e) Components of the Department may prescribe or retain supplementary regulations not inconsistent with this Part.

§ 15a.2 Definitions.

For the purpose of this part:

(a) "Component" means Office of the Secretary or an operating unit of the Department as defined in Department Organization Order 1-1.

(b) "Demand" means a request, order, or subpoena for testimony or documents for use in a legal proceeding.

(c) "Department" means the United States Department of Commerce.

(d) "Department employee" means any officer or employee of the Department, including commissioned officers of the National Oceanic and Atmospheric Administration.

(e) "Document" means any record, paper, and other property held by the Department, including without limitation official letters, telegrams, memoranda, reports, studies, calendar and diary entries, maps, graphs, pamphlets, notes, charts, tabulations, analyses, statistical or informational accumulations, any kind of summaries of meetings and conversations, film impressions, magnetic tapes, and sound or mechanical reproductions.

(f) "General Counsel" means the General Counsel of the Department or other Department employee to whom the General Counsel has delegated authority to act under this part, or the chief legal officer (or designee) of the Department of Commerce component concerned.

(g) "Legal proceeding" means a proceeding before a tribunal constituted by law, including a court, an administrative body or commission, an administrative law judge or hearing officer or any discovery proceeding in support thereof.

(h) "Official business" means the authorized business of the Department.

(i) "Secretary" means Secretary of Commerce.

(j) "Testimony" means a statement given in person before a tribunal or by deposition for use before the tribunal or any other statement given for use before a tribunal in a legal proceeding.

(k) "United States" means the Federal Government, its departments and agencies, and individuals acting on behalf of the Federal Government.

§ 15a.3 Department policy.

The Department's policy is that its documents will not be voluntarily produced and Department employees will not voluntarily appear as witnesses in a legal proceeding. The reasons for this policy include:

(a) To conserve the time of Department employees for conducting official business;

(b) To minimize the possibility of involving the Department in controversial or other issues that are not related to its mission;

(c) To prevent the possibility that the public will misconstrue variances between personal opinions of Department employees and Department policy;

(d) To avoid spending the time and money of the United States for private purposes; and

(e) To preserve the integrity of the administrative process.

§ 15a.4 Testimony or production of documents; general rule.

(a) No Department employee shall give testimony concerning the official business of the Department or produce any document in any legal proceeding without the prior authorization of the General Counsel. Where appropriate, a Department employee may be instructed in writing not to give testimony or produce a document. Without the approval of the General Counsel, no Department employee shall answer inquiries from a person not employed by the Department regarding testimony or documents subject to a demand or a potential demand under the provisions of this Part. All inquiries, unless they involve a demand or potential demand on an employee of the Patent and Trademark Office, shall be referred to the General Counsel. Inquiries involving a demand or potential demand on an employee of the Patent and Trademark Office shall be referred to the Solicitor.

(b) A certified copy of a document for use in a legal proceeding will be provided upon written request and payment of applicable fees. Written requests for certification shall be addressed to the chief legal counsel for the component having possession, custody, or control of the document. Unless governed by another applicable provision of law or component regulation, the applicable fees include charges for certification and reproduction as set out in 15 CFR 4.9. Other reproduction costs and postage fees, as appropriate, must also be borne by the requester.

(c)(1) *Request for testimony or document.* A request for testimony of a Department employee, other than an employee of the Patent and Trademark Office, shall be addressed to the General Counsel, Room 5870, Department of Commerce, Washington, DC 20230. A request for testimony of an employee of the Patent and Trademark Office shall be made to the Solicitor for the Patent and Trademark Office. The mailing address of the Solicitor is Box 8, Patent and Trademark Office, Washington, DC 20231. A request for a document, other than a document within the possession, custody, and control of the Patent and Trademark Office, shall be made to the General Counsel. A request for a document within the possession, custody, and control of the Patent and Trademark Office shall be made to the Solicitor.

(2) *Subpoenas.* A subpoena for testimony by a Department employee or a document, other than testimony of an

employee of the Patent and Trademark Office or a document within the possession, custody, and control of the Patent and Trademark Office, shall be served in accordance with the Federal Rules of Civil or Criminal Procedure as appropriate, or applicable state procedure, and a copy of the subpoena shall be sent to the General Counsel. A subpoena for testimony by an employee of the Patent and Trademark Office or a document within the possession, custody, and control of the Patent and Trademark Office shall be served in accordance with the Federal Rules of Civil or Criminal Procedure as appropriate, or applicable state procedure, and a copy of the subpoena shall be sent to the Solicitor.

(3) *Affidavit.* Every request and subpoena shall be accompanied by an affidavit or declaration under 28 U.S.C. 1746 or, if an affidavit or declaration is not feasible, a statement setting forth the title of the legal proceeding, the forum, the requesting party's interest in the legal proceeding, the reasons for the request or subpoena, a showing that the desired testimony or document is not reasonably available from any other source, and if testimony is requested, the intended use of the testimony, a general summary of the testimony desired, and a showing that no document could be provided and used in lieu of testimony. The purpose of this requirement is to permit the General Counsel to make an informed decision as to whether testimony or production of a document should be authorized.

(d) Any Department employee, other than an employee of the Patent and Trademark Office, who is served with a demand shall immediately notify the General Counsel. An employee of the Patent and Trademark Office served with a demand shall immediately notify the Solicitor.

(e) The General Counsel may authorize and direct a Department employee to testify concerning official business or to produce a document in a legal proceeding when: the Department has a significant interest in the legal proceeding, in the opinion of the General Counsel, production of a document or presenting factual or expert testimony by a Department employee would be in the best interest of the Department or in the public interest, or in such other circumstances as the General Counsel may determine are appropriate. When production of a document is authorized by the General Counsel, fees will be assessed in accordance with paragraph (b) of this section.

(f) The Secretary retains the authority to authorize and direct testimony in

accordance with paragraph (e) of this section in those cases where a statute or Presidential order mandates a personal decision by the Secretary.

(g) The General Counsel may consult or negotiate with an attorney for a party or the party, if not represented by an attorney, to refine or limit a demand so that compliance is less burdensome or obtain information necessary to make the determination required by paragraph (e) of this section. Failure of the attorney or party to cooperate in good faith to enable the General Counsel or Secretary to make an informed determination under this part may serve as the basis for a determination not to comply with the demand.

(h) A determination under this part to comply or not to comply with a demand is not an assertion or waiver of privilege, lack of relevance, technical deficiencies or any other ground for noncompliance. The Department reserves the right to oppose any demand on any legal ground independent of any determination under this part.

§ 15a.5 Testimony of Department employees in proceedings involving the United States.

(a) A Department employee may not testify as an expert or opinion witness for any party other than the United States.

(b) When appropriate, the General Counsel may authorize a Department employee to give testimony as an expert or opinion witness on behalf of the United States.

(c) Whenever, in any legal proceeding involving the United States, a request is made by an attorney representing or acting under the authority of the United States, the General Counsel will make all necessary arrangements for the Department employee to give testimony on behalf of the United States. Where appropriate, the General Counsel may require reimbursement to the Department of the expenses associated with a Department employee giving testimony on behalf of the United States.

§ 15a.6 Legal proceedings between private litigants.

(a) Testimony by a Department employee and production of documents in a legal proceeding not involving the United States shall be governed by § 15a.4.

(b) If a Department employee is authorized to give testimony in a legal proceeding not involving the United States, the testimony, if otherwise proper, shall be limited to facts within the personal knowledge of the Department employee. A Department

employee is prohibited from giving expert or opinion testimony, answering hypothetical or speculative questions, or giving testimony with respect to subject matter which is privileged. If a Department employee is authorized to testify in connection with the employee's involvement or assistance in a quasi-judicial proceeding which is taking place or took place before the Department, that employee is further prohibited from giving testimony on the manner and extent to which the record of the quasi-judicial proceeding was considered or studied or as to the bases, reasons, mental processes, analyses, or conclusions for the decision rendered in the quasi-judicial proceeding.

§ 15a.7 Procedures when a Department employee receives a subpoena.

(a) Except in the case of an employee of the Patent and Trademark Office, any Department employee who receives a subpoena shall immediately forward the subpoena to the General Counsel. In the case of an employee of the Patent and Trademark Office, the subpoena shall immediately be forwarded to the Solicitor. The General Counsel will determine the extent to which a Department employee will comply with the subpoena in accordance with the provisions of § 15a.4(e).

(b) If the Department employee is not authorized by the General Counsel to comply with the subpoena, the Department employee shall appear at the time and place stated in the subpoena, produce a copy of this Part, and respectfully refuse to provide any testimony or produce any document. *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

(c) Where the Department employee is an employee of the Office of the Inspector General, the Inspector General, in consultation with the General Counsel, will make any necessary determinations under paragraphs (a) and (b) of this section.

(d) When necessary or appropriate, the General Counsel will request assistance from the Department of Justice or a U.S. Attorney or otherwise assure the presence of an attorney to represent the interests of the Department, a component of the Department, or a Department employee.

Date: October 13, 1988.

Robert H. Brumley,

General Counsel.

[FR Doc. 88-24361 Filed 10-20-88; 8:45 am]

BILLING CODE 3510-BW-M

Bureau of Export Administration

15 CFR Part 773

[Docket No. 80463-8063]

Foreign Consignees Removed or Suspended from Distribution Licenses

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Distribution License (DL) is a special license authorizing license holders to export eligible commodities to approved consignees in specified countries, without dollar value or quantity limits. Under the DL procedure, foreign consignees are authorized to ship between themselves and their customers without requesting permission from the DL holder. A requirement that DL holders notify all their consignees on the license when the Office of Export Licensing has prohibited the sale or transfer of commodities to specified firms or individuals currently appears in the Export Administration Regulations (15 CFR 773.3(f)(3)(v)). This rule amends § 773.3(1)(4)(ii) to clarify the notification procedures to be followed by the DL holder when consignees are deleted, suspended or revoked from a Distribution License. Clarification of these procedures will ensure that currently approved consignees do not continue to reexport commodities to newly deleted consignees under a Distribution License.

EFFECTIVE DATE: October 21, 1988.

FOR FURTHER INFORMATION CONTACT: Michael Hoffman, Office of Export Licensing, Bureau of Export Administration, Department of Commerce, Telephone: (202) 377-3287.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective