

contracting officers assure that actions required by the regulation are taken.

## PART 9—TESTIMONY OF EMPLOYEES OF THE DEPARTMENT AND PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS

Sec.

- 9.1 Purpose.
- 9.2 Applicability.
- 9.3 Definitions.
- 9.5 General prohibition of production or disclosure in legal proceedings.
- 9.7 Testimony by employees before the Department or in other legal proceedings in which the United States is a party.
- 9.9 Legal proceedings between private litigants: General rules.
- 9.11 Legal proceedings between private litigants: Demands.
- 9.13 Legal proceedings between private litigants: Procedures to request records.
- 9.15 Legal proceedings between private litigants: Procedures to request testimony.
- 9.17 Legal proceedings between private litigants: Procedures for taking testimony.
- 9.19 Acceptance of service on behalf of Secretary.

AUTHORITY: 5 U.S.C. 301; 45 U.S.C. 41-42; 49 U.S.C. 322; 49 U.S.C. 504(f); 23 U.S.C. 409.

SOURCE: 58 FR 6724, Feb. 2, 1993, unless otherwise noted.

### § 9.1 Purpose.

(a) This part sets forth procedures governing the testimony of an employee in legal proceedings in which the United States is a party. It also sets forth procedures to be followed when an employee is issued a subpoena, order or other demand (collectively referred to in this part as a “demand”) by a court or other competent authority, or is requested by a private litigant, to provide testimony or produce records concerning information acquired in the course of performing official duties or because of the employee’s official status. It also prescribes the policies and procedures of the Department with respect to the acceptance of service of legal process and pleadings in legal proceedings involving the Department.

(b) The purposes of this part are to:

- (1) Conserve the time of employees for conducting official business;

- (2) Minimize the possibility of involving the Department in controversial issues not related to its mission;

- (3) Maintain the impartiality of the Department among private litigants;

- (4) Avoid spending the time and money of the United States for private purposes; and

- (5) To protect confidential, sensitive information and the deliberative processes of the Department.

(c) Agency counsel, in his or her discretion, may permit an exception from any requirement in this part. The exception may be granted only when the deviation will not interfere with matters of operational or military necessity, and when agency counsel determines that:

- (1) It is necessary to prevent a miscarriage of justice;

- (2) The Department has an interest in the decision that may be rendered in the legal proceeding; or

- (3) The exception is in the best interest of the Department or the United States.

For Office of Inspector General employees and documents, the Inspector General, in conjunction with the General Counsel of the Department, may permit an exception from any requirement of this part if the Inspector General determines, based on the Inspector General Act of 1978, as amended, that application of the requirement would be inappropriate.

### § 9.2 Applicability.

This part applies to the testimony of an employee in legal proceedings in which the United States is a party. It also applies in legal proceedings between private litigants to requests or demands for testimony or records concerning information acquired in the course of an employee performing official duties or because of the employee’s official status. This part does not apply to any legal proceeding in which an employee is to testify as to facts or events that are in no way related to the employee’s official duties or the functions of the Department. Nor does it apply to Congressional demands for testimony or documents.

### § 9.3 Definitions.

For purposes of this part: