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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:

Department means the Department of Transportation (DOT), including the Office of the Secretary (which encompasses the Office of the Inspector General) and the following operating administrations while they are part of DOT:

(a) The U.S. Coast Guard.

(b) The Federal Aviation Administration.

(c) The Federal Highway Administration.

(d) The Federal Railroad Administration.

(e) The Federal Transit Administration.

(f) The St. Lawrence Seaway Development Corporation.

(g) The National Highway Traffic Safety Administration.

(h) The Maritime Administration.

(i) The Research and Special Programs Administration.

(j) Any DOT operating administration established after the effective date of this part.

Legal proceeding means any case or controversy pending before any federal, state, or local court (including grand jury proceedings), any administrative proceeding pending before any federal, state, or local agency, or any legislative proceeding pending before any state or local agency.

Legal proceeding between private litigants means any legal proceeding in which neither the Department of Transportation nor the United States (including any federal agency or officer of the United States in his or her official capacity) is a party.

Employee of the Department or *Employee* means any current or former officer or employee of the Department; any active duty, retired, or former officer or enlisted member of the Coast

Guard; or any current or former contractor (including any corporation or other entity and any employee or subcontractor).

Agency counsel means the General Counsel of the Department or the Chief Counsel of any operating administration of the Department concerned, any person to whom the General Counsel or Chief Counsel has delegated authority, or any person who is authorized to represent the Department in a specific legal proceeding.

Testimony means any written or oral statement by a witness, including depositions, answers to interrogatories, affidavits, declarations, and statements at a hearing or trial.

§ 9.5 General prohibition of production or disclosure in legal proceedings.

No employee of the Department may provide testimony or produce any material contained in the files of the Department, or disclose any information relating to, or based upon, material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of that employee's official duties or because of that employee's official status unless authorized in accordance with this part, or by other applicable law.

§ 9.7 Testimony by employees before the Department or in other legal proceedings in which the United States is a party.

In any legal proceeding before the Department or in which the United States (including any federal agency or officer of the United States) is a party:

(a) Agency counsel shall arrange for an employee to testify as a witness for the United States whenever the attorney representing the United States requests it.

(b) An employee may testify for the United States both as to facts within the employee's personal knowledge and as an expert or opinion witness. Except as provided in paragraph (c) of this section, an employee may not testify as an expert or opinion witness, with regard to any matter arising out of the employee's official duties or the functions of the Department, for any party other than the United States in any legal proceeding in which the United States is a party. An employee who receives a demand to testify on behalf of a party other than the United States may testify as to facts within the employee's personal knowledge, provided that the testimony be subject to the prior approval of agency counsel and to the Federal Rules of Civil Procedure and any applicable claims of privilege.

(c) An employee may testify as an expert or opinion witness on behalf of an officer or enlisted member of the Coast Guard in any legal proceeding conducted by the Coast Guard.

§ 9.9 Legal proceedings between private litigants: General rules.

In legal proceedings between private litigants:

(a) The proper method for obtaining testimony or records from an employee is to submit a request to agency counsel as provided in §§ 9.13 and 9.15 of this part, not to serve a demand on the employee. Whenever, in a legal proceeding between private litigants, an employee is served with a demand, or receives a request, to testify in that employee's official capacity or produce records, the employee shall immediately notify agency counsel.

(b) If authorized to testify pursuant to these rules, an employee may testify only as to facts within that employee's personal knowledge with regard to matters arising out of his or her official duties.

(1) When the proceeding arises from an accident, an employee may testify only as to personally known facts, not reasonably available from other sources, observed by the employee or uncovered during the employee's investigation of the accident or observed by the employee even if he or she did not investigate the accident. The employee shall decline to testify regarding facts beyond the scope of his or her official duties.

(2) The employee shall not testify to facts that are contained in a report, or any part of a report, unless the employee has obtained permission from agency counsel to disclose the information.

(3) The employee shall not disclose confidential or privileged information