

## §9.2

(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:

## 49 CFR Subtitle A (10-1-07 Edition)

*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.