

**§ 8.31 Industrial security.**

(a) *Background.* The National Industrial Security Program was established by Executive Order 12829 of January 6, 1993 for the protection of information classified pursuant to Executive Order 12356 of April 2, 1982, National Security Information, or its predecessor or successor orders, and the Atomic Energy Act of 1954, as amended. The Secretary of Defense serves as the Executive Agent for inspecting and monitoring contractors, licensees, grantees, and certificate holders that require or will require access to, or that store or will store, classified information, and for determining the eligibility for access to classified information of contractors, licensees, certificate holders, and grantees, and their respective employees.

(b) *Implementing regulations.* The Secretary of Transportation has entered into agreement for the Secretary of Defense to render industrial security services for the Department of Transportation. Regulations prescribed by the Secretary of Defense to fulfill the provisions of Executive Order 12829 have been extended to protect release of classified information for which the Secretary of Transportation is responsible. Specifically, this regulation is DOD 5220.22-M, National Industrial Security Program Operating Manual. This regulation is effective within the Department of Transportation, which functions as a User Agency as prescribed in the regulation. Appropriate security staffs, project personnel, and 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**

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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;