

### §9.13

representation for the employee. Agency counsel shall advise the employee how to respond, including not to testify, if the court or other competent authority rules that the demand must be complied with irrespective of these regulations.

#### **§9.13 Legal proceedings between private litigants: Procedures to request records.**

(a) In a legal proceeding between private litigants, a party who wishes to obtain records from the Department shall submit to agency counsel a request for the records. The request will ordinarily be handled in accordance with the Department's procedures concerning requests for records found at 49 CFR part 7. If the party does not follow the procedures specified in that part, the request must be accompanied by a statement setting forth the relevance of the records to the proceeding. The request should be resolved before any request for testimony under §9.15 is submitted. Where a request for testimony includes a request for additional records, it shall indicate precisely how this new request differs in scope from any previous request in order to avoid agency duplication of effort. Agency counsel shall notify the requester of the approval or denial of the request.

(b) [Reserved]

#### **§9.15 Legal proceedings between private litigants: Procedures to request testimony.**

(a) Any party seeking the testimony of an employee in a legal proceeding between private litigants, concerning facts within the employee's personal knowledge with regard to matters arising out of the employee's official duties, shall, rather than serving a demand for the testimony, request the testimony at least 30 days before it is intended to be taken or received. The request must be submitted to agency counsel and must include:

(1) The title of the case, docket number, and the court, or otherwise clearly identify the legal proceeding involved;

(2) A statement setting forth the basic facts in the proceeding, such as the type, date, and location of an accident;

### 49 CFR Subtitle A (10-1-03 Edition)

(3) A summary of the unresolved issues applicable to the testimony sought;

(4) A summary of the testimony sought and its relevance to the proceeding;

(5) A certification with support, that the information desired is not reasonably available from other sources, including Departmental documents;

(6) Pursuant to §9.9(d) of this part, an affidavit or certification describing the extent of a search of parties and potential parties and listing the names of the parties and potential parties notified; and

(7) A declaration that the party will not seek expert or opinion testimony from the witness or seek the testimony of the witness at a hearing or trial in the proceeding.

The request shall specify which form of testimony (deposition, affidavit, declaration, or answers to interrogatories) is desired and the date by which it is desired; however, only one form, the one least burdensome to the Department that will provide the needed information, will be permitted for each witness.

(b) The party seeking the testimony shall include with its request for testimony a copy of any prior request(s) made by the same requester to the Department or other agency of the United States for records pertaining to the matter being litigated and of the response (not including the records themselves) to the request(s). The party seeking the testimony shall also comply with any agency counsel request that copies of the records previously disclosed by the Department, or a list of those records, be furnished.

(c) In accordance with the requirement of this section and the general provisions of this part, agency counsel shall notify the requester of the approval or denial of the request. Agency counsel may attach special conditions to its approval.

#### **§9.17 Legal proceedings between private litigants: Procedures for taking testimony.**

(a) Testimony of an employee of the Department may be taken only at the office to which the employee is assigned, or any other place designated

## Office of the Secretary of Transportation

## § 10.3

by agency counsel. Additional conditions may be specified under §9.15(c) of this part. The time shall be reasonably fixed to avoid substantial interference with the performance of the employee's or agency counsel's official duties.

(b) Upon completion of the testimony of an employee of the Department, a copy of the transcript of the testimony shall be furnished, at the expense of the party requesting the testimony, to agency counsel for the Department's files.

### §9.19 Acceptance of service on behalf of Secretary.

In any legal proceeding, at the option of the server, process or pleadings may be served on agency counsel, with the same effect as if served upon the Secretary or the head of the operating administration concerned, as the case may be. The official accepting service under this section shall acknowledge the service and take appropriate action. This section does not in any way abrogate or modify the requirements of Rule 4(d)(4) and 4(d)(5) of the Federal Rules of Civil Procedure regarding service of summons and complaint.

## PART 10—MAINTENANCE OF AND ACCESS TO RECORDS PERTAINING TO INDIVIDUALS

### Subpart A—Applicability and Policy

- Sec.
- 10.1 Applicability.
- 10.3 Policy.
- 10.5 Definitions.

### Subpart B—General

- 10.11 Administration of part.
- 10.13 Privacy Act Officer.
- 10.15 Protection of records.

### Subpart C—Maintenance of Records

- 10.21 General.
- 10.23 Accounting of disclosures.
- 10.25 Mailing lists.
- 10.27 Government contractors.
- 10.29 Social Security numbers.

### Subpart D—Availability of Records

- 10.31 Requests for records.
- 10.33 Acknowledgment and access.
- 10.35 Conditions of disclosure.
- 10.37 Identification of individual making request.

- 10.39 Location of records.

### Subpart E—Correction of Records

- 10.41 Requests for correction of records.
- 10.43 Time limits.
- 10.45 Statement of disagreement.

### Subpart F—Procedures for Reconsidering Decisions not to Grant Access to or Amend Records

- 10.51 General.

### Subpart G—Exemptions

- 10.61 General exemptions.
- 10.63 Specific exemptions.

### Subpart H—Fees

- 10.71 General.
- 10.73 Payment of fees.
- 10.75 Fee schedule.
- 10.77 Services performed without charge.

### Subpart I—Criminal Penalties

- 10.81 Improper disclosure.
- 10.83 Improper maintenance of records.
- 10.85 Wrongfully obtaining records.

#### APPENDIX TO PART 10—EXEMPTIONS

AUTHORITY: 5 U.S.C. 552a; 49 U.S.C. 322.

SOURCE: 45 FR 8993, Feb. 11, 1980, unless otherwise noted.

### Subpart A—Applicability and Policy

#### § 10.1 Applicability.

This part implements section 552a of title 5, United States Code, as well as other provisions of the Privacy Act of 1974, and prescribes rules governing the availability of those records of the Department of Transportation which relate to citizens of the United States and aliens lawfully admitted for permanent residence.

[45 FR 8993, Feb. 11, 1980, as amended at 62 FR 23666, May 1, 1997]

#### § 10.3 Policy.

It is the policy of the Department of Transportation to comply with the letter and the spirit of the Privacy Act (the Act). Therefore, personal data contained in each system of records is afforded adequate protection against unauthorized access, is as accurate as is feasible, and is limited to that necessary to accomplish the stated use or