

SUBPOENA FACT SHEET
Requests for Certified Weather Records and Other Data

*Prepared by the NOAA Office of the Senior
Counselor for Atmospheric and Space
Services and Research (GCW)*

Requests for Testimony

Federal regulations generally prohibit U.S. Dept. of Commerce, NOAA's National Weather Service (NWS) employees from appearing as witnesses in litigation not involving the United States. 15 C.F.R. Part 15, subpart B. The policy against employee testimony is very strong and is only excepted when the United States Government has an interest in the litigation. In addition, under no circumstances may a NWS employee provide expert witness testimony. *See* 15 C.F.R. 15.18(a). The underpinnings of the regulations include budget and staffing limitations; too many requests for testimony are received annually to adequately respond to all the inquiries and still perform the NWS mission of issuing weather forecasts, watches and warnings for the protection of life and property. The policy considerations are listed at 15 C.F.R. 15.13(a)-(f).

In part, the regulations prohibiting NWS employees from testifying were promulgated:

- (a) To conserve the time of Department employees for conducting official business;
- (b) To minimize the possibility of involving the Department in controversial issues that are not related to the Department's mission;
- (c) To prevent the possibility that the public will misconstrue variances between personal opinions of Department employees and Department policy.

See 15 C.F.R. § 15.13(a)-(c).

Due to the policy considerations involved, if a Subpoena served upon a NWS employee is not withdrawn, GCW is required to contact the United States Attorney's office to request that office to file a motion to quash. These motions are routinely granted. There is clear legal precedence in these matters; Federal employees are beyond the reach of civil subpoenas issued by state courts. *See* United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951).

If, due to time constraints, it is not possible to have the subpoena quashed prior to the compliance date, the employee will be advised to appear at the time and place set for in the subpoena. The employee will also be advised to produce a copy of the DOC regulations, inform the legal tribunal that he/she has been advised by counsel not to provide the requested testimony, and respectfully decline to testify. *See* 15 C.F.R. 15.15(b); Touhy v. Ragen.

Requests for Interpretation of Weather Data

Generally, state rules of evidence permit the admission of NWS certified records without authenticating testimony from a NWS employee. When interpretation of the records is required, a private meteorologist can interpret NWS records for the court.

The NWS maintains a listing of private, certified meteorologists who can be retained to provide expert testimony. See <http://www.weather.gov/im/dirintro.htm>. The list is provided for informational purposes, with no express or implied endorsement. In addition, there are more detailed listings on the following websites maintained by commercial weather services: <http://www.ametsoc.org/memb/ccm/ccmhome.htm> and <http://www.globalweatherpages.com>.

Requests for Certified Weather Data

The National Climatic Data Center (NCDC) in Asheville, North Carolina, is the official custodian of the weather records of the NWS. The NCDC responds to many requests for certified records for litigation purposes. The NCDC, as the custodian of the records, certifies that the documents are authentic and true copies of meteorological records on file at NCDC. To respond to different litigation needs, NCDC provides two types of certification: a DOC (Department of Commerce) Certification (signed by the NCDC Records Custodian and Director or designated representatives with an attached blue ribbon and the official gold embossed seal of the agency) and a General Certification (signed by a designated officer with no ribbon or seals.) Both certifications have been drafted to comply with general evidentiary requirements for documents introduced under exceptions to the hearsay rule. To contact the NCDC: (828) 271-4800; fax (828) 271-4876; e-mail: orders@ncdc.noaa.gov. The NCDC is located at 151 Patton Avenue, Room 120, Asheville, NC, 28801-5001. The NCDC does not require a subpoena to provide certified records. Weather data may also be obtained via the World Wide Web at: www.ncdc.noaa.gov.

Requests for Sunrise Sunset Data

The U.S. Naval Observatory takes observations and generates sunrise and sunset data. The NWS is not the custodian of records for such records and therefore, cannot certify to such facts, or authenticate such data. For information regarding sunrise and sunset tables and to obtain certified records, contact: U.S. Naval Observatory, ATTN: Code AA, 3450 Massachusetts Ave., N.W., Washington, D.C. 20392-5420; <http://aa.usno.navy.mil/data>.

CONTROLLING REGULATIONS: 15 C.F.R. Part 15, subpart B.