

United States Department of Agriculture
Federal Grain Inspection Service
FGIS DIRECTIVE 1520.1 2-3-93

APPEARANCE IN JUDICIAL AND ADMINISTRATIVE PROCEEDINGS

- I. PURPOSE This Directive establishes policies and procedures for Federal Grain Inspection Service (FGIS) employees who are contacted by an outside party regarding judicial or administrative proceedings which arise out of an employee's official duties or have to do with his/her FGIS employment.
- II. REPLACEMENT HIGHLIGHTS This Directive replaces FGIS Directive 116.2, Appearance in Judicial and Administrative Proceedings, dated July 21, 1989.
- III. POLICY
- A. FGIS employees will be objective in any involvement with judicial and administrative proceedings. They will be provided with all the guidance available when contacted by an outside party regarding such proceedings.
- B. To help maintain the integrity of the nationwide official inspection and weighing system, FGIS management also must be kept advised of all FGIS involvement in judicial and administrative proceedings.
- IV. DEFINITIONS
- A. Judicial Proceeding. Any case or controversy pending before any Federal, State, or local court.
- B. Administrative Proceeding. Any proceeding pending before any Federal, State, or local agency and undertaken for the issuance of any regulations, orders, licenses, permits, or other rulings, or the adjudication of any matter, dispute, or controversy.
- C. Appearance. Testimony, provision of records, or production of documents (including depositions and interrogatories) which arise out of an employee's official duties or have to do with his/her FGIS employment.
- D. Valid Summons, Subpoena, or Other Compulsory Process. An order that is served properly and within the legal authority and the jurisdictional boundaries of the court or administrative agency or official that has issued it.
- E. Subpoenas duces tecum. Type of subpoena issued by a court which requires a witness having under his/her control documents or papers relevant to the controversy to bring such items to a judicial or administrative proceeding.
- F. Witness Fees. The money paid to a witness as compensation for attendance at a judicial or administrative proceeding.
- G. Travel Expenses. The money paid to a witness as reimbursement for transportation, lodging, meals, and other miscellaneous expenses in connection with attendance at a judicial or administrative proceeding.
- V. APPEARANCE ON BEHALF OF THE UNITED A. An FGIS employee may appear as a witness in any judicial or administrative proceeding on behalf of the United States without the issuance of a summons, subpoena, or other compulsory process. However, the employee will obtain permission to appear by following

STATES

the procedures in Section VII. of this Directive.

B. When appearing at any proceeding on behalf of the United States, an employee is:

1. Not entitled to receive witness fees for such appearance.
2. Entitled to travel expenses in accordance with U.S. Department of Agriculture Travel Regulations.
3. Considered to be on official duty and not charged leave (See AMS Directive 305.2, Leave, dated July 31, 19753.

C. See Attachment for guidelines on leave, fees, and travel expenses.

VI.
APPEARANCE
ON BEHALF
OF A PARTY
OTHER THAN
THE UNITED
STATES B.

A. An FGIS employee served with a valid summons, subpoena, or other compulsory process to appear as a witness on behalf of a party other than the United States, may appear only if such appearance has been authorized by the Administrator, with concurrence of the General Counsel.

An FGIS employee requested to appear as a witness on behalf of a party other than the United States, without the service of a valid summons, subpoena, or other compulsory process, may appear only if such appearance is authorized by the Administrator and approved by the Assistant Secretary, and by the General Counsel.

C. Subpoenas duces tecum for FGIS records in judicial or administrative proceedings in which the United States is not a party will be considered requests for records under the Freedom of Information Act and will be handled according to the rules governing public disclosure.

D. When appearing at any proceeding on behalf of a party other than the United States, the employee is:

1. Entitled to travel expenses in accordance with U.S. Department of Agriculture Travel Regulations if such appearance is in the employee's official capacity and such expenses are not paid by the official compelling the appearance, or by the party on whose behalf the employee appears.
2. Required to collect the authorized fees for such service and remit the fees to FGIS. (See Section IX. of this Directive and AMS Directive 305.2, Leave.)

C. See Attachment for guidelines on leave, fees, and travel expenses. Also refer to AMS Directive 305.2, Leave.

VII.
REPORTING
AND CLEARANCE
PROCEDURES

A. When contacted to appear as a witness in a judicial or an administrative proceeding, an FGIS employee will:

1. Immediately notify his/her supervisor and provide the following information, if available:

- a. The name of the attorney or other person requesting the appearance, the name of the parties involved, the name of the court, the status of the case, and the subject matter of the case.

- b. The nature of the appearance sought by the attorney or personal representative.
 - c. Whether a summons or subpoena has been or is expected to be issued by a court and, if so, the name of the court.
 - d. The nature of testimony or documents requested.
 - e. The time, date, and place proposed for further contact between the employee and the attorney or personal representative.
2. Request clearance from the Compliance Division (CP) through the supervisor before appearing as a witness.
3. After appearance as a witness in a judicial or administrative proceeding, excluding grand jury proceedings, and unless prohibited by the court, provide the supervisor with the following information in writing:
- a. Names of parties involved.
 - b. Matter in dispute.
 - c. Nature of the testimony given.
 - d. Name of the court, body, or official to whom testimony was given.
 - e. Date and place of appearance.
 - f. Nature of any record or material produced or disclosed.
 - g. A current file of the essential documents provided.

B. A supervisor, who is advised by an employee of a pending involvement in a judicial or administrative proceeding, will immediately notify the Chief, Regulatory Branch, by telephone and submit the written information identified in A.3. above in a follow-up letter. (Supervisors at field locations should concurrently notify the appropriate program chief.)

C. The Director, CP, will:

- 1. Notify the Administrator of the request for appearance.
- 2. Notify the Office of the General Counsel (OGC), if deemed appropriate.
- 3. Obtain authorization from the Administrator with concurrence by the General Counsel, when appropriate.
- 4. Obtain authorization from the Administrator, approval from the Assistant Secretary, and the General Counsel, when appropriate.
- 5. Arrange for suitable counsel through OGC, if necessary, for any employee who is asked to appear as a witness in any judicial or administrative proceeding.

6. Brief program chief, as appropriate.
7. Provide guidance, as appropriate, to the employee.

VIII.
DISCLOSURE
OF CERTAIN
TYPES OF
MATERIAL

- A. An employee appearing at a judicial or administrative proceeding will not disclose any records or materials which are designated "For Official Use Only," or any records or materials that have not been released for publication unless directed by the court, body, or appropriate official to do so. (This pertains to clearance not granted under Section VII.A.2. It is not anticipated that an employee will ever be placed in this situation, but if it occurs, it is important that a court order or administrative directive be honored.)
- B. The Office of the Inspector General, General Accounting Office, or other agencies must approve the release of their reports.
- C. OGC should be consulted, if appropriate, by the Branch Chief.

IX.
WITNESS
FEES

- A. Funds received for witness service should be sent with a transmittal memo to:

Department of Agriculture
Administrative Collections
P.O. Box 70792
Chicago, Illinois 60673
- B. Make personal checks payable to "Federal Grain Inspection Service, USDA." Endorse all other checks "Pay to the Order of FGIS," and sign the endorsement.
- C. The transmittal should contain the following information:
 1. Payee's Name/Social Security Number.
 2. Check Number.
 3. Check Date.
 4. Management Code.
 5. Object Class.
 6. Amount.

/s/David R. Galliard
Acting Administrator

PLEASE CONTACT THE ISSUANCE STAFF ON 301-734-5359 OR
EMAIL AT JOAN.F.KUNZ@USDA.GOV FOR A COPY OF THE ATTACHMENT.