

## SUBPOENA FACT SHEET

*Prepared by the National Oceanic and Atmospheric Administration (NOAA)  
Office of the Senior Counselor for Atmospheric and Space Services and Research (GCW) (revised 03/25/09)*

### Requests for Testimony

Department of Commerce (DOC) regulations generally prohibit 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 an NWS employee provide expert or opinion witness testimony for any party other than the United States. 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).

Due to the policy considerations involved, if a subpoena served upon an NWS employee is not withdrawn, the NOAA Office of General is required to contact the United States Attorney's office to request that office to file a motion to quash.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 an NWS employee. When interpretation of the records is required, a private meteorologist can interpret NWS records for the court. The NWS maintains a list 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 listings of private meteorologists on the following commercial website: <http://www.ametsoc.org/memb/ccm/ccmhome.html> .

#### Requests for Certified Weather Data

The NOAA 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 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.

The NCDC may be contacted at:

151 Patton Avenue, Room 120  
Asheville, NC 28801-5001

Telephone: 828-271-4800

Facsimile: 828-271-4876

Email: [ncdc.info@noaa.gov](mailto:ncdc.info@noaa.gov)

Website: <http://www.ncdc.noaa.gov/oa/ncdc.html>

The NCDC does not require a subpoena to provide certified records.

#### Requests for Sunrise Sunset Data

The U.S. Naval Observatory (USNO) computes astronomical data: <http://aa.usno.navy.mil/data> . These data are not reports of observed or recorded events, therefore, neither NWS nor USNO can certify to such facts or authenticate such data. For information on legal certification, see the following website: <http://aa.usno.navy.mil/faq/docs/lawyers.php> .

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