



United States
Department of
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Food Safety
and Inspection
Service

FSIS Directive
4630.3

REVISION 1

Witnesses in Judicial Proceedings

WITNESSES IN JUDICIAL PROCEEDINGS

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UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE
WASHINGTON, DC

<h1 style="margin:0;">FSIS DIRECTIVE</h1>	4630.3 Revision 1	1/22/08
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WITNESSES IN JUDICIAL PROCEEDINGS

I. PURPOSE

This directive:

- A. Establishes procedures FSIS employees must follow when testifying in judicial proceedings.
- B. Prescribes the retention or return of appearance fees and payments for travel expenses.

II. CANCELLATION

This directive cancels FSIS Directive 4630.3, dated 3/21/85.

III. REASON FOR REISSUANCE

This directive is revised to:

- A. Update procedures and the approval of appearances.
- B. Delete the list of the Office of the General Counsel (OGC) locations.

IV. REFERENCES

FSIS Directive 3800.4, Travel Allowances and Other Related Fees and Expenses of Witnesses in Agency Hearings

FSIS Directive 4630.2, Leave

7 CFR Part 1, Subpart K

V. ABBREVIATIONS AND FORMS

The following appear in their shortened form in this directive:

AA	Assistant Administrator
ERB	Employee Relations Branch, LERD
FOIA	Freedom of Information Act
LERD	Labor and Employee Relations Division
OGC	Office of the General Counsel
OM	Office of Management

VI. POLICY

VII. DEFINITIONS

A. **Administrative Proceedings.** Proceedings pending before Federal, State or local agencies for issuing regulations, orders, licenses, permits, or other rulings.

B. **Appearance.** Testimony or production of documents, dispositions, or interrogatories arising from an employee's duties with FSIS or relating to their employment with FSIS. This includes situations where an employee is called in their official capacity or as an expert witness when the expertise arises from their employment with FSIS. Matters unrelated to employment with FSIS are excluded unless on behalf of a State or local government.

C. **Complaint.** The original or initial pleading beginning an action. Both the complaint defining the involved issues and the summons requiring a particular action served on the defendant.

D. **Judicial Proceeding.** Any case or controversy pending before any Federal, State, or local court.

E. **Subpoena.** A command to appear at a certain time and place to testify.

F. **Summons.** A legal document requiring the defendant to appear in court to answer a complaint. The defendant is notified that failure to appear will result in judgment by default against them for the relief demanded by the complainant.

VII. BACKGROUND

A. USDA Regulation 7 CFR Part 1, Subpart K (also known as the Touhy Relations), specifies that an employee can appear as a witness on matters arising from official duties only with the approval of the agency's AA, OM (or designee), and the concurrence of the OGC if the appearance is in the interest of FSIS.

B. Subpoenas *duces tecum*, requests for the production of records when the U.S. is not a party in the action, are deemed requests for records under FOIA and handled pursuant to the rules for disclosure under that Act

VIII. APPROVAL FOR APPEARANCE

A. Employee. When an employee receives a subpoena or other type of written or verbal request to appear as a witness, produce records or discuss testimonies, they must:

1. Immediately send a facsimile copy of the subpoena to the immediate supervisor.
2. Remit check(s) if received for witness fees or travel expenses.
3. Endorse the check(s) and include the line "Payable to the U.S. Treasury."

B. **Supervisor.** The immediate supervisor:

1. Transmits the subpoena to the district or program office and ERB via facsimile at (202) 690-3938. If there is difficulty immediately transmitting the subpoena or if the employee is contacted or approached to discuss testimony or to provide records in the absence of a subpoena, the employee must call the ERB branch chief at (800) 217-1886.
2. Allows the employee official time for transmitting the copy of the subpoena to the district or program office and ERB, and speaking with the ERB branch chief about potential testimony.
3. Sends endorsed check(s) to:

USDA FSIS LERD
ATTENTION: ERB BRANCH CHIEF
1400 INDEPENDENCE AVENUE SW
ROOM 3175 SOUTH BUILDING
WASHINGTON DC 20250

C. **AA, OM (or Designee).**

1. The AA, OM (or designee) consults the OGC for determining an employee's appearance if subpoenaed by a party other than the Government when the U.S. is a party in the action.
2. The employee is authorized in writing to appear without a subpoena only when the AA, OM and OGC concur when the U.S. is not a party in the action

3. The OGC approves an employee to appear with or without a subpoena to testify on matters arising from official duties when the U.S. is not a party in the action.

4. Where the OGC does not concur that the employee's appearance is in the interest of FSIS and will not authorize the employee to appear, the OGC will convey USDA's decision to the interested party.

D. ERB.

1. Contacts the employee named in the subpoena to obtain pertinent background information. This includes the matter contested, the employee's involvement, and the anticipated testimony.

2. Contacts the issuing party (usually an attorney) to discuss the matter contested and the expected testimony, and requests a copy of the complaint.

3. Submits the expected testimony, subpoena, and complaint to the OGC via facsimile transmission.

4. Prior to the scheduled time for appearance, ERB or an attorney advisor from the OGC informs the employee by telephone whether or not to comply with the subpoena.

IX. SUBPOENA REQUIREMENTS

A. A subpoena is required in certain judicial proceedings before approval to appear is granted. These include judicial proceedings when:

1. The U.S. is a party and the employee is not testifying on its behalf.

2. A State or local government is a party and the employee is testifying on its behalf, but not in their official capacity.

3. The employee is called solely to testify as an "expert" witness based on knowledge gained in their official capacity.

4. The employee is called to testify between private parties in their official capacity, or produce official records or information.

B. A subpoena, summons, or other compulsory process is not required in certain circumstances, but approval is still required. These include a judicial proceeding concerning matters arising within FSIS or growing out of a violation of laws of the U.S., State, or subdivision in the enforcement where employees are authorized to assist when the employee testifies for the U.S., State, or local government.

X. ANSWERING SUMMONS OR COMPLAINTS

Proper response to summons or complaints is vital to ensure FSIS and the employee receive proper defense.

A. **Service in Person.** Employees who are served a summons or complaint in person on any matter related to their Federal employment must immediately:

1. Notify their supervisor, who notifies others in the supervisory chain of command and ERB.

2. Keep supervisory officials informed of activities transpiring as a result of the summons or complaint that may affect their working assignment.

B. **Service by Mail.** If served by mail, an employee must notify ERB before returning the acknowledgment of receipt. If the receipt is not returned within 20 days, another service is made. The employee is charged the cost of the additional service unless they notify ERB.

XI. RESTRICTION FROM DISCLOSURE OF CERTAIN TYPES OF INFORMATION

A. An employee testifying in a judicial proceeding should not disclose any record or material classified as "Top Secret," "Secret," marked "For Official Use Only," or any other record or material not otherwise releasable under FOIA and authorized in writing. Advice on these matters is obtained when applying for approval to testify.

B. If directed by the court, body, or official to disclose records or material, the employee should respectfully decline until permission is granted by the administrator (or designee) in writing. If permission is not granted, the administrator will notify the requesting court, body, or official of the Agency's position.

XII. TRAVEL EXPENSES AND WITNESS FEES

A. **Travel Expenses.**

1. An employee authorized to make a court appearance while on official duty is granted travel expenses consistent with Agency regulations.

2. An employee making a court appearance while on court leave, annual leave, or in a nonpay status can retain travel expenses provided by the court or by the summoning party.

3. Employees should refer to FSIS Directive 4630.2 when they are unclear about fees for travel expenses or witness fees.

B. **Witness Fees.** Witness fees are retained by the employee for periods of time when not paid by the Agency, in a nonpay status, or on annual leave. They must be returned if on court leave or on official duty.

1. When on jury service in a U.S. or DC court, or when testifying on behalf of the U.S. or DC Government, witness fees are not accepted.

2. In other situations where an employee is on court leave or testifying on official duty, witness fees are turned in to the Agency.

C. **Duplicate Payments.** Handling fees are not retained by the employee.

1. Field employees should forward a check or money order in the amount received to the district or program office with a copy sent by facsimile to ERB. The district or program office forwards the check or money order to ERB.

2. Other employees should forward a check or money order in the amount received to their immediate supervisor, who forwards the check or money order to ERB.

3. ERB forwards the check or money order to the appropriate budget official.



Assistant Administrator
Office of Management