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U. S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
DIRECTIVES SYSTEM

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Subject: Testimony of Employees

Approval: Ted V. Christensen | Title: Director

1. Purpose. This directive provides policy guidance to Office of Surface Mining Reclamation and Enforcement (OSMRE) employees regarding subpoenas or requests to testify in judicial or administrative proceedings concerning matters related to the business of the government.

2. Definitions.

a. Judicial Proceeding. Generally any proceeding taken in a court of law for the prosecution or defense of an action.

b. Administrative Proceeding. A proceeding in or before an administrative body as distinguished from a proceeding in a court.

c. Matters Related to the Business of the Government. Matters resulting directly from employment with OSMRE. Specifically, where an OSMRE employee has gained knowledge and specific facts as a result of his/her employment with OSMRE.

3. Policy/Procedures.

a. Background. Periodically OSMRE employees are subpoenaed or summoned to testify in judicial or administrative proceedings concerning matters related to the business of the government. The propriety of testifying in any judicial or administrative proceeding, on behalf of OSMRE, is governed by Federal regulations at 43 CFR 2.80 and 2.82, the Department of the Interior's regulations concerning the testimony of employees. The regulations state that employees shall not testify without the written permission of the the appropriate Assistant Director in accordance with the delegation of authority directive. OSMRE employees must acquire written permission even if a subpoena is received.

b. Policy. The Director, appropriate Deputy Director, or Assistant Director, can approve the testimony by persons in their offices.

(1) An employee of the Agency shall not testify in any judicial or administrative proceeding concerning matters related to the business of the Government without written permission.

c. Responsibilities.

(1) Each Assistant Director shall be the Director's designee and shall determine in writing if permission to testify will be approved or withheld. He/she is also responsible for ensuring that supervisors and employees comply with the provisions of this directive.

(2) The Associate Solicitor, DMS, shall be consulted prior to any determination to authorize or withhold permission to testify. The Associate Solicitor shall also provide employees with legal counsel and accompany employees to legal proceedings.

(3) An Officer or Employee shall be responsible for immediately notifying his/her supervisor of a request to testify and for forwading copies of the legal papers received to the Associate Solicitor Division of Surface Mining.

d. Procedures

(1) If an employee receives any type of notice to testify at a deposition, hearing, trial or similar proceeding, concerning matters related to the government, the following procedures will be followed.

(a) The employee must immediately notify his/her supervisor of the service or receipt of the notice.

(b) The employee shall forward a copy of the legal papers received to the office of his/her respective Assistant Director, and the Associate Solicitor (DSM).

(2) If the date of the scheduled testimony precludes written approval or disapproval the employee must appear at the time, date, and place stated in the legal papers received and decline to testify on the grounds that testimony is prohibited by Federal regulations 43 CFR 2.82. The Associate Solicitor will arrange to provide legal counsel for the employee at hearing, disposition or legal proceeding.

4. Reporting Requirements. None

5. References - 43 CFR 2.82.

6. Effects on Other Documents. This document interprets 43 CFR 2.82 and supersedes OSMRE Directive Per-24, September 14, 1984.

7. Contact. Assistant Director, Budget and Administration, (202) 343-4293.