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	U· S· DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: PER - 24 Transmittal Number: 589 Date: JAN 2 1990

Subject: Testimony of Employees

Approval: | Title: Director

1. Purpose. This directive provides policy guidance to the Office of Surface Mining (OSM) employees regarding subpoenas or requests to testify in judicial or administrative proceedings concerning matters related to the business of the Government. This directive, however, does not apply to OSM employees who are approved as witnesses by an Administrative Judge at EEOC hearings. In those instances, the procedures at 29 CFR Section 1613.218 are to be followed.

2. Definitions.

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

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

3. Policy/Procedures.

a. Background. Periodically OSM 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 is governed by Federal regulations in 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 permission of the agency. OSM employees must acquire written permission to testify. Such written permission is required even if a subpoena is received.

Normally, an employee will be given permission to testify as to facts within his/her knowledge, but not as to any matters which are privileged or as to opinions of the employee.

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

(2) The Associate Solicitor, DSM, or his/her designee shall be consulted prior to any determination to authorize or withhold permission to testify. The Associate Solicitor or his/her designee will be requested to determine whether it is necessary to provide employees with legal counsel and also whether it is necessary to 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 forward 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 business of 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; and

(b) The employee shall forward a copy of the legal papers received to the Associate Solicitor (DSM) and to the office of the respective Field Office Director or Assistant Director who has responsibility for the employee pursuant to paragraph 3(c)(1) of this directive.

(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. If it is determined to be necessary, the Associate Solicitor will arrange to provide legal counsel for the employee at the hearing, deposition, or legal proceeding.

4. Reporting Requirements. None.

5. References - 43 CFR 2.80 and 2.82.

6. Effects On Other Documents. This document interprets 43 CFR 2.82 and supersedes OSM Directive PER -24, October 30, 1986.

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