

NOAA POLICIES REGARDING THE FURNISHING OF RECORDS IN LITIGATION AND EMPLOYEE TESTIMONY

By Catherine M. Hess

ABSTRACT

The following are guidelines regarding information and its use in legal proceedings. First, the types of records available are explained. Then, the regulations affecting how and when an NOAA employee may testify are outlined. Finally, a list of different categories of weather records is given with the addresses of the proper branches of the weather service where requests should be submitted. This article gives the NOAA policies on these matters as reflected in the NOAA Directives Manual 22-07, Environmental Information Summaries, C-1, and Weather Service Operations Manual Chapter D-90.

1. GUIDELINES CONCERNING RECORDS AND DATA

NOAA, which collects, checks, publishes, and archives official weather records for the United States, receives hundreds of requests per year for these records for use in legal proceedings. It is the policy of NOAA to provide such records to non-federal litigants to the same extent that they are available to the general public. Most of these requests show a lack of familiarity with the kinds and forms of information available, and what NOAA can be reasonably expected to do to fill the request. These guidelines are for the enlightenment of parties wishing to use weather records in legal proceedings not involving the United States.

There are several thousand stations throughout the country making official observations. The location of these stations may be obtained from the local National Weather Service office or the National Climatic Center in Asheville, NC.

The most common kinds of information gathered at a weather station are precipitation measurements and daily high and low temperatures. About 300 offices record other information, such as wind, temperature, humidity, type of weather, atmospheric pressure, visibility, or the presence of clouds. This type of information may also be gotten from the FAA, airline observers, the military, or private meteorologists. The National Climatic Center has the originals of all types of data from its weather stations. This information is also published in Climatological Data and Hourly Precipitation Data for state information, and in Local Climatological Data for each station. These publications may be ordered directly from the National Climatic Center, at a charge.

Other weather records available from the National Climatic Center files are solar

radiation data, upper air data, accounts of major storms, photographs of radar scope imagery, satellite cloud pictures, weather maps, observations from ships and aircraft, a variety of summaries of weather conditions, and climatological publications from foreign countries. Costs for these other records vary according to the amount of time it takes to locate them and how many copies are desired.

If an attorney feels that printed information is not satisfactory (because of the way it is presented or because more data is desired) copies of the original records may be available from the National Climatic Center at a small charge. If these are still not satisfactory the attorney can request specific information to be extracted or rephrased in plain language if necessary, which would involve a substantially higher charge. The attorney also has the option of using a private meteorologist.

If the data do not have a preprinted certification on them, then the records may be certified upon request, either individually or with an attachment. Individual certification is stamped on each sheet of information with a charge for each signature. A less costly option is having a certifying statement attached with a grommet to the documents certified (group certification). In addition, U.S. Department of Commerce authentication (blue ribbon and seal) can be requested. In some courts, records must be authenticated to be admissible. In most circumstances, authenticated records will obviate the need for NOAA employee to appear in court for authentication purposes.

If the data are at slightly different times or locations than what is applicable to the case, a good thing to do is to ask for the help of a private meteorologist who can render an opinion on whether the data are applicable to the case. Addresses of private consulting meteorologists may be obtained from the American Meteorological Society at 45 Beacon Street, Boston, MA 02180.

If you are a NOAA employee and you are served with a subpoena duces tecum or a similar request for records, you should let the NOAA Office of General Counsel know immediately. The records may be provided only when they have been authorized according to the NOAA freedom of information regulations. For the guidelines pertaining to answering requests for this information, see the NOAA freedom of infor-

mation regulations (15 CFR Part 903), and the Department of Commerce privacy regulations (15 CFR Part 4b), and 15 U.S.C. 1525.

Data as to the time of a sunrise, sunset, moonrise, or moonset are not official records of NOAA. Such information is provided by the Nautical Almanac Office (U.S. Naval Observatory, Mass. Avenue and 34th Street N.W., Washington, D.C. 20390) and may be examined at local National Weather service offices. If moon or sun data is required, it may be obtained upon request from the Nautical Almanac Office. That office will prepare a certification statement for specified locations of moon and sun data. The observatory will also prepare a certification statement regarding the moon phase on specified dates.

2. GUIDELINES CONCERNING TESTIMONY

If you are a NOAA employee and you are asked to give official testimony in any case involving the United States, you must let the NOAA Office of General Counsel know, as well as the appropriate NOAA organizational element. You may not testify as a witness for the side opposing the United States; in other words, if the United States is the plaintiff you may not testify for the defendant and vice versa. When you are testifying for the United States, a NOAA Staff Attorney should, when at all possible, be present at all meetings regarding your testimony.

Requests for testimony from a NOAA employee in private litigation not involving the United States should be addressed in writing to the NOAA office of General Counsel, along with description of the testimony needed and an explanation as to why the information would not be available from another source. NOAA policy is generally not to allow its employees to testify so as to maintain strict impartiality among non-federal litigants. However, the NOAA Office of General Counsel will authorize the testimony if the party making the request shows satisfactorily that the information would not be available elsewhere, that no records could be introduced in evidence in substitution for the testimony, and that the other conditions of the NOAA Directives Manual are met. Even if all of these conditions are not met, the Office of General Counsel may allow the employee to testify if NOAA has a significant interest in the litigation, and the outcome of the case would affect present or future policies of NOAA, or it is necessary to provide such information in the public interest. If testimony is authorized, the NOAA Office of General Counsel may arrange for the testimony to be given by a deposition or an affidavit at cost to the requesting party.

NOAA's policy is that any employee author-

ized to testify for private individuals should give only impartial testimony, that is, strictly factual information. An employee may not appear as an expert witness except when authorization has been given by the NOAA Office of General Counsel. If necessary, the NOAA Office of General Counsel may request the Department of Justice (Local U.S. Attorney) to intervene in the matter to represent the interests of the Federal Government.

If a Government Attorney is not present at your testimony, you should have with you a copy of the NOAA Directives Manual. If you are asked to testify as an expert witness, or on other matters which you do not have authorization, you should decline and explain that you are not allowed to do so, showing the pertinent NOAA Directives Manual Section. If the court orders you to testify, then comply, but first you should ask the court for an opportunity to seek the advice of the Office of General Counsel.

Requests for certified copies of these types of information should be referred to the following offices:

Weather and Climatological records:

Director, National Climatic Center
Climatic Information Branch
NOAA, Federal Building
Asheville, NC 28801

Weather Forecasts and Warnings (including Public, Marine and Aviation):

Assistant Administrator for
Weather Services
Attn: Aviation Safety and
Evaluation Center
8060 13th Street
Silver Spring, MD 20910

Aeronautical Charts:

Assistant Administrator for National
Ocean Services
Aeronautical Chart Division
6001 Executive Boulevard
Rockville, MD 20852

Other:

Office of the General Counsel, NOAA
U.S. Department of Commerce
14th and Constitution Avenue, N.W.
Washington, D.C. 20230

1. Catherine M. Hess is a recent graduate of the University of Maryland, and works as an Assistant Editor for the Washington, DC Humane Society. She is the daughter of Harold M. Hess, Lead Forecaster in the WSFO, Washington, DC, and learned to tolerate dinnertime discussions about PVA, entrainment and "surprise snowstorms." She is our new Contributing Editor.