

**§ 1.217 Where must I send my demand?**

(a) Except for subpoenas served in accordance with the Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure, or applicable state procedure as appropriate, you must send your demand, including all information required by § 1.214 of this subpart, to:

(1) The Office of the General Counsel at 1400 Independence Avenue SW, Washington, DC 20250, Attention: “Touhy Demands,” or by electronic mail to *OGC-Touhy-Demands@usda.gov* and

(2) The United States Department of Agriculture agency office from which the official information or testimony is sought.

(b) Notwithstanding paragraph (a) of this section, a demand for Office of Inspector General information or testimony must be sent to the Counsel to the Inspector General, United States Department of Agriculture, Attention: “Touhy Demands,” at 1400 Independence Avenue SW, Mail Stop 2308, Washington, DC 20250-2308; by facsimile to (202) 690-1528; or by electronic mail to *OIG.TOUHY-DEMANDS@oig.usda.gov*.

[84 FR 56100, Oct. 21, 2019, as amended at 87 FR 25571, May 2, 2022]

**§ 1.218 How much will I be charged?**

(a) In the event that a demand is granted, the Department may charge reasonable fees. The appropriate Department official will determine all fees, if any, associated with this subpart and shall timely notify you of the fees, particularly those that are to be paid in advance.

(b) When a demand is granted under this subchapter to permit an employee to testify, you must pay the witness the fee and expenses, including any travel related costs, prescribed for attendance by the applicable rule of court. If no such fees are prescribed, the local Federal district court rule relating to witness fees for the Federal district court closest to where the witness appears will apply.

(c) When a demand is granted under this subchapter to produce documents, blueprints, electronic tapes, or other official information, the fees to be charged and paid prior to production

shall be calculated as provided in Department regulations implementing the fee provisions of the FOIA.

## RESPONSIBILITIES OF THE DEPARTMENT

**§ 1.219 How will the Department process my demand?**

(a) The appropriate Department official, in consultation with the Office of the General Counsel, will consider your demand, and decide whether to grant or deny it. An Office of the General Counsel attorney or Department official may negotiate with you or your representative to refine or limit your demand. All demands for Office of Inspector General information or testimony will be processed by the Counsel to the Inspector General.

(b) Any decision in response to your demand will be limited to the scope of information requested in accordance with the requirements of this subpart.

(c) If you fail to follow the requirements of this subpart, the Department may decide not to grant your demand. If the Department determines that your demand is not complete, the Department may require that you provide additional information before your demand will be considered.

(d) If your demand is complete, the Department will consider it by applying the criteria under § 1.220.

**§ 1.220 The Department's considerations in deciding whether to grant or deny a demand.**

(a) In deciding whether to grant or deny a demand, the appropriate Department official should consider the following factors:

(1) Whether compliance with the demand would be unduly burdensome, disproportionate to the needs of the case, or otherwise inappropriate under the applicable rules of discovery or rules of procedure governing the legal proceeding underlying the demand;

(2) Whether compliance with the demand is appropriate under the relevant substantive law concerning privilege or disclosure of information;

(3) The public interest;

(4) The need to conserve the time and expense of Department employees for the conduct of official business;