

## § 5.7

except when executive privilege is invoked by the President.

### § 5.7 Records of other agencies.

If a request is submitted to FEMA to make available current records which are the primary responsibility of another agency, FEMA will refer the request to the agency concerned for appropriate action. FEMA will advise the requester that the request has been forwarded to the responsible agency.

### § 5.8 Records involved in litigation or other judicial process.

Where there is reason to believe that any records requested may be involved in litigation or other judicial process in which the United States is a party, including discovery procedures pursuant to the Federal Rules of Civil Procedure or Federal Rules of Criminal Procedure, the request shall be referred to the General Counsel.

### § 5.9 Inconsistent issuances of FEMA and its predecessor agencies superseded.

Policies and procedures of any of FEMA's predecessor agencies inconsistent with this regulation are superseded to the extent of that inconsistency.

## Subpart B—Publication of or Availability of General Agency Information, Rules, Orders, Policies, and Similar Material

### § 5.20 Publication of rules and general policies.

In accordance with 5 U.S.C. 552(a)(1), there are separately stated and currently published, or from time to time there will be published, in the FEDERAL REGISTER for the guidance of the public, the following general information concerning FEMA:

(a) Description of the organization of the Headquarters Office and regional and other offices and the established places at which, the employees from whom, and the methods whereby the public may obtain information, make submittals or requests, or obtain decisions.

(b) Statement of the general course and method by which FEMA functions are channeled and determined, includ-

## 44 CFR Ch. I (10–1–04 Edition)

ing the nature and requirements of all formal and informal procedures available.

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by FEMA.

(e) Each amendment, revision, or repeal of the materials described in this section. Much of this information will also be codified in this subchapter A.

### § 5.21 Effect of failure to publish.

5 U.S.C. 552(a)(1) provides that, except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or to be adversely affected by, a matter required to be published in the FEDERAL REGISTER and not so published.

### § 5.22 Coordination of publication.

The General Counsel, FEMA, is responsible for coordination of FEMA materials required to be published in the FEDERAL REGISTER.

### § 5.23 Incorporation by reference.

When deemed appropriate, matter covered by this subpart, which is reasonably available to the class of persons affected thereby may be incorporated by reference in the FEDERAL REGISTER in accordance with standards prescribed from time to time by the Director of the Federal Register (see 1 CFR part 51).

### § 5.24 Availability of opinions, orders, policies, interpretations, manuals, and instructions.

FEMA will make available for public inspection and copying the material described in 5 U.S.C. 552(a)(2) as enumerated in § 5.25 and an index of those materials as described in § 5.28, at convenient places and times.

### § 5.25 Available materials.

FEMA materials which are available under this subpart are as follows:

## Federal Emergency Management Agency, DHS

## § 5.40

(a) Final opinions and orders made in the adjudication of cases.

(b) Those statements of policy and interpretations which have been adopted by FEMA and are not published in the FEDERAL REGISTER.

(c) Administrative staff manuals and instructions to staff that affect a member of the public, unless such materials are promptly published and copies offered for sale.

### § 5.26 Rules for public inspection and copying.

(a) *Location.* Materials are available for public inspection and copying at the following locations:

(1) Headquarters:

Federal Center Plaza, 500 C Street, SW, Washington, DC 20472

(2) *Regional Offices*

Region I, Room 442, J. W. McCormack Post Office & Court House, Boston, MA 02109;

Region II, 26 Federal Plaza, New York, NY 10278;

Region III, Liberty Square Bldg. (Second Floor), 105 South Seventh Street, Philadelphia, PA 19106;

Region IV, 1371 Peachtree Street, N.E., 7th Floor, Atlanta, GA 30309;

Region V, 300 South Wacker Drive, 24th Floor, Chicago, IL 60606;

Region VI, Federal Regional Center, Denton, TX 76201;

Region VII, 911 Walnut Street, Room 300, Kansas City, MO 64106;

Region VIII, Denver Federal Center, Bldg. 710, Denver, CO 80225-0267;

Region XI, Building 105, Presidio of San Francisco, CA 94129;

Region X, Federal Regional Center, 130-228th Street, SW., Bothell, WA 98021-9796.

(b) *Time.* Materials will be made available for public inspection and copying during the normal hours of business.

(c) FEMA will furnish reasonable copying services at fees specified in subpart C. Such reproduction services as are required will be arranged by the Office of Administrative Support in the headquarters or by regional offices as appropriate.

(d) *Handling of materials.* The unlawful removal or mutilation of materials is forbidden by law and is punishable by fine or imprisonment or both. FEMA personnel making materials available will ensure that all materials provided for inspection and copying are

returned in the same condition as provided.

[44 FR 50287, Aug. 27, 1979, as amended at 47 FR 13149, Mar. 29, 1982; 48 FR 44542, Sept. 29, 1983; 50 FR 40006, Oct. 1, 1985]

### § 5.27 Deletion of identifying details.

To the extent required to prevent a clearly unwarranted invasion of personal privacy, FEMA may delete identifying details when making available or publishing an opinion, statement of policy, interpretation, or staff manual or instruction. However, the justification for each deletion will be explained fully in writing, and will require the concurrence of the General Counsel. A copy of the justification will be attached to the material containing the deletion and a copy will also be furnished to the Headquarters FOIA Officer or appropriate Regional Director.

### § 5.28 Indexes.

FEMA will maintain and make available for public inspection and copying current indexes arranged by subject matter providing identifying information for the public regarding any matter issued, adopted, or promulgated after July 4, 1967, and described in § 5.25. FEMA will publish quarterly and make available copies of each index or supplements thereto. The indexes will be maintained for public inspection at the location described in § 5.26.

### § 5.29 Effect of failure to make information materials available.

Materials requested to be made available pursuant to § 5.24 that affect a member of the public may be relied upon, used, or cited as precedent by FEMA against any private party only if (a) they have been indexed and either made available or published as required by 5 U.S.C. 552(a)(2), or (b) the private party has actual and timely notice of their terms.

## Subpart C—Fees

### § 5.40 Copies of FEMA records available at a fee.

One copy of FEMA records not available free of charge will be provided at a fee as provided in § 5.46. A reasonable number of additional copies will be provided for the applicable fee where