

§ 5.2 Application.

This part applies to all records and information materials generated, developed, or held by FEMA at Headquarters, in Regions, or in the field, or any component thereof.

§ 5.3 Definitions.

For purposes of this part, the following terms have the meanings ascribed to them in this section:

(a) *Records*. *Records* means all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics made or received by FEMA in pursuance of Federal Law or in connection with the transaction of public business and preserved, or appropriate for preservation, as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of FEMA or because of the information value of data contained therein. The term does not include:

(1) Material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents; or

(2) Objects or articles, such as structures, furniture, paintings, sculpture, models, vehicles or equipment; or

(3) Formulae, designs, drawings, research data, computer programs, technical data packages, and the like, which are not considered *records* within the Congressional intent of reference because of development costs, utilization, or value. These items are considered exploitable resources to be utilized in the best interest of *all* the public and are not preserved for informational value nor as evidence of agency functions. Requests for copies of such material shall be evaluated in accordance with policies expressly directed to the appropriate dissemination or use of these resources. Requests to inspect this material to determine its content for informational purposes shall normally be granted, unless inspection is inconsistent with the obligation to protect the property value of the material, as, for example, may be true for patent information and certain formulae, or is inconsistent with another significant and legitimate governmental purpose.

(b) *Reasonably Described*. *Reasonably described*, when applied to a request record, means identifying it to the extent that it will permit the location of the particular document with a reasonable effort.

(c) *Agency*. *Agency*, as defined in section 552(e) of title 5 U.S.C., includes any executive department, military department, government corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

(d) *Headquarters FOIA Officer*. The FOIA/Privacy Act Specialist or his/her designee.

(e) *Regional FOIA Officer*. The Regional Director, or his/her designee.

[44 FR 50287, Aug. 27, 1979, as amended at 45 FR 1421, Jan. 7, 1980; 51 FR 34604, Sept. 30, 1986]

§ 5.4 Availability of records.

(a) FEMA records are available to the greatest extent possible in keeping with the spirit and intent of FOIA and will be furnished promptly to any member of the public upon request addressed to the office designated in § 5.26. The person making the request need not have a particular interest in the subject matter, nor must he provide justification for the request.

(b) The requirement of 5 U.S.C. 552 that records be available to the public refers only to records in being at the time the request for them is made. FOIA imposes no obligation to compile a record in response to a request.

§ 5.5 Exemptions.

Requests for FEMA records may be denied if disclosure is exempted under the provisions of 5 U.S.C. 552, as outlined in subpart E. Usually, except when a record is classified, or when disclosure would violate any other Federal statute, the authority to withhold a record from disclosure is permissive rather than mandatory. The authority for nondisclosure will not be invoked unless there is compelling reason to do so.

§ 5.6 Congressional information.

Nothing in this part authorizes withholding information from the Congress

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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-

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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: