

## Federal Emergency Management Agency, DHS

## § 5.88

(e) Where the release of documents in response to a subpoena duces tecum is authorized by the General Counsel (or, as to documents maintained by the Office of Inspector General, the Inspector General), the official having custody of the requested records will furnish, upon the request of the party seeking disclosure, authenticated copies of the documents. No official or employee of FEMA shall respond in strict compliance with the terms of a subpoena duces tecum unless specifically authorized by the General Counsel (or Inspector General).

### § 5.85 Authentication and attestation of copies.

The Director, Deputy Director, Associate Directors, Administrators, the General Counsel, the Docket Clerk, Inspector General, Regional Directors, and their designees, and other heads of offices having possession of records are authorized in the name of the Director to authenticate and attest for copies or reproductions of records. Appropriate fees will be charged for such copies or reproductions based on the fee schedule set forth in section 5.46 of this part.

### § 5.86 Production of documents in litigation or other adjudicatory proceeding in which the United States is a party.

Subpoenas duces tecum issued pursuant to litigation or any other adjudicatory proceeding in which the United States is a party shall be handled as provided at § 5.8.

### § 5.87 Testimony of FEMA employees in private litigation.

(a) No FEMA employee shall testify in response to a subpoena or other demand in private litigation as to any information relating to material contained in the files of the Agency, or any information acquired as part of the performance of that person's official duties or because of that person's official status, including the meaning of Agency documents.

(b) Whenever a demand is made upon a FEMA employee, other than an employee of the Office of Inspector General, for the disclosure of information described in paragraph (a) of this section, that employee shall immediately

notify the Office of General Counsel. Employees of the Office of Inspector General shall notify the Inspector General of such demands. The General Counsel (or Inspector General through designated legal counsel), upon receipt of such notice and absent waiver of the general prohibition against employee testimony at his or her discretion, shall arrange with the appropriate United States Attorney the taking of such steps as are necessary to quash the subpoena or seek a protective order.

(c) In the event that an immediate demand for testimony or disclosure is made in circumstances which would preclude prior notice to and consultation with the General Counsel (or Inspector General), the employee shall respectfully request from the demanding authority a stay in the proceedings to allow sufficient time to obtain advice of counsel.

(d) If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with paragraph (c) of this section pending consultation with counsel, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to testify or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing these regulations and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

### § 5.88 Testimony in litigation in which the United States is a party.

(a) Whenever, in any legal proceeding in which the United States is a party, the attorney in charge of presenting the case for the United States requests it, the General Counsel shall arrange for an employee of the Agency to testify as a witness for the United States.

(b) The attendance and testimony of named employees of the Agency may not be required in any legal proceeding by the judge or other presiding officer, by subpoena or otherwise. However, the judge or other presiding officer may, upon a showing of exceptional circumstances (such as a case in which a particular named FEMA employee has