

PART 3 [RESERVED]**PART 4—INTERGOVERNMENTAL REVIEW OF FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) PROGRAMS AND ACTIVITIES**

Sec.

- 4.1 What is the purpose of these regulations?
- 4.2 What definitions apply to these regulations?
- 4.3 What programs and activities of FEMA are subject to these regulations?
- 4.4 [Reserved]
- 4.5 What is the Director's obligation with respect to Federal interagency coordination?
- 4.6 What procedures apply to the selection of programs and activities under these regulations?
- 4.7 How does the Director communicate with State and local officials concerning FEMA's programs and activities?
- 4.8 How does the Director provide an opportunity to comment on proposed Federal financial assistance and direct Federal development?
- 4.9 How does the Director receive and respond to comments?
- 4.10 How does the Director make efforts to accommodate intergovernmental concerns?
- 4.11 What are the Director's obligations in interstate situations?
- 4.12 How may a State simplify, consolidate, or substitute federally required State plans?
- 4.13 May the Director waive any provision of these regulations?

AUTHORITY: E.O. 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec. 204, Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334).

SOURCE: 48 FR 29316, June 24, 1983, unless otherwise noted.

EDITORIAL NOTE: For additional information, see related documents published at 47 FR 57369, Dec. 23, 1982; 48 FR 17101, Apr. 21, 1983; and 48 FR 29096, June 24, 1983.

§ 4.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of

section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on State, areawide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) These regulations are intended to aid the internal management of FEMA, and are not intended to create any right or benefit enforceable at law by a party against FEMA or its officers.

§ 4.2 What definitions apply to these regulations?

FEMA means the Federal Emergency Management Agency.

Order means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

Director means the Director of FEMA or an official or employee of FEMA acting for the Director under a delegation of authority.

State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 4.3 What programs and activities of FEMA are subject to these regulations?

The Director publishes in the FEDERAL REGISTER a list of FEMA's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 4.4 [Reserved]**§ 4.5 What is the Director's obligation with respect to Federal interagency coordination?**

The Director, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in

an effort to assure full coordination between such agencies and FEMA regarding programs and activities covered under these regulations.

§ 4.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A State may select any program or activity published in the FEDERAL REGISTER in accordance with § 4.3 of this part for intergovernmental review under these regulations. Each State, before selecting programs and activities, shall consult with local elected officials.

(b) Each State that adopts a process shall notify the Director of FEMA's programs and activities selected for that process.

(c) A State may notify the Director of changes in its selections at any time. For each change, the State shall submit to the Director an assurance that the State has consulted with local elected officials regarding the change. FEMA may establish deadlines by which States are required to inform the Director of changes in their program selections.

(d) The Director uses a State's process as soon as feasible, depending on individual programs and activities, after the Director is notified of its selections.

§ 4.7 How does the Director communicate with State and local officials concerning FEMA's programs and activities?

(a) For those programs and activities covered by a state process under § 4.6, the Director, to the extent permitted by law:

(1) Uses the state process to determine views of State and local elected officials; and,

(2) Communicates with State and local elected officials, through the state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Director provides notice to directly affected State, areawide, regional, and local entities in a State of proposed Federal financial assistance or direct Federal development if:

(1) The State has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the State process.

This notice may be made by publication in the FEDERAL REGISTER or other appropriate means, which FEMA in its discretion deems appropriate.

§ 4.8 How does the Director provide an opportunity to comment on proposed Federal financial assistance and direct Federal development?

(a) Except in unusual circumstances, the Director gives state processes or directly affected State, areawide, regional and local officials and entities at least 60 days from the date established by the Director to comment on proposed direct Federal development or Federal financial assistance.

(b) This section also applies to comments in cases in which the review, coordination, and communication with FEMA have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Act shall allow areawide agencies a 60-day opportunity for review and comment.

§ 4.9 How does the Director receive and respond to comments?

(a) The Director follows the procedures in § 4.10 if:

(1) A State office or official is designated to act as a single point of contact between a state process and all Federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 4.6.

(b)(1) The single point of contact is not obligated to transmit comments from State, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a State has not established a process, or is unable to submit a state process recommendation, State, areawide, regional and local officials and entities may submit comments to FEMA.

(d) If a program or activity is not selected for a state process, State, areawide, regional and local officials and entities may submit comments to FEMA. In addition, if a state process recommendation for a nonselected program or activity is transmitted to FEMA by the single point of contact, the Director follows the procedures of § 4.10 of this part.

(e) The Director considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Director is not required to apply the procedures of § 4.10 of this part, when such comments are provided by a single point of contact, by the applicant or directly to FEMA by a commenting party.

§ 4.10 How does the Director make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to FEMA through its single point of contact, the Director either:

- (1) Accepts the recommendation;
- (2) Reaches a mutually agreeable solution with the state process; or
- (3) Provides the single point of contact with such written explanation of the decision, as the Director in his or her discretion deems appropriate. The Director may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Director informs the single point of contact that:

- (1) FEMA will not implement its decision for at least ten days after the single point of contact receives the explanation; or
- (2) The Director has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.
- (c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 4.11 What are the Director's obligations in interstate situations?

(a) The Director is responsible for:

- (1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;
- (2) Notifying appropriate officials and entities in states which have adopted a process and which select FEMA's program or activity;
- (3) Making efforts to identify and notify the affected State, areawide, regional, and local officials and entities in those States that have not adopted a process under the Order or do not select FEMA's program or activity;
- (4) Responding pursuant to § 4.10 of this part if the Director receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with FEMA have been delegated.

(b) The Director uses the procedures in § 4.10 if a state process provides a state process recommendation to FEMA through a single point of contact.

§ 4.12 How may a State simplify, consolidate, or substitute federally required State plans?

(a) As used in this section:

(1) *Simplify* means that a State may develop its own format, choose its own submission date, and select the planning period for a State plan.

(2) *Consolidate* means that a State may meet statutory and regulatory requirements by combining two or more plans into one document and that the State can select the format, submission date, and planning period for the consolidated plan.

(3) *Substitute* means that a State may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a State may decide to try to simplify, consolidate, or substitute federally required state plans without prior approval by the Director.

(c) The Director reviews each state plan that a State has simplified, consolidated, or substituted and accepts

§ 4.13

the plan only if its contents meet Federal requirements.

§ 4.13 May the Director waive any provision of these regulations?

In an emergency, the Director may waive any provision of these regulations.

PART 5—PRODUCTION OR DISCLOSURE OF INFORMATION

Subpart A—General Provisions

Sec.

- 5.1 Scope and purposes of part.
- 5.2 Application.
- 5.3 Definitions.
- 5.4 Availability of records.
- 5.5 Exemptions.
- 5.6 Congressional information.
- 5.7 Records of other agencies.
- 5.8 Records involved in litigation or other judicial process.
- 5.9 Inconsistent issuances of FEMA and its predecessor agencies superseded.

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

- 5.20 Publication of rules and general policies.
- 5.21 Effect of failure to publish.
- 5.22 Coordination of publication.
- 5.23 Incorporation by reference.
- 5.24 Availability of opinions, orders, policies, interpretations, manuals, and instructions.
- 5.25 Available materials.
- 5.26 Rules for public inspection and copying.
- 5.27 Deletion of identifying details.
- 5.28 Indexes.
- 5.29 Effect of failure to make information materials available.

Subpart C—Fees

- 5.40 Copies of FEMA records available at a fee.
- 5.41 FEMA publications.
- 5.42 Fees to be charged—categories of requesters.
- 5.43 Waiver or reduction of fees.
- 5.44 Prepayment of fees.
- 5.45 Form of payment.
- 5.46 Fee schedule.
- 5.47 Appeals regarding fees.

Subpart D—Described Records

- 5.50 General.
- 5.51 Submission of requests for described records.
- 5.52 Review of requests.

44 CFR Ch. I (10–1–98 Edition)

- 5.53 Approval of request.
- 5.54 Denial of request of records.
- 5.55 Appeal within FEMA of denial of request.
- 5.56 Extension of time limits.
- 5.57 Predisclosure notification procedures for confidential commercial information.
- 5.58 Exhaustion of administrative remedies.
- 5.59 Judicial relief available to the public.
- 5.60 Disciplinary action against employees for “arbitrary or capricious” denial.
- 5.61 Contempt for noncompliance.

Subpart E—Exemptions

- 5.70 General.
- 5.71 Categories of records exempt from disclosure under 5 U.S.C. 552.
- 5.72 Executive privilege exemption.

Subpart F—Subpoenas or Other Legal Demands for Testimony or the Production or Disclosure of Records or Other Information

- 5.80 Scope and applicability.
- 5.81 Statement of policy.
- 5.82 Definitions.
- 5.83 Authority to accept service of subpoenas.
- 5.84 Production of documents in private litigation.
- 5.85 Authentication and attestation of copies.
- 5.86 Production of documents in litigation or other adjudicatory proceeding in which the United States is a party.
- 5.87 Testimony of FEMA employees in private litigation.
- 5.88 Testimony in litigation in which the United States is a party.
- 5.89 Waiver.

AUTHORITY: 5 U.S.C. 552 as amended by sections 1801–1804 of the Omnibus Anti-Drug Abuse Act of 1986 which contains the Freedom of Information Reform Act of 1986 (Pub. L. 99–570); 5 U.S.C. 301 (Pub. L. 85–619); Reorganization Plan No. 3 of 1978; E.O. 12127; and E.O. 12148.

SOURCE: 44 FR 50287, Aug. 27, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 5.1 Scope and purposes of part.

This part sets forth policies and procedures concerning the availability of and disclosure of records and information held by the Federal Emergency Management Agency (FEMA) in accordance with 5 U.S.C. 552, popularly known as the “Freedom of Information Act,” (FOIA).