

## § 5.21

### § 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 Chief 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:

(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:

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

### (2) Regional Offices

Region I: 99 High Street, 6th Floor, Boston, Massachusetts 02110.

Region II: 26 Federal Plaza, Suite 1337, New York, New York 10278.

Region III: 615 Chestnut Street, One Independence Mall, 6th Floor, Philadelphia, Pennsylvania 19106.

Region IV: 3003 Chamblee Tucker Road, Atlanta, Georgia 30341.

Region V: 536 South Clark Street, 6th Floor, Chicago, Illinois 60605.

Region VI: Federal Regional Center, 800 North Loop 288, Denton, Texas 76209.

Region VII: 9221 Ward Parkway, Suite 300, Kansas City, Missouri 64114.

Region VIII: Denver Federal Center, Building 710, Box 25267, Denver, Colorado 80255.

Region IX: 1111 Broadway, Suite 1200, Oakland, California 94607.

Region X: Federal Regional Center, 130 228th Street SW, Bothell, Washington 98021.

(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; 74 FR 15333, Apr. 3, 2009]

### § 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 Chief Counsel. A

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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 Administrator.

### § 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 reproduction services are not readily obtainable from private commercial sources.

### § 5.41 FEMA publications.

Anyone may obtain FEMA publications without charge from the FEMA Headquarters, Regional Offices, the FEMA Library at [www.FEMA.gov](http://www.FEMA.gov), or from the FEMA Distribution Center at P.O. Box 2012, 8231 Stayton Drive, Jessup, Maryland 20794 in accordance with standard operating procedures, including limitation on numbers of specific individual publications. FEMA Films may be obtained on loan or cer-

tain of these films may be purchased, in which case fees will be charged as set out in a FEMA catalogue. Non-exempt FEMA research reports are available from the National Technical Information Service, United States Department of Commerce, which establishes its own fee schedule. Charges, if any, for these items and similar user charges are established in accordance with other provisions of law as, for example, 31 U.S.C. 9701 and are not deemed search and duplication charges hereunder.

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

### § 5.42 Fees to be charged—categories of requesters.

(a) There are four categories of FOIA requesters: Commercial use requesters; representatives of news media; educational and noncommercial scientific institutions; and all other requesters. The time limits for processing requests shall only begin upon receipt of a proper request which reasonably identifies records being sought. The Freedom of Information Reform Act of 1986 prescribes specific levels of fees for each of these categories:

(1) When records are being requested for commercial use, the fee policy of FEMA is to levy full allowable direct cost of searching for, reviewing for release, and duplicating the records sought. Commercial users are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. The full allowable direct cost of searching for and reviewing records will be charged even if there is ultimately no disclosure of records. Commercial use is defined as a use that furthers the commercial, trade or profit interests of the requester or person on whose behalf the request is made. In determining whether a requester falls within the commercial use category, FEMA will look to the use to which a requester will put the documents requested. Where a requester does not explain his/her use, or where his/her explanation is insufficient to permit a determination of the nature of the use, FEMA shall require the requester to provide information regarding the use to be made of the information and if