

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

SOURCE: 54 FR 11715, Mar. 22, 1989, unless otherwise noted.

#### § 5.80 Scope and applicability.

(a) This subpart sets forth policies and procedures with respect to the disclosure or production by FEMA employees, in response to a subpoena, order or other demand of a court or other authority, of any material contained in the files of the Agency or any information relating to material contained in the files of the Agency or any information acquired by an employee as part of the performance of that person's official duties or because of that person's official status.

(b) This subpart applies to State and local judicial, administrative and legislative proceedings, and Federal judicial and administrative proceedings.

(c) This subpart does not apply to Congressional requests or subpoenas for testimony or documents, or to an employee making an appearance solely in his or her private capacity in judicial or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents, domestic relations, etc.).

(d) The Department of Homeland Security's regulations, 6 CFR 5.41 through 5.49, apply to any subject matter not already covered by this subpart, including but not limited to demands or requests directed to current or former FEMA contractors.

[54 FR 11715, Mar. 22, 1989, as amended at 72 FR 43546, Aug. 6, 2007]

#### § 5.81 Statement of policy.

(a) It is the policy of FEMA to make its records available to private litigants to the same extent and in the same manner as such records are made available to members of the general public, except where protected from disclosure by litigation procedural authority (e.g., Federal Rules of Civil Procedure) or other applicable law.

(b) It is FEMA's policy and responsibility to preserve its human resources

for performance of the official functions of the Agency and to maintain strict impartiality with respect to private litigants. Participation by FEMA employees in private litigation in their official capacities is generally contrary to this policy.

#### § 5.82 Definitions.

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

(a) *Demand* refers to a subpoena, order, or other demand of a court of competent jurisdiction, or other specific authority (e.g., an administrative or State legislative body), signed by the presiding officer, for the production, disclosure, or release of FEMA records or information or for the appearance and testimony of FEMA personnel as witnesses in their official capacities.

(b) *Employee of the Agency* includes all officers and employees of the United States appointed by or subject to the supervision, jurisdiction or control of the Administrator of FEMA.

(c) *Private litigation* refers to any legal proceeding which does not involve as a named party the United States Government, or the Federal Emergency Management Agency, or any official thereof in his or her official capacity.

#### § 5.83 Authority to accept service of subpoenas.

In all legal proceedings between private litigants, a subpoena duces tecum or subpoena ad testificandum or other demand by a court or other authority for the production of records held by FEMA Regional offices or for the oral or written testimony of FEMA Regional employees should be addressed to the appropriate Regional Administrator listed in § 5.26. For all other records or testimony, the subpoena should be addressed to the Chief Counsel, FEMA, 500 C Street SW., Washington, DC 20472 Washington, DC 20472. No other official or employee of FEMA is authorized to accept service of subpoenas on behalf of the Agency.