SUBCHAPTER A—GENERAL

PART 0—GENERAL STATEMENTS OF POLICY [RESERVED]

PART 1—RULEMAKING; POLICY AND PROCEDURES

Subpart A—General

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SOURCE: 46 FR 32584, June 24, 1981, unless otherwise noted.

Subpart A—General

§ 1.1 Purpose.

(a) This part contains the basic policies and procedures of the Federal Emergency Management Agency (FEMA) for adoption of rules. These policies and procedures incorporate those provisions of section 4 of the Administrative Procedure Act (APA) (5 U.S.C. 553) which FEMA will follow. This part and internal FEMA Manuals implement Executive Order 12291.

(b) Rules which must be published are described in section 3(a) of the APA, 5 U.S.C. 552(a). FEMA implementation of paragraph (a) is contained in 44 CFR part 5, subpart B.

(c) This part contains policies and procedures for implementation of the Regulatory Flexibility Act which took effect January 1, 1981.

(d) A FEMA Manual No. 1140.1, “The Formulation, Drafting, Clearance, and Publication of Federal Register Documents” has been issued describing the internal procedures including policy level oversight of FEMA for:

1. Publishing the semiannual agenda of significant regulations under development and review;
2. Making initial determinations with respect to significance of proposed rulemaking;
3. Determining the need for regulatory analyses; and
4. Reviewing existing regulations, including the reviews required by the Regulatory Flexibility Act.

(e) As the FEMA Manual deals with internal management it is not subject to the requirements either of 5 U.S.C. 552 or 553. Its provisions are not part of this rule and reference to it is informative only.

[46 FR 32584, June 24, 1981, as amended at 49 FR 33878, Aug. 27, 1984]

§ 1.2 Definitions.

(a) Rule or regulation means the whole or a part of any agency statement of general applicability and future effect designed to (1) implement, interpret, or prescribe law or policy, or (2) describe procedures or practice requirements. It includes any rule of general applicability governing Federal grants to States and local governments for which the agency provides an opportunity for notice and public comment, except that the term rule does not include a rule of particular applicability relating to rates, wages, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances. For purposes of this part the term rule does not include regulations issued with respect to a military or foreign affairs function of the United States.
§ 1.3 Scope.

(a) This part prescribes general rulemaking procedures for the issuance, amendment, or repeal of rules in which participation by interested persons is required by 5 U.S.C. 553 or other statutes, by Executive Order 12291, by FEMA policy, or by § 1.4 of this part.

(b) Any delegation by the Administrator of authority to issue rules may not be further redelegated, unless expressly provided for in the delegation.

(c) This part does not apply to rules issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557).

§ 1.4 Policy and procedures.

(a) In promulgating new regulations, reviewing existing regulations, and developing legislative proposals concerning regulation, FEMA, to the extent permitted by law, shall adhere to the following requirements:

(1) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action;

(2) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society;

(3) Regulatory objectives shall be chosen to maximize the net benefits to society;

(4) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and

(5) FEMA shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular entities affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

(b) It is the policy of FEMA to provide for public participation in rulemaking regarding its programs and functions, including matters that relate to public property, loans, grants, or benefits, or contracts, even though these matters are not subject to a requirement for notice and public comment rulemaking by law.

(c) FEMA will publish notices of proposed rulemaking in the Federal Register and will give interested persons an opportunity to participate in the rulemaking through submission of written data, views, and arguments with or without opportunity for oral presentation.

(d) In order to give the public, including small entities and consumer groups, an early and meaningful opportunity to participate in the development of rules, for a number of regulations the Administrator will employ additional methods of inviting public participation. These methods include, but are not limited to, publishing advance Notices of Proposed Rulemaking (ANPR), which can include a statement with respect to the impact of the proposed rule on small entities; holding open conferences; convening public forums or panels, sending notices of proposed regulations to publications likely to be read by those affected and soliciting comment from interested parties by such means as direct mail. An ANPR should be used to solicit public comment early in the rulemaking process for significant rules.

(e) It is the policy of FEMA that its notices of proposed rulemaking are to afford the public at least sixty days for...