

## § 5.84

### § 5.84 Production of documents in private litigation.

(a) The production of records held by FEMA in response to a subpoena duces tecum or other demand issued pursuant to private litigation, whether or not served in accordance with the provisions of § 5.83 of this subpart, is prohibited absent authorization by the Chief Counsel.

(b) Whenever an official or employee of FEMA, including any Regional Administrator, receives a subpoena or other demand for the production of Agency documents or material, he or she shall immediately notify and provide a copy of the demand to the Chief Counsel.

(c) The Chief Counsel, after consultation with other appropriate officials as deemed necessary, shall promptly determine whether to disclose the material or documents identified in the subpoena or other demand. Generally, authorization to furnish the requested material or documents shall not be withheld unless their disclosure is prohibited by relevant law or for other compelling reasons.

(d) Whenever a subpoena or demand commanding the production of any record is served upon any Agency employee other than as provided in § 5.83 of this subpart, or the response to a demand is required before the receipt of instructions from the Chief Counsel, such employee shall appear in response thereto, respectfully decline to produce the record(s) on the ground that it is prohibited by this section and state that the demand has been referred for the prompt consideration of the Chief Counsel.

(e) Where the release of documents in response to a subpoena duces tecum is authorized by the Chief Counsel, 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 Chief Counsel.

## 44 CFR Ch. I (10–1–10 Edition)

### § 5.85 Authentication and attestation of copies.

The Administrator, Deputy Administrators, Regional Administrators, Assistant Administrators, United States Fire Administrator, Federal Insurance Administrator, Chief Counsel, and their designees, and other heads of offices having possession of records are authorized in the name of the Administrator 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.

[74 FR 15334, Apr. 3, 2009]

### § 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, for the disclosure of information described in paragraph (a) of this section, that employee shall immediately notify the Office of Chief Counsel. The Chief 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