

§5.83

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.

§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

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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.

§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.

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§5.86 Records involved in litigation or other judicial process.

Subpoenas duces tecum issued pursuant to litigation or any other adjudicatory proceeding in which the United