

(b) If FEMA fails to make a finding within 180 days or issues a finding in favor of the recipient, FEMA shall:

(1) Promptly advise the complainant in writing of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring a civil action only in a United States District Court for the district in which the recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint at the time it is filed.

(iii) That before commencing the action, the complainant shall give 30 days notice by registered mail to the Director, the Attorney General of the United States, and the recipient;

(iv) That the notice must state: The alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court (Federal or State) of the United States.

PART 8—NATIONAL SECURITY INFORMATION

Sec.

8.1 Purpose.

8.2 Original classification authority.

8.3 Senior FEMA official responsible for the information security program.

8.4 Mandatory declassification review procedures.

AUTHORITY: Reorganization Plan No. 3 of 1978, E.O. 12148 and E.O. 12356.

§ 8.1 Purpose.

(a) Section 5.3(b) of Executive Order (EO) 12356, "National Security Information" requires agencies to promulgate implementing policies and regulations. To the extent that these regula-

tions affect members of the public, these policies are to be published in the FEDERAL REGISTER.

(b) This regulation provides public notification of the FEMA procedures for processing requests for the mandatory review of classified information pursuant to section 3.4(d) of E.O. 12356.

[49 FR 24518, June 14, 1984, as amended at 49 FR 38119, Sept. 27, 1984; 50 FR 40006, Oct. 1, 1985]

§ 8.2 Original classification authority.

(a) The Director, Federal Emergency Management Agency (FEMA), has the authority to classify information originally as TOP SECRET, as designated by the President in the FEDERAL REGISTER, Vol 47, No. 91, May 11, 1982, in accordance with section 1.2(a)(2), E.O. 12356.

(b) In accordance with section 1.2(d)(2), E.O. 12356, the following positions have been delegated ORIGINAL TOP SECRET CLASSIFICATION AUTHORITY by the Director, FEMA:

(1) DEPUTY DIRECTOR, FEMA

(2) ASSOCIATE DIRECTOR, NATIONAL PREPAREDNESS DIRECTORATE

(3) DIRECTOR, OFFICE OF SECURITY

(c) The positions delegated original Top Secret Classification Authority in paragraph (b) of this section, are also delegated Original Secret and Confidential Classification Authority by virtue of this delegation. The following positions have been delegated Original Secret and Original Confidential Classification Authority:

(1) Associate Director, State and Local Programs and Support.

(2) Regional Directors.

Any further delegation of original classification authority, for any classification level, will be accomplished only by the Director of the Federal Emergency Management Agency.

(d) The positions delegated ORIGINAL TOP SECRET CLASSIFICATION AUTHORITY in paragraph (b) of this section, are also delegated ORIGINAL SECRET and CONFIDENTIAL CLASSIFICATION AUTHORITY by virtue of this delegation. The positions delegated ORIGINAL SECRET CLASSIFICATION AUTHORITY in paragraph (c) of this section, are also delegated

ORIGINAL CONFIDENTIAL CLASSIFICATION AUTHORITY by virtue of this delegation. Any further delegation of original classification authority, for any classification level, will be accomplished only by the Director of FEMA.

[49 FR 24518, June 14, 1984 as amended at 51 FR 34605, Sept. 30, 1986; 53 FR 47210, Nov. 22, 1989; 56 FR 32328, July 16, 1991]

§ 8.3 Senior FEMA official responsible for the information security program.

The Director of Security, FEMA, has been designated as the senior official to direct and administer the FEMA information security program, in accordance with section 5.3(a), E.O. 12356.

[49 FR 24518, June 14, 1984]

§ 8.4 Mandatory declassification review procedures.

(a) All information classified by FEMA under E.O. 12356 or predecessor orders shall be subject to a review for declassification if such a review is requested by a United States citizen or permanent resident alien, a Federal agency or a State or local government.

(b) Requests for declassification review shall be submitted to the Office of Security, Federal Emergency Management Agency, Washington, DC 20472. All requests shall be in writing and reasonably describe the information sought with sufficient clarity to enable the appropriate FEMA component to identify the information sought. Any requests that do not sufficiently identify the information sought shall be returned to the requestor and he or she shall be asked to clarify the request and/or provide additional information.

(c) If within 30 days the requestor does not respond to the agency's request for clarification or additional information, the FEMA Office of Security shall notify the requestor that no further action can be taken on the request. If the requestor's response to the agency's request for clarification and/or additional information is inadequate, the Office of Security shall notify him or her that no further action will be taken until such time as the agency is provided with adequate information concerning the request. In addition, the agency's response will set

forth the agency's explanation of the deficiencies of the request.

(d) Once a request meets the foregoing requirements for processing, it will be acted upon as follows:

(1) Receipt of all requests shall be acknowledged within ten (10) working days.

(2) FEMA action upon a request shall be completed within sixty (60) calendar days.

(e) The Director of Security shall designate a FEMA component to conduct the declassification review. This will normally be the originating component. The designated program or staff office shall conduct the review and forward its recommendation(s) to the Office of Security. Information no longer requiring protection under E.O. 12356 shall be declassified and released unless withholding is otherwise authorized under applicable law. When information cannot be declassified in its entirety, FEMA will make a reasonable effort to release those declassified portions of the requested information that constitute a coherent segment. If the information may not be released in whole or part, the requestor shall be given a brief statement as to the reason for the denial, a notice of the right to appeal the determination to the Director of FEMA and a notice that such an appeal must be filed within sixty (60) calendar days to be considered.

(f) If the request requires the rendering of services for which fees may be charged under 31 U.S.C. 9701, such fees may be imposed in accordance with the provisions of 44 CFR part 5, subpart C.

(g) The following procedures shall be followed when denials of requests for declassification are appealed:

(1) The Director shall, within fifteen (15) working days of receipt of the appeal, convene a meeting of the FEMA Information Security Oversight Committee (ISOC). Representation on the FEMA ISOC shall include the Director of Security or his/her representative, a representative of the component that denied the original request, a representative from the Office of General Counsel, a representative from the Office of External Affairs and the Chief of Staff or his/her representative.

(2) If the ISOC upholds the appeal in its entirety, the information will be released in accordance with the provisions of paragraph (e) of this section.

(3) If the ISOC denies the appeal, in part or in its entirety, then it will forward the appeal with its recommendation(s) to the Director of FEMA, for a final determination. A reply will be forwarded to the requestor enclosing the declassified releasable information if any, and an explanation for denying the request in whole or in part.

(4) Final action on appeals shall be completed within thirty (30) working days of receipt of appeal.

[49 FR 24518, June 14, 1984, as amended at 49 FR 38119, Sept. 27, 1984; 50 FR 40006, Oct. 1, 1985; 51 FR 34605, Sept. 30, 1986]

PART 9—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

Sec.

- 9.1 Purpose of part.
- 9.2 Policy.
- 9.3 Authority.
- 9.4 Definitions.
- 9.5 Scope.
- 9.6 Decision-making process.
- 9.7 Determination of proposed action's location.
- 9.8 Public notice requirements.
- 9.9 Analysis and reevaluation of practicable alternatives.
- 9.10 Identify impacts of proposed actions.
- 9.11 Mitigation.
- 9.12 Final public notice.
- 9.13 Particular types of temporary housing.
- 9.14 Disposal of Agency property.
- 9.15 Planning programs affecting land use.
- 9.16 Guidance for applicants.
- 9.17 Instructions to applicants.
- 9.18 Responsibilities.

APPENDIX A TO PART 9—DECISION-MAKING PROCESS FOR E.O. 11988

AUTHORITY: E.O. 11988; E.O. 11990; Reog. Plan No. 3 of 1978; E.O. 12127; E.O. 12148; 42 U.S.C. 5201.

SOURCE: 45 FR 59526, Sept. 9, 1980, unless otherwise noted.

§9.1 Purpose of part.

This regulation sets forth the policy, procedure and responsibilities to implement and enforce Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands.

§9.2 Policy.

(a) FEMA shall take no action unless and until the requirements of this regulation are complied with.

(b) It is the policy of the Agency to provide leadership in floodplain management and the protection of wetlands. Further, the Agency shall integrate the goals of the Orders to the greatest possible degree into its procedures for implementing NEPA. The Agency shall take action to:

(1) Avoid long- and short-term adverse impacts associated with the occupancy and modification of floodplains and the destruction and modification of wetlands;

(2) Avoid direct and indirect support of floodplain development and new construction in wetlands wherever there is a practicable alternative;

(3) Reduce the risk of flood loss;

(4) Promote the use of nonstructural flood protection methods to reduce the risk of flood loss;

(5) Minimize the impact of floods on human health, safety and welfare;

(6) Minimize the destruction, loss or degradation of wetlands;

(7) Restore and preserve the natural and beneficial values served by floodplains;

(8) Preserve and enhance the natural values of wetlands;

(9) Involve the public throughout the floodplain management and wetlands protection decision-making process;

(10) Adhere to the objectives of the Unified National Program for Floodplain Management; and

(11) Improve and coordinate the Agency's plans, programs, functions and resources so that the Nation may attain the widest range of beneficial uses of the environment without degradation or risk to health and safety.

§9.3 Authority.

The authority for these regulations is (a) Executive Order 11988, May 24, 1977, which replaced Executive Order 11296, August 10, 1966, (b) Executive Order 11990, May 24, 1977, (c) Reorganization Plan No. 3 of 1978 (43 FR 41943); and (d) Executive Order 12127, April 1, 1979 (44 FR 1936). E.O. 11988 was issued in furtherance of the National Flood Insurance Act of 1968, as amended (Pub.