

SUBCHAPTER C—PUBLIC AVAILABILITY AND USE

PART 1250—PUBLIC AVAILABILITY AND USE OF FEDERAL RECORDS

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Subpart A—General Information About Freedom of Information Act (FOIA) Requests

§ 1250.1 Scope of this part.

This part implements the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, for NARA operational records and archival records that are subject to FOIA. Other NARA regulations in 36 CFR parts 1254 through 1275 provide detailed guidance for conducting research at NARA.

§ 1250.2 Definitions.

The following definitions apply to this part:

(a) *Archival records* means permanently valuable records of the United States Government that have been transferred to the legal custody of the Archivist of the United States.

(b) *Commercial use requester* means a requester seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(c) *Confidential commercial information* means records provided by a submitter that may contain material exempt from release under the FOIA because

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disclosure could reasonably be expected to cause the submitter substantial competitive harm.

(d) *Educational institution request* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(e) *FOIA request* means a written request for access to records of the executive branch of the Federal Government held by NARA, including NARA operational records, or to Presidential records in the custody of NARA that were created after January 19, 1981, that cites the Freedom of Information Act.

(f) *Freelance journalist* means an individual who qualifies as a representative of the news media because the individual can demonstrate a solid basis for expecting publication through a news organization, even though not actually in its employ. A publication contract would be the clearest proof of a solid basis, but the individual's publication history may also be considered in demonstrating this solid basis.

(g) *News media representative* means a person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify

as disseminators of news) who make their products available for purchase or subscription to the general public.

(h) *Non-commercial scientific institution* means an institution that is not operated on a basis that furthers the commercial, trade, or profit interests of any person or organization, and which is operated solely for the purpose of conducting scientific research which produces results that are not intended to promote any particular product or industry.

(i) *Operational records* means those records that NARA creates or receives in carrying out its mission and responsibilities as an executive branch agency. This does not include archival records as defined in paragraph (a) of this section.

(j) *Other requesters* means any individual who is not a commercial-use requester, not a representative of the news media, not a freelance journalist, nor one associated with an educational or non-commercial scientific institution whose research activities conform to the definition in paragraph (h) of this section.

(k) *Submitter* means any person or entity providing potentially confidential commercial information to an agency. The term submitter includes, but is not limited to, corporations, state governments, and foreign governments.

§ 1250.4 Who can file a FOIA request?

Any individual, partnership, corporation, association, or government regardless of nationality may file a FOIA request.

§ 1250.6 Does FOIA cover all of the records at NARA?

No, FOIA applies only to the records of the executive branch of the Federal government and certain Presidential records. Use the following chart to determine how to gain access:

IF YOU WANT ACCESS TO ...	THEN ACCESS IS GOVERNED BY . . .
(A) Records of executive branch agencies	This part and parts 1254 through 1260 of this chapter. FOIA applies to these records.
(B) Records of the Federal courts	Parts 1254 through 1260 of this chapter. FOIA does not apply to these records.

IF YOU WANT ACCESS TO ...	THEN ACCESS IS GOVERNED BY . . .
(C) Records of Congress	Parts 1254 through 1260 of this chapter. FOIA does not apply to these records.
(D) Presidential records (created by Presidents holding office since 1981).	This part and parts 1254 through 1270 of this chapter. FOIA applies to these records 5 years after the President leaves office. However a President may invoke exemptions under the Presidential Records Act which would extend this up to 12 years after the President leaves office.
(E) Documents created by Presidents holding office before 1981 and housed in a NARA Presidential library.	The deed of gift under which they were given to NARA. These documents are not Federal records and FOIA does not apply to these materials.
(F) Nixon Presidential materials	Part 1275 of this chapter. FOIA does not apply to these materials.

§ 1250.8 Does NARA provide access to all the executive branch records housed at NARA facilities?

(a) NARA provides access to the records NARA creates (operational records) and records originating in other Federal agencies that have been transferred to the legal custody of the Archivist of the United States (archival records).

(b) Twentieth-century personnel and medical records of former members of the military and of former civilian employees of the Federal government are held at NARA’s National Personnel Records Center (NPRC), located in St. Louis, Missouri. These records remain in the legal custody of the agencies that created them and access to them is governed by the FOIA and other access regulations of the creating agencies. The NPRC processes FOIA requests under authority delegated by the originating agencies, not under the provisions of this part.

(c) In our national and regional records centers, NARA stores records that agencies no longer need for day-to-day business. These records remain in the legal custody of the agencies that created them. Access to these records is through the originating agency. NARA does not process FOIA requests for these records.

§ 1250.10 Do I need to use FOIA to gain access to records at NARA?

(a) Most archival records held by NARA are available to the public for

research without filing a FOIA request. You may either visit a NARA facility as a researcher to view and copy records or you may write to request copies of specific records.

(b) If you are seeking access to archival records that are restricted and not available to the public, you may need to file a FOIA request or a mandatory review request (see part 1254 of this chapter for procedures for accessing classified records) to gain access to these materials. If you make a reference request for restricted records, we may ask that you change your reference request to a FOIA request or a mandatory review request. See 36 CFR 1254.46 for information on filing mandatory review requests.

(c) You must file a FOIA request when you request access to NARA operational records that are not already available to the public.

§ 1250.12 What types of records are available in NARA’s FOIA Reading Room?

(a) NARA makes available for public inspection and copying the following materials described in subsection (a)(2) of the FOIA:

- (1) Final NARA orders;
- (2) Written statements of NARA policy that are not published in the FEDERAL REGISTER;
- (3) Operational staff manuals and instructions to staff that affect members of the public;

(4) Copies of records requested 3 or more times under FOIA and other records that have been or are likely to become the subject of subsequent FOIA requests for substantially the same records;

(5) An index, updated quarterly, to these materials.

(b) These materials are available during normal working hours at the NARA facility where the records are located. See 36 CFR parts 1253 and 1254 for a fuller description of NARA facilities and research room procedures.

(c) Any of this material that was created after October 31, 1996, will also be placed on NARA's web site at http://www.archives.gov/research_room/foia_reading_room/foia_reading_room.html.

(d) For paper copies of the index to these materials write the NARA FOIA Officer at the address listed in § 1250.22(d).

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§ 1250.14 If I do not use FOIA to request records, will NARA treat my request differently?

Whether you choose to invoke the FOIA or not, NARA will respond as promptly as possible to your request.

Subpart B—How To Access Records Under FOIA

§ 1250.20 What do I include in my FOIA request?

In your FOIA request, you must:

(a) Describe the records you wish to access in enough detail to allow NARA staff to find them. The more information you provide, the better possibility NARA has of finding the records you are seeking. Information that will help us find the records includes:

(1) The agencies, offices, or individuals involved; and

(2) The approximate date when the records were created.

(b) Include your name and full mailing address. If possible, please include a phone number or email address as well. This information will allow us to reach you faster if we have any questions about your request.

(c) Mark both your letter and envelope with the words "FOIA Request."

§ 1250.22 Where do I send my FOIA request?

(a) For requests for archival records in the Washington, DC, area, mail your request to the Chief, Special Access and FOIA Staff (NWCTF), Room 6350, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001.

(b) For archival records in any of NARA's regional records services facilities, send the FOIA request to the director of the facility in which the records are located. The addresses for these facilities are listed in 36 CFR 1253.7.

(c) For Presidential records subject to FOIA, mail your request to the director of the library in which the records are located. The addresses for these facilities are listed in 36 CFR 1253.3.

(d) For the operational records of any NARA unit except the Office of the Inspector General, mail your request to the NARA FOIA Officer (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001.

(e) For records of the Inspector General write to Office of the Inspector General (OIG), FOIA Request, Room 1300, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001.

(f) If you are unable to determine where to send your request, send it to the NARA FOIA Officer (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. That office will forward your request to the office(s) that have the records you are seeking. Your request will be considered received when it reaches the proper office's FOIA staff.

§ 1250.24 Will you accept a FOIA request through email?

Yes, send email FOIA requests to http://www.archives.gov/global_pages/inquire_form.html. You must indicate in the subject line of your email message that you are sending a FOIA request. The body of the message must contain all of the information listed in § 1250.20.

[66 FR 16376, Mar. 23, 2001, as amended at 67 FR 43253, June 27, 2002]

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§ 1250.26 How quickly will NARA respond to my FOIA request?

(a) NARA will make an initial response to all FOIA requests within 20 working days. The initial response will inform requesters of any complexity in processing their request, which may lengthen the time required to reach a final decision on the release of the records.

(b) In most cases, NARA will make a decision on the release of the records you requested within the 20 working days. If unusual circumstances prevent us from making a decision within 20 working days, we will inform you in writing how long it will take us to complete your request. Unusual circumstances are the need to:

(1) Search for and collect the records from field facilities;

(2) Search for, collect, and review a voluminous amount of records which are part of a single request; or

(3) Consult with another agency before releasing records.

(c) If we are extending the deadline for more than an additional 10 working days, we will ask you if you wish to modify your request so that we can meet the deadline. If you do not agree to modify your request, we will work with you to arrange an alternative time schedule for review and release.

(d) If you have requested records that we do not have the authority to release without consulting another agency (e.g. security-classified records), we will refer copies of the documents to the appropriate agency. NARA will send you an initial response to your FOIA requests within 20 working days informing you of this referral. However, the final response to your FOIA can only be made when the agency to which we have referred the documents responds to us.

(e) If you have requested Presidential records and NARA decides to grant you access, NARA must inform the incumbent and former Presidents of our intention to disclose information from those records. After receiving the notice, the incumbent and former Presidents have 30 days in which to decide whether or not to invoke Executive privilege to deny access to the information. NARA will send you an initial response to your FOIA request within

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20 working days informing you of the status of your request. However, the final response to your FOIA can only be made at the end of the 30-day Presidential notification period.

(f) If you have requested records containing confidential commercial information that is less than 10 years old, we will contact the submitter of the requested information. NARA will send you an initial response to your FOIA request within 20 working days informing you of our actions. See §1250.82 for the time allowed the submitter to object to the release of confidential commercial information. If the records contain confidential commercial information that is 10 years old or older, NARA staff will not contact the submitter, but will process the request under normal FOIA procedures.

§ 1250.28 Will NARA ever expedite the review of the records I requested?

(a) In certain cases NARA will move your FOIA request or appeal to the head of our FOIA queue. We will do this for any of the following reasons:

(1) A reasonable expectation of an imminent threat to an individual's life or physical safety;

(2) A reasonable expectation of an imminent loss of a substantial due process right; or

(3) An urgent need to inform the public about an actual or alleged Federal government activity (this last criterion applies only to those requests made by a person primarily engaged in disseminating information to the public).

(b) NARA can expedite requests, or segments of requests, only for records over which we have control. If NARA must refer a request to another agency, we will so inform you and suggest that you seek expedited review from that agency. We cannot expedite requests for Presidential records or shorten the 30-day Presidential notification period.

§ 1250.30 How do I request expedited processing?

You must submit a statement, certified to be true and correct to the best of your knowledge, explaining the basis of your need for expedited processing. All such requests must be sent to the

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appropriate official at the address listed in §1250.22. You may request expedited processing when you first request records or at any time during our processing of your request.

§ 1250.32 How quickly will NARA process an expedited request?

We will respond to you within 10 days of our receipt of your request for expedited processing. If we grant your request, the NARA office responsible for the review of the requested records will process your request as quickly as possible. If we deny your request for expedited processing and you decide to appeal our denial, we will also expedite our review of your appeal.

§ 1250.34 How will I know if NARA is going to release the records I requested?

Once NARA decides to release the requested records, in whole or in part, we will inform you in writing. Our response will tell you how much responsive material we found, where you may review the records, and the copying or other charges due. If the records you

sought were released only in part, we will estimate, if possible, the amount of the withheld information. Also, if we deny any part of your request, our response will explain the reasons for the denial, which FOIA exemptions apply, and your right to appeal our decisions.

§ 1250.36 When will NARA deny a FOIA request?

The FOIA contains nine exemptions under which information may be exempted from release. Given the age and nature of archival records, many of these exemptions apply to only a few of the records in our custody. We will only withhold information where we must (such as information which remains classified, or information which is specifically closed by statute) or we reasonably foresee that disclosure would cause a harm. In addition if only part of a record must be withheld, NARA will provide access to the rest of the information in the record. Categories of information that may be exempt from disclosure under the FOIA are as follows:

SECTION OF THE FOIA:	REASON FOR EXEMPTION:
5 U.S.C. 552(b)(1)	Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified under the Executive order.
5 U.S.C. 552(b)(2)	Related solely to the internal personnel rules and practices of an agency.
5 U.S.C. 552(b)(3)	Specifically exempted from disclosure by statute (other than section 552b of this title), provided that the statute: (A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.
5 U.S.C. 552(b)(4)	Trade secrets and commercial or financial information obtained from a person that are privileged or confidential.
5 U.S.C. 552(b)(5)	Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.
5 U.S.C. 552(b)(6)	Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

SECTION OF THE FOIA:	REASON FOR EXEMPTION:
5 U.S.C. 552(b)(7)	Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information: (A) Could reasonably be expected to interfere with enforcement proceedings; (B) Would deprive a person of a right to a fair trial or an impartial adjudication; (C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting lawful national security intelligence investigation, information furnished by a confidential source; (E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (F) Could reasonably be expected to endanger the life or physical safety of any individual.
5 U.S.C. 552(b)(8)	Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.
5 U.S.C. 552(b)(9)	Geological and geophysical information and data, including maps, concerning wells.

§ 1250.38 In what format will NARA provide copies?

After all applicable fees are paid, NARA will provide you copies of records in the format you request if the records already exist in that format, or if they are readily reproducible in the format you request.

Subpart C—Fees

§ 1250.50 Will I be charged for my FOIA request?

(a) Fees and fee waivers for FOIA requests for NARA operational records are listed in this subpart.

(b) Fees for FOIA requests for NARA archival records are listed in 36 CFR part 1258.

§ 1250.52 How much will I have to pay for a FOIA request for NARA operational records?

(a) If you are a commercial use requester, we will charge you fees for searching, reviewing, and copying.

(b) If you are an educational or scientific institution requester, or a member of the news media, we will charge you fees for copying. However, we will not charge you for copying the first 100 pages.

(c) If you do not fall into either of the categories in paragraphs (a) and (b) of this section, then we will charge you search and copying fees. However, we will not charge you for the first 2 hours of search time or for copying the first 100 pages.

§ 1250.54 General information on fees for NARA operational records.

(a) NARA is able to make most of its records available for examination at the NARA facility where the records

are located. Whenever this is possible, you may review the records in a NARA research room at that facility.

(b) If you want NARA to supply you with copies, we will normally require you to pay all applicable fees in accordance with §1250.52 before we provide you with the copies.

(c) NARA may charge search fees even if the records are not releasable or even if we do not find any responsive records during our search.

(d) If you are entitled to receive 100 free pages, but the records cannot be copied onto standard size (8.5" by 11") photocopy paper, we will copy them on larger paper and will reduce your copy fee by the normal charge for 100 standard size photocopies. If the records are not on textual media (e.g., photographs or electronic files) we will provide the equivalent of 100 pages of standard size paper copies for free.

(e) We will not charge you any fee if the total costs are \$10 or less.

(f) If estimated search or review fees exceed \$50, we will contact you. If you have specified a different limit that you are willing to spend, we will contact you only if we estimate the fees will exceed that amount.

(g) If you have failed to pay FOIA fees in the past, we will require you to pay your past-due bill before we begin processing your request. If we estimate that your fees may be greater than \$250, we may require payment or a deposit before we begin processing your request.

(h) If we determine that you (acting either alone or with others) are breaking down a single request into a series of requests in order to avoid or reduce fees, we may aggregate all these requests in calculating the fees.

§ 1250.56 Fee schedule for NARA operational records.

In responding to FOIA requests for operational records, NARA will charge the following fees, where applicable, unless we have given you a reduction or waiver of fees under §1250.60.

(a) *Search fees*—(1) *Manual searching of records.* When the search is relatively straightforward and can be performed by a clerical or administrative employee, the search rate is \$16 per hour (or fraction thereof). When the request

is more complicated and must be done by a professional employee of NARA, the rate is \$33 per hour (or fraction thereof)

(2) *Computer searching.* This is the actual cost to NARA of operating the computer and the salary of the operator. When the search is relatively straightforward and can be performed by a clerical or administrative employee, the search rate is \$16 per hour (or fraction thereof). When the request is more complicated and must be done by a professional employee of NARA, the rate is \$33 per hour (or fraction thereof).

(b) *Review fees.* (1) Review fees are charged for time spent examining all documents that are responsive to a request to determine if any are exempt from release and to determine if NARA will release exempted records.

(2) The review fee is \$33 per hour (or fraction thereof).

(3) NARA will not charge review fees for time spent resolving general legal or policy issues regarding the application of exemptions.

(c) *Reproduction fees*—(1) *Self-service photocopying.* At NARA facilities with self-service photocopiers, you may make reproductions of released paper documents for 15 cents per page.

(2) *Photocopying standard size pages.* This charge is 20 cents per page when NARA produces the photocopies.

(3) *Reproductions of electronic records.* The direct costs to NARA for staff time for programming, computer operations, and printouts or electromagnetic media to reproduce the requested information will be charged to requesters. When the work is relatively straightforward and can be performed by a clerical or administrative employee, the rate is \$16 per hour (or fraction thereof). When the request is more complicated and must be done by a professional employee of NARA, the rate is \$33 per hour (or fraction thereof).

(4) *Copying other media.* This is the direct cost to NARA of the reproduction. Specific charges will be provided upon request.

§ 1250.58 Does NARA ever waive FOIA fees for NARA operational records?

(a) NARA will waive or reduce your fees for NARA operational records only

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if your request meets both of the following criteria:

(1) The request is in the public interest (i.e., information likely to contribute significantly to public understanding of the operations and activities of the government); and

(2) The request is not primarily in your commercial interest.

(b) All requests for fee waivers or reductions must be made at the time of the initial FOIA request. All requests must include the grounds for requesting the reduction or elimination of fees.

§ 1250.60 How will NARA determine if I am eligible for a fee waiver for NARA operational records?

(a) If you request a fee waiver, NARA will consider the following in reviewing how your request meets the public interest criteria in §1250.58(a)(1):

(1) How do the records pertain to the operations and activities of the Federal Government?

(2) Will release reveal any meaningful information about Federal Government activities that is not already publicly known?

(3) Will disclosure to you advance the understanding of the general public on the issue?

(4) Do you have expertise in or a thorough understanding of these records?

(5) Will you be able to disseminate this information to a broad spectrum of the public?

(6) Will disclosure lead to a significantly greater understanding of the Government by the public?

(b) After reviewing your request and determining that there is a substantial public interest in release, NARA will also review it to determine if it furthers your commercial interests. If it does, you are not eligible for a fee waiver.

Subpart D—Appeals

§ 1250.70 What are my appeal rights under FOIA?

You may appeal any of the following decisions:

(a) The refusal to release a record, either in whole or in part;

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(b) The determination that a record does not exist or cannot be found;

(c) The determination that the record you sought was not subject to the FOIA;

(d) The denial of a request for expedited processing; or

(e) The denial of a fee waiver request.

§ 1250.72 How do I file an appeal?

(a) All appeals must be in writing and received by NARA within 35 calendar days of the date of NARA's denial letter. Mark both your letter and envelope with the words "FOIA Appeal," and include a copy of your initial request and our denial.

(b) In your appeal, explain why we should release the records, grant your fee waiver request, or expedite the processing of your request. If we were not able to find the records you wanted, explain why you believe our search was inadequate. If we denied you access to records and told you that those records were not subject to FOIA, please explain why you believe the records are subject to FOIA.

§ 1250.74 Where do I send my appeal?

(a) If NARA's Inspector General denied your request, send your appeal to the Archivist of the United States, (ATTN: FOIA Appeal Staff), Room 4200, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland 20740-6001.

(b) Send all other appeals to the Deputy Archivist of the United States, (ATTN: FOIA Appeal Staff), Room 4200, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland 20740-6001.

(c) Denials under FOIA of access to national security information accessioned into the National Archives of the United States are made by designated officials of the originating or responsible agency or by NARA under a written delegation of authority. You must appeal determinations that records remain classified for reasons of national security to the agency with responsibility for protecting and declassifying that information. NARA will provide you with the necessary appeal information in those cases. You

can find additional information on access to national security classified records at NARA in 36 CFR part 1254.

§ 1250.76 May I email my FOIA appeal?

Yes, you may submit a FOIA appeal via email to http://www.archives.gov/global_pages/inquire_form.html. You must put the words “FOIA Appeal” in the subject line of your email message. The body of your message must contain the information in § 1250.72(b).

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§ 1250.78 How does NARA handle appeals?

NARA will respond to your appeal within 20 working days after its receipt of the appeal by NARA. If we reverse or modify our initial decision, we will inform you in writing and reprocess your request. If we do not change our initial decision, our response to you will explain the reasons for our decision, any FOIA exemptions that apply, and your right to judicial review of our decision.

Subpart E—Special Situations

§ 1250.80 How does a submitter identify records containing confidential commercial information?

When a person submits records that contain confidential commercial information to NARA, that person may state in writing that all or part of the records are exempt from disclosure under exemption (b)(4) of the FOIA.

§ 1250.82 How will NARA handle a FOIA request for confidential commercial information?

If NARA receives a FOIA request for records containing confidential commercial information or for records that we believe may contain confidential commercial information and if the information is less than 10 years old, we will follow these procedures:

(a) If, after reviewing the records in response to a FOIA request, we believe that the records may be opened, we will make reasonable efforts to inform the submitter of this. When the request is for information from a single or small number of submitters, NARA will send a notice via registered mail to the submitter’s last known address.

Our notice to the submitter will include a copy of the FOIA request and will tell the submitter the time limits and procedures for objecting to the release of the requested material.

(b) The submitter will have 5 working days from the receipt of our notice to object to the release and to explain the basis for the objection. The NARA FOIA Officer may extend this period for an additional 5 working days.

(c) NARA will review and consider all objections to release that are received within the time limit. If we decide to release the records, we will inform the submitter in writing. This notice will include copies of the records as we intend to release them and our reasons for deciding to release. We will also inform the submitter that we intend to release the records 10 working days after the date of the notice unless a U.S. District Court forbids disclosure.

(d) If the requester files a lawsuit under the FOIA for access to any withheld records, we will inform the submitter.

(e) We will notify the requester whenever we notify the submitter of the opportunity to object or to extend the time for objecting.

PART 1251—TESTIMONY BY NARA EMPLOYEES RELATING TO AGENCY INFORMATION AND PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS

Sec.

1251.1 What is the purpose of this part?

1251.2 To what demands does this part apply?

1251.3 What definitions apply to this part?

1251.4 May employees provide records or give testimony in response to a demand without authorization?

1251.6 How does the General Counsel determine whether to comply with a demand for records or testimony?

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1251.10 What are the filing requirements for a demand for documents or testimony?

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1251.16 Are there any restrictions that apply to testimony?

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1251.18 Are there any restrictions that apply to the production of records?

1251.20 Are there any fees associated with providing records or testimony?

1251.22 Are there penalties for providing records or testimony in violation of this part?

AUTHORITY: 44 U.S.C. 2104; 44 U.S.C. 2108; 44 U.S.C. 2109; 44 U.S.C. 2111 note; 44 U.S.C. 2112; 44 U.S.C. 2116; 44 U.S.C. ch. 22; 44 U.S.C. 3103.

SOURCE: 73 FR 79393, Dec. 29, 2008, unless otherwise noted.

§ 1251.1 What is the purpose of this part?

(a) This part provides the policies and procedures to follow when submitting a demand to an employee of the National Archives and Records Administration (NARA) to produce records or provide testimony relating to agency information in connection with a legal proceeding. You must comply with these requirements when you request the release or disclosure of records or agency information.

(b) The National Archives and Records Administration intends these provisions to:

(1) Promote economy and efficiency in its programs and operations;

(2) Minimize NARA's role in controversial issues not related to its mission;

(3) Maintain NARA's impartiality among private litigants when NARA is not a named party; and

(4) Protect sensitive, confidential information and the deliberative processes of NARA.

(c) In providing for these requirements, NARA does not waive the sovereign immunity of the United States.

(d) This part provides guidance for the internal operations of NARA. It does not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

§ 1251.2 To what demands does this part apply?

This part applies to demands to NARA employees for factual, opinion, or expert testimony relating to agency information or for production of records in legal proceedings whether or not NARA is a named party. However, it does not apply to:

(a) Demands upon or requests for a NARA employee to testify as to facts or events that are unrelated to his or her official duties and that are unrelated to the functions of NARA;

(b) Demands upon or requests for a former NARA employee to testify as to matters in which the former employee was not directly or materially involved while at NARA;

(c) Requests for the release of, or access to, records under the Freedom of Information Act, 5 U.S.C. 552, as amended; the Privacy Act, 5 U.S.C. 552a; the Federal Records Act, 44 U.S.C. chs. 21, 29, 31, 33; the Presidential Records Act, 44 U.S.C. ch. 22; or the Presidential Recordings and Materials Preservation Act, 44 U.S.C. 2111 note;

(d) Demands for records or testimony in matters before the Equal Employment Opportunity Commission or the Merit Systems Protection Board; and

(e) Congressional demands and requests for testimony or records.

§ 1251.3 What definitions apply to this part?

The following definitions apply to this part:

Court of competent jurisdiction means, for purposes of this part, the judge or some other competent entity, as authorized by statute or regulation or other lawful means, and not simply by an attorney or court clerk, must sign a demand for records the disclosure of which is constrained by the Privacy Act, 5 U.S.C. 552a because section (b)(11) of the Act requires appropriate authorization of a court of competent jurisdiction. See *Doe v. Digenova*, 779 F.2d 74 (D.C. Cir. 1985); *Stiles v. Atlanta Gas Light Company*, 453 F. Supp. 798 (N.D. Ga. 1978).

Demand means a subpoena, or an order or other command of a court or other competent authority, for the production, disclosure, or release of records in a legal proceeding, or for the appearance and testimony of a NARA employee in a legal proceeding.

General Counsel means the General Counsel of NARA or a person to whom the General Counsel has delegated authority under this part. General Counsel also means the Inspector General of NARA (or a person to whom the Inspector General has delegated authority

under this part) when a demand is made for records of NARA's Office of the Inspector General, or for the testimony of an employee of NARA's Office of the Inspector General.

Legal proceeding means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, legislative body, or other body that conducts a legal or administrative proceeding. Legal proceeding includes all phases of litigation.

NARA means the National Archives and Records Administration.

NARA employee or employee means:

(1) Any current or former officer or employee of NARA, except that this definition does not include former NARA employees who are retained or hired as expert witnesses concerning, or who agree to testify about, matters available to the public or matters with which they had no specific involvement or responsibility during their employment with NARA;

(2) Any other individual hired through contractual agreement by or on behalf of NARA or who has performed or is performing services under such an agreement for NARA;

(3) Any individual who served or is serving in any consulting or advisory capacity to NARA, whether formal or informal; and

(4) Any individual who served or is serving in any volunteer or internship capacity to NARA.

Records or agency information means:

(1) Archival records, which are permanently valuable records of the United States Government that have been transferred to the legal custody of the Archivist of the United States;

(2) Operational records, which are those records that NARA creates or receives in carrying out its mission and responsibilities as an executive branch agency. This does not include archival records as defined above in this section;

(3) All documents and materials which are NARA agency records under the Freedom of Information Act, 5 U.S.C. 552, as amended;

(4) Presidential records as defined in 44 U.S.C. 2201; historical materials as defined in 44 U.S.C. 2101; records as de-

defined in 44 U.S.C. 2107 and 44 U.S.C. 3301;

(5) All other documents and materials contained in NARA files; and

(6) All other information or materials acquired by a NARA employee in the performance of his or her official duties or because of his or her official status.

Testimony means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, interviews, and statements made by an individual in connection with a legal proceeding.

§ 1251.4 May employees provide records or give testimony in response to a demand without authorization?

No, except as otherwise permitted by § 1251.14 of this part, no employee may produce records and information or provide any testimony relating to agency information in response to a demand, or other legal request, without the prior, written approval of the General Counsel.

§ 1251.6 How does the General Counsel determine whether to comply with a demand for records or testimony?

The General Counsel may consider the following factors in determining whether or not to grant an employee permission to testify on matters relating to agency information, or permission to produce records in response to a demand:

(a) NARA's compliance with the demand is required by federal law, regulation or rule, or is otherwise permitted by this part;

(b) The purposes of this part are met;

(c) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;

(d) NARA has an interest in the decision that may be rendered in the legal proceeding;

(e) Allowing such testimony or production of records would assist or hinder NARA in performing its statutory duties;

(f) Allowing such testimony or production of records would involve a substantial use of NARA resources;

(g) Responding to the demand would interfere with the ability of NARA employees to do their work;

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(h) Allowing such testimony or production of records would be in the best interest of NARA or the United States;

(i) The records or testimony can be obtained from the publicly available records of NARA or from other sources;

(j) The demand is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand arose;

(k) Disclosure would violate a statute, Executive Order or regulation;

(l) Disclosure would reveal confidential, sensitive, or privileged information, trade secrets or similar, confidential commercial or financial information, otherwise protected information, or information which would otherwise be inappropriate for release;

(m) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceeding, or compromise constitutional rights;

(n) Disclosure would result in NARA appearing to favor one litigant over another;

(o) Disclosure relates to documents that were created by another agency;

(p) A substantial Government interest is implicated;

(q) The demand is within the authority of the party making it;

(r) The demand is sufficiently specific to be answered; and

(s) Other factors, as appropriate.

§ 1251.8 Who is authorized to accept service of a subpoena demanding the production of records or testimony?

(a) Demands for testimony, except those involving an employee of NARA's Office of the Inspector General, must be addressed to, and served on, the General Counsel, National Archives and Records Administration, Suite 3110, 8601 Adelphi Road, College Park, MD 20740-6001.

(b) Demands for the testimony of an employee of NARA's Office of the Inspector General must be addressed to, and served on, the Inspector General, National Archives and Records Administration, Suite 1300, 8601 Adelphi Road, College Park, MD 20740-6001.

(c) Demands for the production of NARA operational records, except those of the Office of the Inspector

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General, must be addressed to, and served on, the General Counsel.

(d) Demands for records of the Inspector General must be addressed to, and served on, the Inspector General.

(e) Demands for the production of records stored in a Federal Records Center (FRC), including the National Personnel Records Center, must be addressed to, and served on, the director of the FRC where the records are stored. NARA honors the demand to the extent required by law, if the agency having legal title to the records has not imposed any restrictions. If the agency has imposed restrictions, NARA notifies the authority issuing the demand that NARA abides by the agency-imposed restrictions and refers the authority to the agency for further action.

(f) Demands for the production of materials designated as Federal archival records, Presidential records or donated historical materials administered by NARA must be addressed to, and served on either: the Assistant Archivist for Records Services—Washington, DC (for records located in Headquarters); Director of Archival Operations (for records located in the regions); or the appropriate Presidential Library Director.

(g) For matters in which the United States is a party, the Department of Justice should contact the General Counsel instead of submitting a demand for records or testimony on its own or another agency's behalf.

(h) The demanding party is responsible for complying with all service requirements, including any additional requirements contained in the Federal Rules of Civil Procedure or other statutory or regulatory authority.

(i) Contact information for each NARA facility may be found at 36 CFR part 1253.

§ 1251.10 What are the filing requirements for a demand for documents or testimony?

You must comply with the following requirements, as appropriate, whenever you issue a demand to a NARA employee for records, agency information or testimony:

(a) Your demand must be in writing and must be served on the appropriate party as identified in §1251.8.

(b) Demands for production of records that are governed by the Privacy Act require authorization of a court of competent jurisdiction as defined in §1251.3.

(c) Your written demand (other than a demand pursuant to the Federal Rules of Civil Procedure in a case in which NARA is a party, in which case you must comply with the requirements of that rule) must contain the following information:

(1) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved;

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement as to how the need for the information outweighs the need to maintain any confidentiality of the information and outweighs the burden on NARA to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than a NARA employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used instead of testimony;

(7) A description of all previous decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requester and other parties may require with each NARA employee for time spent by the employee

in connection with the request for testimony.

(d) NARA reserves the right to require additional information to process your demand.

(e) Your demand (other than a demand pursuant to the Federal Rules of Civil Procedure in a case in which NARA is a party, in which case you must comply with the requirements of that rule) should be submitted at least 45 days before the date that records or testimony is required. Demands submitted in less than 45 days before records or testimony is required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(f) Failure to cooperate in good faith to enable the General Counsel to make an informed decision may serve as the basis for a determination not to comply with your demand.

(g) The information collection contained in this section has been approved by the Office of Management and Budget under the Paperwork Reduction Act under the control number 3095-0038.

§ 1251.12 How does NARA process your demand?

(a) After service of a demand for production of records or for testimony, an appropriate NARA official reviews the demand and, in accordance with the provisions of this, determines whether, or under what conditions, to produce records or authorize the employee to testify on matters relating to agency information.

(b) NARA processes demands in the order in which we receive them. NARA will not complete and return certifications, affidavits, or similar documents submitted with a demand for records, but if requested will certify records in accordance with NARA's published fee schedule at 36 CFR part 1258. Absent exigent or unusual circumstances, NARA responds within 45 days from the date of receipt. The time for response depends upon the scope of the demand.

(c) The General Counsel may grant a waiver of any procedure described by this part where a waiver is considered

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necessary to promote a significant interest of NARA or the United States or for other good cause.

§ 1251.14 Who makes the final determination on compliance with demands for records or testimony?

The General Counsel makes the final determination on demands to employees for testimony. The appropriate NARA official authorized to accept service, as described in §1251.8, makes the final determination on demands for the production of records. The NARA official notifies the requester and, as necessary, the court or other authority of the final determination and any conditions that may be imposed on the release of records or information, or on the testimony of a NARA employee. If the NARA official deems it appropriate not to comply with the demand, the official communicates the reasons for the noncompliance as appropriate.

§ 1251.16 Are there any restrictions that apply to testimony?

(a) The General Counsel may impose conditions or restrictions on the testimony of NARA employees including, for example, limiting the areas of testimony or requiring the requester and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal or will only be used or made available in the particular legal proceeding for which testimony was requested. The General Counsel may also require a copy of the transcript of testimony at the requester's expense.

(b) NARA may offer the employee's written declaration instead of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee must not:

(1) Disclose confidential or privileged information; or

(2) For a current NARA employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of NARA unless testimony is being given on behalf of the United States.

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§ 1251.18 Are there any restrictions that apply to the production of records?

(a) The General Counsel may impose conditions or restrictions on the release of records and agency information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of a confidentiality agreement must be acceptable to the General Counsel. In cases where protective orders or confidentiality agreements have already been executed, NARA may condition the release of records and agency information on an amendment to the existing protective order or confidentiality agreement.

(b) Typically, original NARA records will not be produced in response to a demand. Instead of the original records, NARA provides certified copies for evidentiary purposes (see 28 U.S.C. 1733; 44 U.S.C. 2116). Such copies must be given judicial notice and must be admitted into evidence equally with the originals from which they were made (see 44 U.S.C. 2116). If the General Counsel so determines, under exceptional circumstances, original NARA records may be made available for examination in response to a demand, but they are not to be presented as evidence.

§ 1251.20 Are there any fees associated with producing records or providing testimony?

(a) *Generally.* The General Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs to NARA.

(b) *Fees for records.* Fees for producing records include fees for searching, reviewing, and duplicating records, costs of attorney time spent in reviewing the demand or request, and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. Costs for employee time are calculated on the basis of the hourly pay of the employee (including all pay, allowance, and benefits). Fees for duplication are the same

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as those charged by NARA in part 1258 of this title.

(c) *Witness fees.* Fees for attendance by a witness include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees are determined based upon the rule of the Federal district court closest to the location where the witness appears.

(d) *Payment of fees.* (1) Witness fees for current NARA employees must be submitted to the General Counsel and made payable to the Treasury of the United States.

(2) Fees for the production of records, including records certification fees, must be submitted to the official who makes the final determination on demands for the production of records, as described in §1251.14, and made payable to the National Archives Trust Fund (NATF).

(3) Applicable fees paid to former NARA employees providing testimony should be paid directly to the former employee in accordance with 28 U.S.C. 1821 or other applicable statutes.

(e) *Certification (authentication) of copies of records.* NARA may certify that records are true copies in order to facilitate their use as evidence. Request certified copies from NARA at least 45 days before the date they are needed. We charge a certification fee for each document certified.

(f) *Waiver or reduction of fees.* The General Counsel, in his or her sole discretion, may, upon a showing of good cause, waive or reduce any fees in connection with the testimony, production, or certification of records.

(g) *De minimis fees.* Fees are not assessed if the total charge is \$10.00 or less, or as otherwise stated in NARA policy.

§1251.22 Are there any penalties for providing records or testimony in violation of this part?

(a) An employee who discloses official records or information or gives testimony relating to official information, except as expressly authorized by NARA or as ordered by a Federal court after NARA has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Additionally, former NARA

employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current NARA employee who testifies or produces official records and information in violation of this part is subject to disciplinary action.

PART 1252—PUBLIC USE OF RECORDS, DONATED HISTORICAL MATERIALS, AND FACILITIES; GENERAL

Sec.
1252.1 Scope.
1252.2 Definitions.

AUTHORITY: 44 U.S.C. 2104(a).

§ 1252.1 Scope.

This subchapter prescribes rules and procedures governing the public use of records and donated historical materials in the custody of the National Archives and Records Administration (NARA). Except for part 1250, this subchapter does not apply to current operating records of NARA. This subchapter also prescribes rules and procedures governing the public use of certain NARA facilities.

[59 FR 29191, June 6, 1994]

§ 1252.2 Definitions.

The following definitions are established for terms used in this subchapter.

Archives or archival records mean Federal records that have been determined by NARA to have sufficient historical or other value to warrant their continued preservation by the U.S. Government, and have been transferred to the National Archives of the United States.

Director means the head of a Presidential library, the head of a Presidential Materials Staff, the head of a NARA division, branch, archival center, or unit responsible for servicing archival records, the head of a regional archives, or the head of a Federal records center.

Documents mean, for purposes of part 1254 of this chapter, archives, FRC records, donated historical materials, Nixon Presidential historical materials, and Presidential records, regardless of the media on which they are contained. Document form may include

paper, microforms, photographs, sound recordings, motion pictures, maps, drawings, and electronic files.

Donated historical materials means books, correspondence, documents, papers, pamphlets, magnetic tapes, pictures, photographs, plats, maps, films, motion pictures, sound recordings, and other documental media having historical or commemorative value accepted by NARA from a source other than an agency of the U.S. Government.

Federal records center includes the Washington National Records Center, the National Personnel Records Center, and the Federal records centers listed in §1253.6 of this chapter.

Federal records center records (FRC records) mean records which, pending their transfer to the National Archives of the United States or their disposition in any other manner authorized by law, have been transferred to a Federal records center operated by NARA.

Nixon Presidential historical materials has the meaning specified in §1275.16 of this chapter.

Presidential records has the meaning specified in §1270.14 of this chapter.

Records mean records or microfilm copies of records transferred to NARA under 44 U.S.C. 2107 and 3103; namely, archives and Federal records center records as the terms are defined in §1252.2. The term *records* does not include current operating records of NARA, the public availability of which is governed by part 1250 of this chapter, or donated historical materials as defined in this section.

Researcher means a person who has been granted access to original documents or copies of documents.

[33 FR 4885, Mar. 22, 1968, 42 FR 13022, Mar. 8, 1977, and 49 FR 33253, Aug. 22, 1984. Redesignated and amended at 50 FR 15723, 15726, Apr. 19, 1985; 59 FR 29191, June 6, 1994]

PART 1253—LOCATION OF NARA FACILITIES AND HOURS OF USE

Sec.

- 1253.1 National Archives Building.
- 1253.2 National Archives at College Park.
- 1253.3 Presidential Libraries.
- 1253.4 Washington National Records Center.
- 1253.5 National Personnel Records Center.
- 1253.6 Records Centers.
- 1253.7 Regional Archives.
- 1253.8 Federal Register.

1253.9 Federal Holidays.

1253.10 Notification Process for Changes in Hours.

AUTHORITY: 44 U.S.C. 2104(a).

SOURCE: 75 FR 71545, Nov. 24, 2010, unless otherwise noted.

§ 1253.1 National Archives Building.

The National Archives Building is located at 700 Pennsylvania Avenue, NW., Washington, DC 20408. Hours for the Research Center and the Central Research Room are posted at <http://www.archives.gov>. The exhibit areas' hours of operation are also posted at <http://www.archives.gov>. Last admission to the exhibit areas of the building will be no later than 30 minutes before the stated closing hour. The phone number for the National Archives Building is 202-357-5000.

§ 1253.2 National Archives at College Park.

The National Archives at College Park is located at 8601 Adelphi Road, College Park, MD 20740-6001. Hours for the Research Center are posted at <http://www.archives.gov>. The phone number for the Research Center is 800-234-8861.

§ 1253.3 Presidential Libraries.

Hours for the Presidential libraries' research rooms are posted at <http://www.archives.gov>. The Presidential library museums are open every day except Thanksgiving, December 25, and January 1 (with the exception of the Lyndon Baines Johnson Library which is only closed December 25). For more specific information about museum hours, please contact the libraries directly or visit the NARA Web site at <http://www.archives.gov>. Contact information for each library is as follows:

(a) Herbert Hoover Library is located at 210 Parkside Dr., West Branch, IA (mailing address: P.O. Box 488, West Branch, IA 52358-0488). The phone number is 319-643-5301 and the fax number is 319-643-6045. The e-mail address is hoover.library@nara.gov.

(b) Franklin D. Roosevelt Library is located at 4079 Albany Post Rd., Hyde Park, NY 12538-1999. The phone number is 800-FDR-VISIT or 845-486-7770 and the fax number is 845-486-1147. The e-

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mail address is *roosevelt.library@nara.gov*.

(c) Harry S. Truman Library is located at 500 W. U.S. Hwy 24, Independence, MO 64050-1798. The phone number is 800-833-1225 or 816-268-8200 and the fax number is 816-268-8295. The e-mail address is *truman.library@nara.gov*.

(d) Dwight D. Eisenhower Library is located at 200 SE. Fourth Street, Abilene, KS 67410-2900. The phone number is 877-RING-IKE or 785-263-4751 and the fax number is 785-263-6718. The e-mail address is *eisenhower.library@nara.gov*.

(e) John Fitzgerald Kennedy Library is located at Columbia Point, Boston, MA 02125-3398. The phone number is 866-JFK-1960 or 617-514-1600 and the fax number is 617-514-1652. The e-mail address is *kennedy.library@nara.gov*.

(f) Lyndon Baines Johnson Library and Museum is located at 2313 Red River St., Austin, TX 78705-5702. The phone number is 512-721-0200 and the fax number is 512-721-0170. The e-mail address is *johnson.library@nara.gov*.

(g) Richard Nixon Library, California is located at 18001 Yorba Linda Boulevard, Yorba Linda, CA 92886-3903. The phone number is 714-983-9120 and the fax number is 714-983-9111. The e-mail address is *nixon@nara.gov*. Richard Nixon Library, Maryland is located at 8601 Adelphi Road, College Park, MD 20740-6001. The phone number is 301-837-3290 and the fax number is 301-837-3202. The e-mail address is *nixon@nara.gov*.

(h) Gerald R. Ford Library is located at 1000 Beal Avenue, Ann Arbor, MI 48109-2114. The phone number is 734-205-0555 and the fax number is 734-205-0571. The e-mail address is *ford.library@nara.gov*. Gerald R. Ford Museum is located at 303 Pearl St., Grand Rapids, MI 49504-5353. The phone number is 616-254-0400 and the fax number is 616-254-0386. The e-mail address is *ford.museum@nara.gov*.

(i) Jimmy Carter Library is located at 441 Freedom Parkway, Atlanta, GA 30307-1498. The phone number is 404-865-7100 and the fax number is 404-865-7102. The e-mail address is *carter.library@nara.gov*.

(j) Ronald Reagan Library is located at 40 Presidential Dr., Simi Valley, CA 93065-0699. The phone number is 800-410-8354 or 805-577-4000 and the fax

number is 805-577-4074. The e-mail address is *reagan.library@nara.gov*.

(k) George Bush Library is located at 1000 George Bush Drive West, College Station, TX 77845. The phone number is 979-691-4000 and the fax number is 979-691-4050. The e-mail address is *bush.library@nara.gov*.

(l) William J. Clinton Library is located at 1200 President Clinton Avenue, Little Rock, AR 72201. The phone number is 501-374-4242 and the fax number is 501-244-2883. The e-mail address is *clinton.library@nara.gov*.

§ 1253.4 Washington National Records Center.

Washington National Records Center is located at 4205 Suitland Road, Suitland, MD (mailing address: Washington National Records Center, 4205 Suitland Road, Suitland, MD, 20746-8001). The hours are posted at <http://www.archives.gov>. The phone number is 301-778-1600.

§ 1253.5 National Personnel Records Center.

(a) *Military Personnel Records*. NARA—National Personnel Records Center—Military Personnel Records is located at 9700 Page Ave., St. Louis, MO 63132-5100. The hours are posted at <http://www.archives.gov>.

(b) *Civilian Personnel Records*. NARA—National Personnel Records Center—Civilian Personnel Records is located at 111 Winnebago St., St. Louis, MO 63118-4199. The hours are posted at <http://www.archives.gov>.

§ 1253.6 Records Centers.

Hours for records center research rooms are posted at <http://www.archives.gov>. Contact information for each center is as follows:

(a) NARA—Northeast Region (Boston) is located at the Frederick C. Murphy Federal Center, 380 Trapelo Rd., Waltham, MA 02452-6399. The telephone number is 781-663-0139.

(b) NARA—Northeast Region (Pittsfield, MA) is located at 10 Conte Drive, Pittsfield, MA 02101. The telephone number is 413-236-3600.

(c) NARA—Mid Atlantic Region (Northeast Philadelphia) is located at 14700 Townsend Rd., Philadelphia, PA

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19154-1096. The telephone number is 215-305-2000.

(d) NARA—Southeast Region (Atlanta) is located at 4712 Southpark Blvd., Ellenwood, GA 30294. The telephone number is 404-736-2820.

(e) NARA—Great Lakes Region (Dayton) is located at 3150 Springboro Road, Dayton, OH 45439. The telephone number is 937-425-0600.

(f) NARA—Great Lakes Region (Dayton-Miamisburg) is located at 8801 Kingsridge Drive, Dayton, OH 45458. The telephone number is (937) 425-0601.

(g) NARA—Great Lakes Region (Chicago) is located at 7358 S. Pulaski Rd., Chicago, IL 60629-5898. The telephone number is 773-948-9000.

(h) NARA—Central Plains Region (Lee's Summit, MO) is located at 200 Space Center Drive, Lee's Summit, MO 64064-1182. The telephone number is 816-823-6272.

(i) NARA—Central Plains Region (Lenexa) is located at 17501 W. 98th Street, Lenexa, KS 66219. The telephone number is 913-563-7600.

(j) NARA—Southwest Region (Fort Worth) is located at 1400 John Burgess Drive, Fort Worth, Texas 76140. The telephone number is 817-551-2000.

(k) NARA—Rocky Mountain Region (Denver) is located at Building 48, Denver Federal Center, West 6th Ave. and Kipling Street, Denver, CO (mailing address: P.O. Box 25307, Denver, CO 80225-0307). The telephone number is 303-407-5700.

(l) NARA—Pacific Region (San Francisco) is located at 1000 Commodore Dr., San Bruno, CA 94066-2350. The telephone number is 650-238-3500.

(m) NARA—Pacific Region (Riverside) is located at 23123 Cajalco Road, Perris, CA 92570-7298. The telephone number is 951-956-2000.

(n) NARA—Pacific Alaska Region (Seattle) is located at 6125 Sand Point Way, NE., Seattle, WA 98115-7999. The telephone number is 206-336-5115.

§ 1253.7 Regional Archives.

Hours for regional archives research rooms, including extended hours for microfilm research only, are posted at <http://www.archives.gov>. Contact information for each regional archives facility is as follows:

(a) The National Archives at Boston is located in the Frederick C. Murphy Federal Center, 380 Trapelo Rd., Waltham, MA 02452. The telephone number is 781-663-0144 or Toll Free 1-866-406-2379. The National Archives at Boston, Pittsfield Annex is located at 10 Conte Drive, Pittsfield, MA 01201-8230. The telephone number is 413-236-3600.

(b) The National Archives at New York City is located at 201 Varick St., New York, NY 10014-4811 (entrance is on Houston Street, between Varick and Hudson). The telephone number is 212-401-1620 or Toll Free 1-866-840-1752.

(c) The National Archives at Philadelphia is located at the Robert N.C. Nix Federal Building, 900 Market St., Philadelphia, PA 19107-4292 (entrance is on Chestnut Street between 9th and 10th Streets). The telephone number is 215-606-0100.

(d) The National Archives at Atlanta is located at 5780 Jonesboro Road, Morrow, GA 30260. The telephone number is 770-968-2100.

(e) The National Archives at Chicago is located at 7358 S. Pulaski Rd., Chicago, IL 60629-5898. The telephone number is 773-948-9000.

(f) The National Archives at Kansas City is located at 400 West Pershing Road, Kansas City, MO 64108. The telephone number is 816-268-8000.

(g) The National Archives at Fort Worth is located at 501 West Felix St., Bldg. 1, Dock 1, Fort Worth, TX (mailing address: P.O. Box 6216, Fort Worth, TX, 76115-0216). The telephone number is 817-334-5525.

(h) The National Archives at Denver: The textual research room is located at Building 48, Denver Federal Center, West 6th Ave. and Kipling Street, Denver, CO. The telephone number is 303-407-5740. The microfilm research room is located at Building 46, Denver Federal Center, West 6th Ave. and Kipling Street, Denver, CO. (mailing address: P.O. Box 25307, Denver, CO 80225-0307). The telephone number is 303-407-5751.

(i) The National Archives at Riverside is located at 23123 Cajalco Road, Perris, CA 92570-7298. The telephone number is 951-956-2000.

(j) The National Archives at San Francisco is located at 1000 Commodore Dr., San Bruno, CA 94066-2350. The telephone number is 650-238-3501.

(k) The National Archives at Seattle is located at 6125 Sand Point Way, NE., Seattle, WA 98115-7999. The telephone number is 206-336-5115.

(l) The National Archives at Anchorage is located at 654 West Third Avenue, Anchorage, AK 99501-2145. The telephone number is 907-261-7820.

(m) The National Archives at St. Louis, the National Personnel Records Center archival research room is located at 9700 Page Ave., St. Louis, MO 63132-5100. The telephone number is 314-801-9195.

§ 1253.8 Federal Register.

The location and business hours of the Office of the Federal Register are posted at <http://www.archives.gov>, and codified in 1 CFR 2.3.

§ 1253.9 Federal holidays.

(a) NARA research rooms are closed on all Federal holidays.

(b) The exhibit areas in the National Archives Building are closed on Thanksgiving and December 25.

(c) The Presidential library museums are open every day except Thanksgiving, December 25, and January 1 (with the exception of the Lyndon Baines Johnson Library which is only closed December 25).

§ 1253.10 Notification process for changes in hours.

(a) NARA will follow the procedure found in § 1253.10(c) when proposing to change hours of operations for research rooms, exhibit areas and museums, except as noted in § 1253.10(d).

(b) Changing hours of operations for research rooms, exhibit areas and museums may not be arbitrary. Proposed changes must be documented by evidence of a business need to change the hours of operation.

(c) The notification process must proceed as follows:

(1) Post a notice on <http://www.archives.gov>.

(2) Post notices in areas visible to the public in their research room, exhibit areas or museum.

(3) Issue a press release, e-mail notification, or other means normally used by that unit to notify the public of events at their location.

(4) These notices will provide written determination justifying the change in hours.

(d) In the event that emergency changes to hours of operations for research rooms, exhibit areas and museums are necessary, including but not limited to inclement weather, NARA units will give as much advance notice to the public as possible. Emergency notification will be posted at <http://www.archives.gov>.

PART 1254—USING RECORDS AND DONATED HISTORICAL MATERIALS

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AUTHORITY: 44 U.S.C. 2101–2118.

SOURCE: 69 FR 39314, June 30, 2004, unless otherwise noted.

Subpart A—General Information

§ 1254.1 What kinds of archival materials may I use for research?

(a) The National Archives and Records Administration (NARA) preserves records of all three branches (Executive, Legislative, and Judicial) of the Federal Government in record groups that reflect how government agencies created and maintained them. Most of these records are of Executive Branch agencies. We also have individual documents and collections of donated historical materials that significantly supplement existing records in our custody or provide information not available elsewhere in our holdings. Descriptions of many of our records are available through our Web site, <http://www.archives.gov>.

(b) We provide information about records and we make them available to the public for research unless they have access restrictions. Some records may be exempt from release by law. Donors may apply restrictions on access to historical materials that they donate to NARA. Access restrictions are further explained in part 1256 of this chapter. We explain procedures for obtaining information about records in § 1254.2.

(c) In addition to traditional paper (textual) materials, our holdings also include special media materials such as microfilm, still pictures, motion pictures, sound and video recordings, cartographic and architectural records, and electronic records. The majority of these materials are housed at the National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–

6001. Many of these types of materials also are represented in the holdings of our Presidential libraries and our regional archives facilities listed in part 1253 of this chapter.

(d) The majority of our archival materials are 30 years old or older.

(e) Records creating agencies hold the legal title and control access to records housed in NARA records centers. Our procedures to obtain access to these records are in §1256.2.

§ 1254.2 Does NARA provide information about documents?

(a) Upon request, we provide overall information about our holdings or about specific documents, if the time required to furnish the information is not excessive and if the information is not restricted (see part 1256 of this chapter). For anyone unable to visit, we may provide information contained in specific documents by offering copies of the documents for a fee (see §1254.60).

(b) Requests must be on designated forms when we require them. The Office of Management and Budget (OMB) approves these forms as information collections and the forms bear the approved control number.

(c) If requests that we receive in the normal course of reference service do not specifically cite the Freedom of Information Act (5 U.S.C. 552, as amended), we do not consider those requests made under the Act. To make a request under the Act, follow the procedures in part 1250 of this chapter.

§ 1254.4 Where and when are documents available to me for research?

(a) You may obtain general information about the location of records by visiting the NARA Web site at www.archives.gov; writing to the National Archives and Records Administration (NWCC2), 8601 Adelphi Road, College Park, MD 20740-6001; completing our Inquire form at http://www.archives.gov/global_pages/inquire_form.html; sending a fax request to (301) 837-0483; or calling (202) 501-5400, (301) 837-2000, or toll free (866) 272-6272.

(b) The locations of NARA's research rooms are shown in part 1253 of this chapter. Hours for research rooms are

posted at <http://www.archives.gov>. Contact our facilities directly for information about their particular holdings. A facility or unit director may authorize that documents be made available at times other than the times specified.

(c) Before planning a visit, contact the facility holding materials of potential interest to determine whether the documents are available, whether there are enough documents to warrant a visit, or whether ordering copies would be more practical.

(d) In addition to the procedures in this part, researchers who wish to use archival materials that contain national security classified information must follow procedures in part 1256 of this chapter.

[69 FR 39314, June 30, 2004, as amended at 75 FR 71547, Nov. 24, 2010]

§ 1254.6 Do I need a researcher identification card to use archival materials at a NARA facility?

(a) Yes, you need a researcher identification card to use original archival materials at a NARA facility. See §§1254.8 and 1254.10 for information on obtaining a card.

(b) You also need a researcher identification card if you wish to use only microfilm copies of documents at NARA's Washington, DC, area facilities and in any NARA facility where the microfilm research room is not separate from the textual research room.

(c) If you are using only microfilm copies of records in some regional archives where the microfilm research room is separate from the textual room, you do not need an identification card but you must register as described in §1254.22.

[69 FR 39314, June 30, 2004, as amended at 75 FR 10415, Mar. 8, 2010]

§ 1254.8 What information do I need to provide when applying for a researcher identification card?

(a) You must apply in person and show identification containing your picture or physical description, such as a driver's license or school identification card. You also must provide proof of your current address, such as a bank statement, utility bill, or department of motor vehicles change of address

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card, if the address on your driver's license or other identification is not current. Students who consider the home of their parents as their permanent address, but who do not live there during the academic session, must provide their current student address. If you travel long distance to conduct research in original archival materials at a NARA facility, we may ask you how we can contact you locally. In special circumstances, the director of a facility or unit has the authority to grant exceptions to these requirements.

(b) If you apply for access to large quantities of documents or to documents that are especially fragile or valuable, we may require you to furnish additional information about reasons why you require access. Some materials are too fragile or valuable for direct handling or viewing. Preservation concerns (*see* §§1254.20(b) and 1254.36(e)) and availability of resources (*see* §1254.20(c)) may limit our ability to accommodate certain requests.

(c) If you are younger than 14, you must follow the procedures in §1254.24 to seek permission to conduct research.

(d) We do not issue you a researcher identification card if the appropriate supervisor or director of the NARA facility determines that the documents that you wish to use are not in the legal custody of NARA and you do not present appropriate written authorization from the legal title holder to examine the documents.

(e) The collection of information contained in this section has been approved by the Office of Management and Budget with the control number 3095-0016.

§1254.10 For how long and where is my researcher identification card valid?

(a) Your card is valid for 1 year and may be renewed. Cards we issue at one NARA facility are valid at each facility, except as described in paragraph (b) of this section. Cards are not transferable and you must present your card if a guard or research room attendant requests to see it.

(b) At NARA facilities in the Washington, DC, area and other NARA facilities that issue and use plastic researcher identification cards as part of

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their security systems, we issue a plastic card to replace the paper card issued at some NARA facilities at no charge. The plastic card is valid at all NARA facilities.

[69 FR 39314, June 30, 2004, as amended at 75 FR 10415, Mar. 8, 2010]

§ 1254.12 Will NARA log or inspect my computer, other equipment, and notes?

(a) If you bring personal computers, scanners, tape recorders, cameras, and other equipment into our facilities, we will inspect the equipment.

(1) In the Washington, DC, area, you must complete the Equipment Log at the guard's desk. The guard checks the log for proof of your personal ownership before you remove your equipment from the building.

(2) In the regional archives and Presidential libraries, we may tag your equipment after inspection and approval.

(b) Not all NARA facilities permit you to take your personal notes into the research room. In research rooms that permit taking in your notes, a NARA or contractor employee may stamp, initial, and date notes and other research materials we approve for admission to indicate that they are your personal property.

(c) We inspect your personal property, including notes, electrostatic copies, equipment cases, tape recorders, cameras, personal computers, and other property, before you may remove them from our research rooms or facilities.

§1254.14 Are some procedures in regional archives and Presidential libraries different from those in the Washington, DC, area?

Yes, the variety of facilities, locations of research rooms, room sizes, and other factors contribute to differences in some, but not all, practices from the Washington, DC, area. When the appropriate regional director of archival operations or Presidential library director indicates, you must follow the procedures in regional archives and Presidential library archival research rooms where researchers use original documents. These procedures are in addition to the procedures we

specify elsewhere in this part. The procedures are either posted in the facility or the staff gives copies of them to researchers.

Subpart B—Research Room Rules

GENERAL PROCEDURES

§ 1254.20 What general policies apply in all NARA facilities where archival materials are available for research?

(a) Researchers may use original documents only in the designated research room at the facility where they are stored.

(b) Researchers must use microfilm copies or other alternative copies of documents when available, rather than the original documents. Some of our microfilm publications are available in more than one NARA facility.

(c) We may limit the quantity of documents that we deliver to you at one time. In some research rooms, we furnish records according to a specific time schedule.

§ 1254.22 Do I need to register when I visit a NARA facility for research?

(a) Yes, you must register each day you enter a NARA research facility by furnishing the information on the registration sheet or scanning an encoded researcher identification card. We may ask you for additional personal identification.

(b) NARA facilities in the Washington, DC, area contain several research rooms; you must register in each research room you visit on a daily basis.

(c) In regional archives, you also sign out when leaving the research room for the day. In some Presidential libraries, where we instruct you to do so, you sign out when you leave the building.

[69 FR 39314, June 30, 2004, as amended at 75 FR 10415, Mar. 8, 2010]

§ 1254.24 Whom does NARA allow in research rooms?

(a) We limit admission to research rooms in our facilities to individuals examining or copying documents and other materials.

(b) We do not admit children under the age of 14 to these research rooms

unless we grant them research privileges (*see* paragraph (d) of this section).

(c) The appropriate supervisor may make exceptions for a child who is able to read and who will be closely supervised by an adult while in the research room. The adult must agree in writing to be present when the child uses documents and to be responsible for compliance with the research room and copying rules in subparts B and C of this part.

(d) Students under the age of 14 who wish to perform research on original documents must apply in person at the facility where the documents are located. At the National Archives Building, apply to the chief of the Research Support Branch (NWCC1). At the National Archives at College Park, apply to the chief of the Research Support Branch (NWCC2). For regional archives and Presidential libraries, apply to the appropriate supervisor or archivist in charge. We may require either that the student must present a letter of reference from a teacher or that an adult accompany the student while doing research. Students may contact NARA by phone, e-mail, fax, or letter in advance of their visit to discuss their eligibility for research privileges. Current contact information for our facilities is available on our Web site, <http://www.archives.gov>.

(e) We may permit adults and children participating in scheduled tours or workshops in our research rooms when they do not handle any documents that we show to them. These visitors do not need a researcher identification card.

§ 1254.26 What can I take into a research room with me?

(a) *Personal belongings.* You may take a hand-held wallet and coin purse for the carrying of currency, coins, credit cards, keys, driver's license, and other identification cards into research rooms, but these are subject to inspection when you enter or leave the room. The guard or research room attendant determines whether your wallet or purse is sufficiently small for purposes of this section. You may take cell

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phones, pagers, and similar telecommunications devices into a research room only under the circumstances cited in § 1254.46(b) and, for cell phone cameras, in § 1254.70(g).

(b) *Notes and reference materials.* You may take notes, references, lists of documents to be consulted, and other materials into a research room if the supervisor administering the research room or the senior staff member on duty in the research room determines that they are essential to your work requirements. Not all facilities permit you to take notes into the research room. In facilities that allow you to bring notes, staff may stamp your items to indicate that they are your property.

(c) You may bring back into the research room on subsequent visits your research notes made on notepaper and notecards we provide and electrostatic copies you make on copying machines in NARA research rooms which are marked with the statement "Reproduced at the National Archives." You must show any notes and copies to the research room attendant for inspection when you enter the research room.

(d) *Personal equipment.* The research room attendant, with approval from the supervisor, archivist, or lead archives technician in charge of the room, may admit personal computers, tape recorders, scanners, cameras, and similar equipment if the equipment meets NARA's approved standards for preservation. We do not approve the use of any equipment that could potentially damage documents. If demand to use equipment exceeds the space available for equipment use, we may impose time limits. If you wish to use computers, sound recording devices, or other equipment, you must work in areas the research room attendant designates, when required.

§ 1254.28 What items are not allowed in research rooms?

(a) You may not bring into the research rooms overcoats, raincoats, jackets, hats, or other outerwear; personal paper-to-paper copiers, unless permitted in accordance with § 1254.86 of this part; briefcases, satchels, valises, suitcases, day packs, purses, boxes, or similar containers of personal

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property. We may make exceptions for headwear worn for religious or health reasons. In facilities where we provide notepaper and notecards, you also may not bring into the research room notebooks, notepaper, notecards, folders or other containers for papers.

(b) You may store personal items at no cost in lockers or other storage facilities in the NARA facility. These lockers or other storage facilities are available on a first-come-first-served basis.

(c) You must remove your personal belongings each night from the lockers or other storage facilities we provide to hold them. If you do not remove your personal belongings, NARA personnel will remove them. We post directions for reclaiming confiscated items near the lockers or other storage facilities.

(d) NARA is not responsible for the loss or theft of articles you store in the lockers.

(e) We may charge a replacement fee for lost locker keys.

(f) Knives and other sharp objects such as box cutters, razors, or wire are not permitted in our research rooms.

§ 1254.30 Does NARA provide any supplies?

Yes, in most facilities NARA furnishes you, without charge, pencils and specially marked lined and unlined notepaper and notecards, for use in the research rooms. NARA also provides diskettes and paper for our public access computers. Return unused pencils and notepaper, notecards, diskettes, and printer paper to the research room attendant at the end of the day.

§ 1254.32 What rules apply to public access use of the Internet on NARA-supplied computers?

(a) Public access computers (workstations) are available for Internet use in all NARA research rooms. The number of workstations varies per location. We provide these workstations for research purposes on a first-come-first-served basis. When others are waiting to use the workstation, we may impose a 30-minute time limit on the use of the equipment.

(b) You should not expect privacy while using these workstations. These

workstations are operated and maintained on a United States Government system, and activity may be monitored to protect the system from unauthorized use. By using this system, you expressly consent to such monitoring and the reporting of unauthorized use to the proper authorities.

(c) You may not use these workstations to gain access to entertainment or other inappropriate Web sites in our research rooms. You also may not use these workstations to conduct private business not related to your research or NARA holdings.

(d) NARA provides at least one Internet access workstation in each facility that complies with the Workforce Investment Act of 1998, ensuring comparable accessibility to individuals with disabilities.

(e) You may download information to a diskette and print materials, but the research room staff will furnish the diskettes and paper. You may not use personally owned diskettes on NARA personal computers. You may not load files or any type of software on these workstations.

RULES RELATING TO USING ORIGINAL DOCUMENTS

§ 1254.34 What are my responsibilities when using documents?

(a) You must sign for the documents you receive and we may require you to show your researcher identification card.

(b) You are responsible for the proper handling of and prevention of damage to all documents delivered to you until you return them. Specific handling instructions are given in §§1254.36 and 1254.38.

(c) When you finish using the documents, you must return them to the research room attendant.

(d) You must not remove the reference service slip that accompanies the documents to the research room.

(e) If we ask, you must return documents up to 15 minutes before closing time.

(f) Before leaving a research room, even for a short time, you must notify the research room attendant and place all documents in their proper containers.

§ 1254.36 What care must I take when handling documents?

To prevent damage to documents, we have rules relating to the physical handling of documents.

(a) You must use only pencils in research rooms where original documents are used.

(b) You must not lean on, write on, refold, trace, or otherwise handle documents in any way likely to cause damage.

(c) You must follow any additional rules that apply to the use of special media records at our facilities, such as wearing cotton gloves we provide you for handling still pictures and any original film-based materials.

(d) You must identify documents for reproduction only with a paper tab that we provide you. You must not use paper clips, rubber bands, self-stick notes or similar devices to identify documents.

(e) You must use exceptionally valuable or fragile documents only under conditions the research room attendant specifies.

(f) You must request that research room personnel unstaple or remove other fasteners from documents that cannot otherwise be read.

(g) If you notice damage to any document(s), notify the research room attendant immediately.

§ 1254.38 How do I keep documents in order?

(a) You must keep unbound documents in the order in which we deliver them to you.

(b) You must not attempt to rearrange documents that appear to be in disorder. Instead, you must refer any suspected problems with the records to the research room attendant.

(c) You may use only one folder at a time.

(d) Remove documents from only one container at a time.

§ 1254.40 How does NARA prevent removal of documents?

(a) You must not remove documents from a research room. Removing, mutilating, or revising or otherwise altering documents is forbidden by law and is punishable by fine or imprisonment or both (18 U.S.C. 2071).

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(b) Upon leaving the research room or facility, you must present for examination any article that could contain documents or microfilm, as well as presenting copies or notes to ensure that no original records are mixed in with them.

(c) To ensure that no one unlawfully removes or mutilates documents, NARA may post at the entrance to research rooms instructions supplementing the rules in this part. These instructions are specific to the kinds of records you use or to the facility where the records are stored.

RULES RELATING TO USING MICROFILM

§ 1254.42 What are the rules that apply to using self-service microfilm?

NARA makes available microfilm copies of many records on a self-service basis.

(a) When microfilm is available on a self-service basis, research room attendants assist you in identifying research sources on microfilm and provide information concerning how to locate and retrieve the roll(s) of film containing the information of interest. You are responsible for retrieving and examining the roll(s).

(b) Unless you require assistance in learning how to operate microfilm reading equipment or have a disability, we expect you to install the microfilm on the reader, rewind it when finished, remove it from the reader, and return it to the proper microfilm box. You must carefully remove from and return to the proper microfilm boxes rewound microfilm. You must take care when loading and unloading microfilm from microfilm readers. Report damaged microfilm to the research room attendant as soon you discover it.

(c) Unless we make an exception, you may use only one roll of microfilm at a time.

(d) After using each roll, you must return the roll of microfilm to the location from which you removed it, unless we otherwise instruct you.

(e) You should bring to the attention of the research room attendant any microfilm you find in the wrong box or file cabinet.

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§ 1254.44 How long may I use a microfilm reader?

(a) Use of the microfilm readers in the National Archives Building is on a first-come-first served basis.

(b) Archival operations directors at our regional archives may permit reservations for use of microfilm readers and set time limits on use to meet local circumstances.

[69 FR 39314, June 30, 2004, as amended at 75 FR 10415, Mar. 8, 2010]

OTHER CONDUCT RULES

§ 1254.46 Are there other rules of conduct that I must follow?

(a) Part 1280 specifies conduct rules for all NARA facilities. You must also obey any additional rules supplementing Subpart B of part 1254 that are posted or distributed by the facility director.

(b) You may not eat, drink, chew gum, smoke, or use smokeless tobacco products, or use a cell phone, pager, or similar communications device that emits sound signals in a research room. Communications devices must be in vibrate mode. You must make and receive telephone calls outside of research rooms.

(c) We prohibit loud talking and other activities likely to disturb other researchers.

§ 1254.48 When does NARA revoke research privileges?

(a) Behaviors listed in paragraphs (a)(1) through (a)(4) of this section may result in NARA denying or revoking research privileges.

(1) Refusing to follow the rules and regulations of a NARA facility;

(2) Demonstrating by actions or language that you present a danger to documents or NARA property;

(3) Presenting a danger to other researchers, NARA or contractor employees, or volunteers; or

(4) Verbally or physically harassing or annoying other researchers, NARA or contractor employees, or volunteers.

(b) Denying or revoking research privileges means:

(1) We may deny or revoke your research privileges for up to 180 days;

(2) You lose research privileges at all NARA research rooms nationwide; and

(3) You lose your valid researcher identification card if you already have one.

(c) We notify all NARA facilities of the revocation of your research privileges.

(d) If we revoke your research privileges, we send you a written notice of the reasons for the revocation within 3 working days of the action.

§ 1254.50 Does NARA consider reinstating research privileges?

(a) You have 30 calendar days after the date of revocation to appeal the action in writing and seek reinstatement of research privileges. Mail your appeal to: Deputy Archivist of the United States, 8601 Adelphi Road, College Park, MD 20740-6001.

(b) The Deputy Archivist has 30 calendar days from receipt of an appeal to decide whether to reinstate your research privileges and to respond to you in writing.

(c) If the Deputy Archivist upholds the revocation of privileges or if you do not appeal, you may request in writing reinstatement of research privileges no earlier than 180 calendar days from the date we revoked privileges. This request may include application for a new researcher identification card.

(d) Our reinstatement of research privileges applies to all research rooms.

(e) If we reinstate your research privileges, we issue you a card for a probationary period of 60 days. At the end of the probationary period, you may apply for a new, unrestricted identification card, which we issue to you if your conduct during the probationary period follows the rules of conduct in this part and in part 1280 of this chapter.

[69 FR 39314, June 30, 2004, as amended at 76 FR 6555, Feb. 7, 2011]

§ 1254.52 Can NARA extend the period of revoked research privileges?

(a) If the reinstatement of research privileges would pose a threat to the safety of persons, property, or NARA holdings, or if, in the case of a probationary identification card, you fail to comply with the rules of conduct for NARA facilities, we may extend the revocation of privileges for additional

180-day periods. We send you a written notice of an extension within 3 work-days of our decision to continue the revocation of research privileges.

(b) You have 30 calendar days after the decision to extend the revocation of research privileges to appeal the action in writing. Mail your appeal to the Deputy Archivist at the address given in §1254.50(a). The Deputy Archivist has 30 calendar days from receipt of your appeal to decide whether to reinstate your research privileges and to respond to you in writing.

[69 FR 39314, June 30, 2004, as amended at 76 FR 6555, Feb. 7, 2011]

Subpart C—Copying Archival Materials

GENERAL INFORMATION

§ 1254.60 What are NARA's copying services?

(a) You may order copies of many of our documents for a fee. Our fee schedule for copies is located in §1258.12 of this chapter. Exceptions to the fee schedule are located in §1258.4. See §1258.6 about reproductions NARA may provide without charging a fee.

(b) For preservation reasons, we do not make copies from the original documents if the documents are available on microfilm and a clear copy (electrostatic, photographic, or microfilm) can be made from the microfilm.

§ 1254.62 Does NARA have archival materials protected by copyright?

Yes, although many of our holdings are in the public domain as products of employees or agents of the Federal Government, some records and donated historical materials do have copyright protection. Particularly in the case of some special media records, Federal agencies may have obtained materials from private commercial sources, and these may carry publication restrictions in addition to copyright protection. Presidential records may also contain copyrighted materials. You are responsible for obtaining any necessary permission for use, copying, and publication from copyright holders and for any other applicable provisions of the Copyright Act (Title 17, United States Code).

§ 1254.64

§ 1254.64 Will NARA certify copies?

Yes, the responsible director of a unit, or any of his or her superiors, the Director of the Federal Register, and their designees may certify copies of documents as true copies for a fee. The fee is found at § 1258.12(a).

RULES RELATING TO SELF-SERVICE COPYING

§ 1254.70 How may I make my own copies of documents?

(a) Self-service copiers are available in some of our facilities. Contact the appropriate facility to ask about availability before you visit.

(b) In the Washington, DC, area, self-service card-operated copiers are located in research rooms. Other copiers we set aside for use by reservation are located in designated research areas. Procedures for use are outlined in §§ 1254.80 through 1254.84 of this subpart.

(c) You may use NARA self-service copiers where available after the research room attendant reviews the documents to determine their suitability for copying. The appropriate supervisor or the senior archivist on duty in the research room reviews the determination of suitability if you request.

(d) We may impose time limits on using self-service copiers if others are waiting to use them.

(e) In some of our facilities, you may use your own scanner or personal paper-to-paper copier to copy textual materials if the equipment meets our standards cited in §§ 1254.80 and 1254.86. Contact the appropriate facility for additional details before you visit.

(f) You must follow our document handling instructions in §§ 1254.36 and 1254.72. You also must follow our microfilm handling instructions in § 1254.42.

(g) You may use a hand-held camera with no flash or a cell phone camera to take pictures of documents only if you have the permission of the research room attendant.

(h) You may not use a self-service copier or personal scanner to copy some special media records. If you wish to copy motion pictures, maps and architectural drawings, or aerial photographic film, the appropriate staff can

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advise you on how to order copies. If you wish to obtain copies of electronic records files, the appropriate staff will assist you.

§ 1254.72 What procedures do I follow to copy documents?

(a) You must use paper tabs to designate individual documents you wish to copy. You must show the container including the tabbed documents to the research room attendant who determines whether they can be copied on the self-service copier. The manager of the staff administering the research room reviews the determination of suitability if you ask. After copying is completed, you must return documents removed from files for copying to their original position in the file container, you must refasten any fasteners removed to facilitate copying, and you must remove any tabs placed on the documents to identify items to be copied.

(b) If you are using a reserved copier, you must submit the containers of documents to the attendant for review before your appointment. The review time required is specified in each research room. Research room attendants may inspect documents after copying.

(c) You may copy from only one box and one folder at a time. After copying the documents, you must show the original documents and the copies to a research room attendant.

§ 1254.74 What documents are unsuitable for copying on a self-service or personal copier or scanner?

(a) Bound archival volumes (except when specialized copiers are provided).

(b) Documents fastened together by staples, clips, acco fasteners, rivets, or similar fasteners, where folding or bending documents may cause damage.

(c) Documents larger than the glass copy plate of the copier.

(d) Documents with uncancelled security classification markings.

(e) Documents with legal restrictions on copying.

(f) Documents that the research room attendant judges to be in poor physical condition or which may be subject to possible damage if copied.

§ 1254.76 What procedures do I follow to copy formerly national security-classified documents?

(a) We must properly cancel security classification markings (Confidential, Secret, Top Secret) and other restricted markings on declassified records before documents are copied. Only a NARA staff member can cancel security markings. Properly declassified documents bear the declassification authority as required by 32 CFR 2001.24.

(b) You may not remove from the research room copies of documents bearing uncanceled classification markings. We confiscate copies of documents with uncanceled markings.

(c) When you copy individual documents, the research room staff cancels the classification markings on each page of the copy and places the declassification authority on the first page of each document. If you copy only selected pages from a document, you must make a copy of the first page bearing the declassification authority and attach that page to any subsequent page(s) you copy from the document. You must show this declassification authority to the guard or research room attendant when you remove copies of documents from the research room or the building.

(d) Before you copy formerly-classified materials, we provide you with a declassification strip, which you attach to the copier. The strip reproduces on each page copied and cancels the security markings. We may also provide a declassification strip to attach to your personal copier or scanner.

(e) Staff at Presidential libraries cancel security markings before documents are provided to researchers in research rooms.

RULES RELATING TO USING COPYING EQUIPMENT**§ 1254.80 Does NARA allow me to use scanners or other personal copying equipment?**

(a) Subject to §§ 1254.26(d) and 1254.86, you may use scanners and other copying equipment if the equipment meets certain conditions or minimum standards described in paragraphs (b) through (g) of this section. Exceptions

are noted in paragraph (h). The supervisor administering the research room or the senior staff member on duty in the research room reviews the research room attendant's determination if you request.

(b) Equipment platens or copy boards must be the same size or larger than the records. No part of a record may overhang the platen or copy board.

(c) No part of the equipment may come in contact with records in a manner that causes friction, abrasion, or that otherwise crushes or damages records.

(d) We prohibit drum scanners.

(e) We prohibit automatic feeder devices on flatbed scanners. When using a slide scanner, we must check slides after scanning to ensure that no damage occurs while the slide is inside the scanner.

(f) Light sources must not raise the surface temperature of the record you copy. You must filter light sources that generate ultraviolet light.

(g) All equipment surfaces must be clean and dry before you use records. You may not clean or maintain equipment, such as replacing toner cartridges, when records are present. We do not permit aerosols or ammonia-containing cleaning solutions. We permit a 50 percent water and 50 percent isopropyl alcohol solution for cleaning.

(h) If you wish to use a scanner or other personal copier in a regional archives or Presidential library, contact the facility first for approval. Not all facilities permit the use of scanners or personal copying equipment because of space, electrical load concerns, and other reasons. Your request must state the space and power consumption requirements and the intended period of use.

(i) In facilities that provide a self-service copier or permit the use of personal paper-to-paper copiers or scanners, you must show documents you wish to copy to the research room attendant for approval.

(j) If you have any question about what is permissible at any given facility, consult with the facility before your visit. Contact information for our facilities is found in part 1253 of this chapter and at the NARA Web site, <http://www.archives.gov>.

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§ 1254.82 What limitations apply to my use of self-service card-operated copiers?

(a) There is a 5-minute time limit on copiers in research rooms when others are waiting to use the copier. If you use a microfilm reader-printer, we may limit you to three copies when others are waiting to use the machine. If you wish to copy large quantities of documents, you should see a staff member in the research room to reserve a copier for an extended time period.

(b) If we must cancel an appointment due to copier failure, we make every effort to schedule a new mutually agreed-upon time. However, we do not displace researchers whose appointments are not affected by the copier failure.

§ 1254.84 How may I use a debit card for copiers in the Washington, DC, area?

Your research identification card can be used as a debit card if you arrange with the Cashier's Office to set up an account using cash, check, money order, debit card, or credit card. Your researcher identification card number as encoded on the card forms the basis of your account in the debit system. You may also purchase generic debit cards of values up to \$20 each from the Cashier's Office using any of the above payment methods. When the Cashier's Office is closed or at any other time during the hours research rooms are open as cited in part 1253 of this chapter, you may use cash or credit card to purchase a debit card from the vending machines located in the research rooms. Inserting the debit card into a card reader connected to the copier enables you to make copies for the appropriate fee, which are found in §1258.12 of this chapter. You can add value to your card using the vending machine in the research room or at the Cashier's Office. We do not make refunds.

[75 FR 10415, Mar. 8, 2010]

§ 1254.86 May I use a personal paper-to-paper copier at the National Archives at College Park?

(a) At the National Archives at College Park facility NARA approves a limited number of researchers to bring in and use personal paper-to-paper

copying equipment in the Textual Research Room (Room 2000). Requests must be made in writing to the chief of the Research Support Branch (NWCC2), National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740-6001. Requests must identify the records you wish to copy, the expected duration of the project, and the make and model of the equipment.

(b) We evaluate requests using the following criteria:

(1) A minimum of 3,000 pages must be copied;

(2) The project is expected to take at least 4 weeks, with the copier in use a minimum of 6 hours per day or 30 hours per week;

(3) The copying equipment must meet our standards for preservation (see §§1254.26(d) and 1254.80); and

(4) Space is available for the personal copying project. NARA allows no more than 3 personal copying projects in the research room at one time, with Federal agencies given priority over other users.

(c) You must coordinate with research room management and oversee the installation and removal of copying equipment. You are responsible for the cost and supervision of all service calls and repairs. You must remove copying equipment and supplies within two business days after the personal copying project is completed.

(d) NARA is not responsible for any personal equipment or consumable supplies.

(e) You must be trained by NARA staff on the proper methods for handling and copying archival documents.

(f) You must abide by all regulations on copying stated in this subpart.

(g) We reserve the right to discontinue the privilege of using a personal copier at any time without notice. We discontinue your privilege if you violate one of the conditions in this subpart, we need to provide space for a Federal agency, or we lack staff to supervise the area.

(h) The collection of information contained in this section has been approved by the Office of Management

and Budget with the control number 3095-0035.

[69 FR 39314, June 30, 2004, as amended at 69 FR 55505, Sept. 15, 2004]

§ 1254.88 What are the rules for the Motion Picture, Sound, and Video Research Room at the National Archives at College Park?

(a) We provide use of NARA viewing and listening equipment in the research room on a first-come-first-served basis. When others are waiting to use the equipment, we may impose a 3-hour limit on your use.

(b) You may use the NARA-furnished recorder or your personal recording device and media to make a copy of unrestricted archival materials in the research room.

(c) We provide you with a copy of the Motion Picture, Sound, and Video Research Room rules and a warning notice on potential copyright claims in unrestricted titles. You are responsible for obtaining any needed permission or release from a copyright owner for other than personal use of the copy.

(d) The research room attendant may inspect and tag your personal recording equipment before admitting you into the unrestricted viewing and copying area in the research room. You must place all equipment and accessory devices on the carts we provide, except that you may place a tripod holding a video camera on the floor in front of a film-viewing station. We are not responsible for damage to or loss of personal equipment and accessories.

(e) You must remain in the research room at your audio or film viewing station at all times while your personal equipment is in use. You must remove your personal equipment from the research room when you leave the room for the day. We cannot be responsible for any damage to or loss of your equipment.

(f) We are not responsible for assisting with “hook-up” to NARA viewing equipment, for providing compatibility between the personal recording equipment and NARA viewing equipment, or for the quality of the copies you make. We provide you information on the types of NARA equipment that we have in the research room and on the cables

necessary for hook-up to our viewing equipment.

(g) When you bring audio or video recording tapes or cassettes into the unrestricted area of the research room, the research room attendant marks the recording media “NARA-approved personal property” for identification purposes. We inspect this media before you leave the research room and when you leave the research complex at the National Archives at College Park.

(h) You may reserve a NARA-furnished video copying station and 120-minute blank video cassette, for a fee, on a first-come-first-served basis for 90 minutes. If no one else is waiting to use the station, you may reserve an additional 90 minutes. You may not connect personal recording devices to NARA equipment at the video copying station. You may use only NARA-provided tapes at the video copying station. Fees for use of the station and blank cassette are specified in § 1258.12 of this chapter.

(i) You may not take any personal recording device or media in the restricted viewing area in the research room.

Subpart D—Microfilming Archival Materials

§ 1254.90 What is the scope of this subpart?

(a) This subpart establishes rules and procedures for the use of privately owned microfilm equipment to film accessioned archival records and donated historical materials in NARA’s legal and physical custody by:

(1) Foreign, Federal, state, and local government agencies;

(2) Private commercial firms;

(3) Academic research groups; or

(4) Other entities or individuals that request exemption from obtaining copies through the regular fee schedule reproduction ordering system of NARA.

(b) If you wish to microfilm Federal agency records in the physical custody of the Washington National Records Center (WNRC), contact the director, WNRC, about procedures for obtaining permission from the originating agency to film those records (*see* § 1253.4). For

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information about procedures for obtaining permission from the originating agency to film records in the records center operation of one of NARA's regional records facilities or in the physical custody of the National Personnel Records Center (NPRC), contact the Regional Administrator of the region in which the records are located (*see* §1253.6), or the director, NPRC, for records in NPRC (*see* §1253.5).

(c) Federal agencies that need to microfilm archival records in support of the agency's mission must contact the appropriate office as specified in §1254.92(a) as soon as possible after the need is identified for information concerning standards and procedures that apply to their microfilming of archival records.

§ 1254.92 How do I submit a request to microfilm records and donated historical materials?

(a) You must submit your request to microfilm materials to the appropriate office.

(1) Submit your written request to microfilm archival records or donated historical materials (except donated historical materials under the control of the Office of Presidential Libraries) in the Washington, DC, area to the Assistant Archivist for Records Services—Washington, DC (NW), 8601 Adelphi Rd., College Park, MD 20740-6001.

(2) Submit your written request to microfilm archival records or donated historical materials in a NARA regional archives to the Assistant Archivist for Regional Records Services (NR), 8601 Adelphi Rd., College Park, MD 20740-6001.

(3) Submit your written request to microfilm records or donated historical materials in a Presidential library or donated historical materials in the Washington area under the control of the Office of Presidential Libraries to the Assistant Archivist for Presidential Libraries (NL), 8601 Adelphi Rd., College Park, MD 20740-6001.

(4) OMB control number 3095-0017 has been assigned to the information collection contained in this section.

(b) You must submit your request to use privately owned microfilm equipment four months in advance of the

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proposed starting date of the microfilming project. If you submit your request with less advance notice, we consider it and may approve it if we have available adequate NARA space and staff and if you can complete all training, records preparation, and other NARA requirements in a shorter time frame.

(1) You may include in your request only one project to microfilm a complete body of documents, such as an entire series, a major continuous segment of a very large series which is reasonably divisible, or a limited number of separate series related by provenance or subject.

(2) We do not accept additional requests from an individual or organization to microfilm records in a NARA facility while we evaluate an earlier request from that individual or organization to microfilm records at that facility.

(3) We establish the number of camera spaces available to a single project based upon the total number of projects approved for filming at that time.

§ 1254.94 What must my request include?

(a) A description of the documents you wish to copy that includes the following elements:

(1) Record group number or agency of origin or, for donated historical materials, title of the collection;

(2) Title of series or file segment;

(3) Date span; and

(4) Estimated volume in number of pages or cubic feet.

(b) The estimated amount of time (work-days) that the microfilm copying project will take; the date that you would like to begin the project; and the number of persons who would require training (*see* §1254.108(b)).

(c) The number and a description of the equipment that you will use for copying including:

(1) The name of the manufacturer and model number; and

(2) The type of light source to be employed (fluorescent, tungsten, or electronic flash) and if electronic flash (*i.e.*, strobe) or fluorescent, whether the light source is filtered to omit ultraviolet radiation.

(d) A statement of the procedures that you will follow to ensure that you copy all pages, that the images on the microfilm are legible, and that the microfilm is properly processed. At a minimum, the procedures should meet the requirements specified in part 1230 of this chapter regarding the microfilming of permanent records.

§ 1254.96 What credits must I give NARA?

(a) You must agree to credit NARA as having custody of the original documents. The credit must appear at the beginning of a microfilm publication and in any publicity material or descriptions of the publication.

(b) If the original documents are Federal records, you must agree to include on the film this statement: “The documents reproduced in this publication are among the records of the (name of agency) in the custody of the National Archives of the United States. (Name of microfilm publication producer) does not claim any copyright interest in these official U.S. Government records.”

(c) If the original documents are donated historical materials, you must agree to include on the film this statement: “The documents reproduced in this publication are donated historical materials from (name of donor) in the custody of the (name of Presidential library or National Archives of the United States). The National Archives and Records Administration administers them in accordance with the requirements of the donor’s deed of gift and the U.S. Copyright Law, Title 17, U.S.C. (Name of microfilm publication producer) does not claim any copyright interest in these donated historical materials.”

(d) If the original documents are Presidential or Vice-Presidential records as specified in 44 U.S.C. 2201, you must agree to include on the film this statement: “The documents reproduced in this publication are Presidential records in the custody of the (name of Presidential library or National Archives of the United States). The National Archives and Records Administration administers them in accordance with the requirements of Title 44, U.S.C. (Name of microfilm

publication producer) does not claim any copyright interest in these official Presidential records.”

(e) If the original documents are records of Congress, you must agree to include on the film this statement: “The documents reproduced in this publication are among the records of the (House of Representatives/Senate) in the physical custody of the National Archives and Records Administration (NARA). NARA administers them in accordance with the requirements of the (House/Senate). (Name of microfilm publication producer) does not claim any copyright interest in these official congressional records.”

§ 1254.98 May NARA make subsequent use of my publication?

You must give NARA a royalty-free worldwide license, to take effect seven years after you complete filming at the NARA facility, to publish, display, reproduce, distribute, and sell the publication, and to create derivative works based on the publication, and to use the publication in collective works, all without limitation. The license required by this section must be written to take effect upon publication if there is no commercial distributor, or once commercial distribution ends if less than seven years from the date you complete filming at the NARA facility.

§ 1254.100 How does NARA evaluate requests?

(a) NARA evaluates requests by estimating how well completion of a proposed project would further our efforts to preserve and to make available to the public the historically valuable records of the Government.

(b) In considering multiple requests to film at the same time, we give priority to microfilming records that have research value for a variety of studies or that contain basic information for fields of research in which researchers have demonstrated substantial interest.

(c) The records to be filmed should be reasonably complete and not subject to future additions, especially of appreciable volumes, within the original body of records. Records with pending or future end-of-series additions are appropriate for filming.

(d) The records to be filmed should not have substantial numbers of documents withdrawn because of continuing national security classification, privacy, or other restrictions.

(e) We approve only requests to microfilm a complete body of documents, such as an entire series or a major continuous segment of a very large series that is reasonably divisible. Microfilming a complete body of documents means that you must consecutively copy all documents within the file unit(s), from the first to the last page, not skipping any pages in between except for pages that are exact duplicates or blank pages that are not included in a pagination scheme.

(f) We normally approve only requests that include assurances that the project will adhere to the specifications in part 1230 of this chapter concerning microfilm stock standards, index placement, and microfilm processing for permanent records.

(g) We approve only requests that specify that NARA will receive a first generation silver halide duplicate negative containing no splices made from the original camera negative of the microform record created in accordance with part 1230 of this chapter.

(1) We may use this duplicate negative microform to make duplicate preservation and reference copies. The copies may be made available for NARA and public use in NARA facilities and programs immediately upon receipt.

(2) We may also make additional use of the microform, as indicated in §1254.98, seven years after you complete filming at the NARA facility, or upon delivery of the publication if there is no commercial distributor, or when the commercial distributor is no longer available, whichever occurs first. We may choose to add our own editorial material to the microform copies.

(3) You must deliver detailed roll lists with the microfilm. The lists must give the full range of file titles and a complete list of all file numbers on each roll of microfilm. We prefer that the list be provided in a fielded, electronic format to facilitate its use by staff and researchers. If the electronic format is a data file with defined or delimited fields, you should transfer with

the file the records layout identifying the fields, any coded values for fields, and explanations of any delimiters.

(4) Microfilm projects may donate to us additional indexes and finding aids. NARA and the microfilm project execute a deed of gift that specifies restrictions on NARA's use and dissemination of these products under mutually acceptable terms.

§ 1254.102 What requests does NARA not approve?

(a) We do not approve any request that does not include all of the information we require in §§1254.94 and 1254.96.

(b) We do not normally approve requests to microfilm documents that:

(1) Have previously been microfilmed and made available to the public;

(2) We have approved for microfilming by another party; or

(3) We plan to film as a NARA microfilm publication or which relate closely to other documents previously microfilmed or approved for microfilming by NARA. We may grant exceptions to this provision at our discretion.

(c) We normally do not approve requests to microfilm documents:

(1) Having restrictions on access that preclude their reproduction;

(2) Known to be protected by copyright;

(3) Having high intrinsic value that only authorized NARA personnel may handle;

(4) In vulnerable physical condition;

(5) Having a high research demand and which we would have to deny to others for an extended period of time during the microfilming process. Where possible, we assist you in developing filming schedules that avoid the need to close documents for a lengthy period of time; and

(6) In formats, such as oversize documents, bound volumes, and others, that would be subject to excessive stress and possible damage from special equipment you plan to use, as well as documents fastened with grommets, heavy duty staples, miscellaneous fasteners, or wafers and other adhesives that cannot be removed without tearing or breaking documents.

(d) We normally do not approve requests from persons or organizations

that failed to produce usable microfilm or to honor commitments they made in previous requests, or for whom we have had to rescind previous permission to microfilm documents because of their conduct.

(e) We do not approve requests to microfilm records in NARA facilities in which there is insufficient space available for private microfilming. We do not permit private microfilming in our records storage (stack) areas.

(1) Federal agencies microfilming records in support of the agency's mission may use the space set aside for private microfilming. Agency microfilming takes priority over private microfilming when there is insufficient space to accommodate both at the same time.

(2) When a NARA facility does not have enough space to accommodate all requests, we may schedule separate projects by limiting the time allowed for each particular project or by requiring projects to alternate their use of the space.

(3) We also do not approve requests where the only space available for filming is in the facility's research room, and such work would disturb researchers. We do not move records from a facility lacking space for private microfilming to another NARA facility for that purpose.

(f) We do not approve requests to microfilm records when there is not enough staff to provide the necessary support services, including document preparation, training of private microfilmmers, and monitoring the filming.

(g) We do not approve the start of a project to microfilm records until you have agreed in writing to the amount and schedule of fees for any training, microfilm preparation, and monitoring we must conduct that is necessary to support your project. Our letter of tentative approval for the project includes an agreement detailing the records in the project and the detailed schedule of fees for NARA services for the project. We give final approval when we receive your signed copy of the agreement.

§ 1254.104 How does NARA determine fees to prepare documents for microfilming?

(a) As part of our evaluation of a request to microfilm documents, we determine the amount of microfilm preparation that we must do before you can microfilm the documents and the estimated cost of such preparation. We base fees for microfilm preparation on direct salary costs (including benefits) and supply costs when we perform the work. When a NARA contractor performs the work, the fees are the cost to NARA. Microfilm preparation includes:

(1) Removing document fasteners from documents when the fasteners can be removed without damage to the documents; and

(2) Taking any document conservation actions that must be accomplished in order to film the documents, such as document flattening or mending.

(b) We provide you detailed information on the fees for microfilm preparation in the letter of approval. You must pay fees in accordance with § 1258.14 of this chapter. When a body of documents requires extensive microfilm preparation, we may establish a different payment schedule at our discretion.

§ 1254.106 What are NARA's equipment standards?

(a) Because we have limited space in many NARA facilities, microfilm/fiche equipment should be operable from a table top unless we have given written permission to use free standing/floor model cameras. You may only use planetary type camera equipment. You may not use automatic rotary cameras and other equipment with automatic feed devices. We may approve your use of book cradles or other specialized equipment designed for use with bound volumes, oversized documents, or other formats, as well as other camera types not specified here, on a case-by-case basis.

(b) The power consumption of the equipment normally must not exceed 1.2 kilowatts. Power normally available is 115 volts, 60 hz. You must make requests for electricity exceeding that normally available at least 90 days in advance.

(c) You may not use equipment having clamps or other devices to exert pressure upon or to attach the document to any surface in a way that might damage the document.

(d) The equipment must not use a heat generating light source in close enough proximity to the documents to result in their physical distortion or degradation. All sources of ultraviolet light must be filtered.

§ 1254.108 What are NARA's requirements for the microfilming process?

(a) Your equipment must conform to the equipment standards in § 1254.106.

(b) You must handle documents according to the training and instructions provided by our staff so that documents are not damaged during copying and so that their original order is maintained. Only persons who have attended NARA training will be permitted to handle the documents or supervise microfilming operations. We charge you fees for training services and these fees will be based on direct salary costs (including benefits) and any related supply costs. We specify these fees in the written agreement we require for project approval in § 1254.102(h).

(c) You may microfilm documents from only one file unit at a time. After you complete microfilming, you must return documents you removed from files for microfilming to their original position in the file container, refasten any fasteners you removed to facilitate copying, and remove any tabs you placed on the documents to identify items to copy. We will provide fasteners for replacement as necessary.

(d) You may not leave documents unattended on the copying equipment or elsewhere.

(e) Under normal microfilming conditions, actual copying time per sheet must not exceed 30 seconds.

(f) You must turn off any lights used with the camera when the camera is not in actual operation.

(g) You may operate microfilm equipment only in the presence of the research room attendant or a designated NARA employee. If NARA places microfilm projects in a common research area with other researchers, the project will not be required to pay for

monitoring that is ordinarily provided. If the microfilm project is performed in a research room set aside for copying and filming, we charge the project fees for these monitoring services and these fees will be based on direct salary costs (including benefits). When more than one project share the same space, monitoring costs will be divided equally among the projects. We specify the monitoring service fees in the written agreement required for project approval in § 1254.102(h).

(h) The equipment normally should be in use each working day that it is in a NARA facility. The director of the NARA facility (as defined in § 1252.2 of this chapter) decides when you must remove equipment because of lack of regular use. You must promptly remove equipment upon request of the facility director.

(i) We assume no responsibility for loss or damage to microfilm equipment or supplies you leave unattended.

(j) We inspect the microform output at scheduled intervals during the project to verify that the processed film meets the microfilm preparation and filming standards required by part 1230 of this chapter. To enable us to properly inspect the film, we must receive the film within 5 days after it has been processed. You must provide NARA with a silver halide duplicate negative of the filmed records (*see* § 1254.100(g)) according to the schedule shown in paragraph (k). If the processed film does not meet the standards, we may require that you refile the records.

(k) When you film 10,000 or fewer images, you must provide NARA with a silver halide duplicate negative upon completion of the project. When the project involves more than 10,000 images, you must provide a silver halide duplicate negative of the first completed roll or segment of the project reproducing this image count to NARA for evaluation. You also must provide subsequent completed segments of the project, in quantities approximating 100,000 or fewer images, to NARA within 30 days after filming unless we approve other arrangements.

(1) If the microfilming process is causing visible damage to the documents, such as flaking, ripping, separation, fading, or other damage, filming must stop immediately and until the problems can be addressed.

§ 1254.110 Does NARA ever rescind permission to microfilm?

We may, at any time, rescind permission to microfilm records if:

(a) You fail to comply with the microfilming procedures in § 1254.108;

(b) Inspection of the processed microfilm reveals persistent problems with the quality of the filming or processing;

(c) You fail to proceed with the microfilming or project as indicated in the request, or

(d) The microfilming project has an unanticipated adverse effect on the condition of the documents or the space set aside in the NARA facility for microfilming.

(e) You fail to pay NARA fees in the agreed to amount or on the agreed to payment schedule.

PART 1256—ACCESS TO RECORDS AND DONATED HISTORICAL MATERIALS

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AUTHORITY: 44 U.S.C. 2101–2118; 22 U.S.C. 1461(b); 5 U.S.C. 552; E.O. 12958 (60 FR 19825, 3 CFR, 1995 Comp., p. 333; E.O. 13292, 68 FR 15315, 3 CFR, 2003 Comp., p. 196; E.O. 13233, 66 FR 56023, 3 CFR, 2001 Comp., p. 815.

SOURCE: 69 FR 39325, June 30, 2004, unless otherwise noted.

Subpart A—General Information

§ 1256.1 What does this part cover?

This part describes NARA's policies on access to archival records of the Executive Branch and donated historical materials in the National Archives of the United States and to records in the physical custody of the Federal records centers. This part applies to records and materials covered by the Federal Records Act (44 U.S.C. 2108 and chs. 29, 31, 33) and donated historical materials. This part does not apply to Presidential, Supreme Court, Senate, House of Representatives, and Architect of the Capitol records except for the purpose of directing mandatory review requests in subpart E.

§ 1256.2 How do I obtain access to records stored in Federal Records Centers?

Agencies that retire their records to a Federal records center (FRC) set rules for access to those records. Address requests for access to records stored in Federal records centers directly to the appropriate agency or to the appropriate FRC director at the address shown in part 1253. When the agency's rules permit, NARA makes FRC records available to requesters. When the agency's rules and restrictions do not permit access FRCs receive requests that should have been sent to the agency, the FRC director refers the requests and any appeals for access, including those made under the Freedom of Information Act (5 U.S.C.

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552, as amended), to the responsible agency.

§ 1256.6 How do I obtain access to records of defunct agencies?

NARA handles access to archives and FRC records received from agencies that have ceased to exist without a successor in function as described in Subpart B.

§ 1256.8 How do I obtain access to Presidential records?

See 36 CFR part 1270, Presidential Records, for the rules for access to Presidential records transferred to NARA.

§ 1256.10 How do I obtain access to Nixon Presidential materials?

See 36 CFR part 1275, Preservation and Protection of and Access to the Presidential Historical Materials of the Nixon Administration, for the rules for access to Nixon Presidential materials.

Subpart B—Access to Federal Archival Records

§ 1256.20 May I obtain access to Federal archival records?

(a) Most Federal archival records are open for research without submitting a Freedom of Information Act (FOIA) request. Part 1254 specifies procedures for using unrestricted records in a NARA research room, submitting reference requests, and ordering copies of records.

(b) Some records are subject to restrictions prescribed by statute, Executive Order, or by restrictions specified in writing in accordance with 44 U.S.C. 2108 by the agency that transferred the records to the National Archives of the United States. All agency-specified restrictions must comply with the FOIA. Even if the records are not national-security classified, we must screen some records for other information exempt from release under the FOIA.

§ 1256.22 How do I request access to restricted information in Federal archival records?

(a) You may file a FOIA request. To request access under the provisions of the FOIA, see part 1250 of this chapter,

Public Availability and Use of Federal Records.

(b) For classified information in Federal records, you may file a FOIA request or a mandatory review request under Executive Order 12958, as amended, as described in §1256.74.

§ 1256.24 How long may access to some records be denied?

(a) Although many records are open for research, some records are closed for long periods, either under our general restrictions, described in subpart D of this part, or another governing authority. For example, in accordance with 44 U.S.C. 2108(b), we do not grant access to restricted census and survey records of the Bureau of the Census less than 72 years old containing data identifying individuals enumerated in population censuses.

(b) Screening records takes time. We screen records as soon as possible and can often make most of the records in which you are interested available. In the case of electronic structured databases, NARA can make a copy of records with restricted information masked. In response to FOIA requests for records in other media, we make a copy of the record available if we can mask or “redact” restricted information.

§ 1256.26 When can I appeal decisions about access to Federal archival records?

(a) For information on filing appeals for requests made under the FOIA, see 36 CFR part 1250, subpart D, Appeals.

(b) For information on filing appeals for requests made under mandatory review, see §1260.54 of this chapter.

§ 1256.28 Does NARA make any exceptions for access to records containing privacy-restricted information?

(a) *NARA policy.* Access to archival records containing information access to which would invade the privacy of an individual is restricted by §1256.56.

(1) NARA may authorize access to such records for the purpose of research to qualified persons doing biomedical or social science research under the conditions outlined in this section as long as the records do not also contain information restricted by

statute or national security-classified information.

(2) If NARA is able to make a copy of such records with all personal identifiers masked or deleted, NARA will make such a “sanitized” copy of the record available to all researchers in accordance with §1256.24.

(3) NARA will not grant access to restricted census and survey records of the Bureau of the Census less than 72 years old containing data identifying individuals enumerated in population censuses in accordance with 44 U.S.C. 2108(b).

(b) *Request for access.* Researchers who wish to have access to records restricted by §1256.56 to conduct biomedical or social science research must submit a written request to the NARA FOIA/Privacy Act Officer (NGC), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. OMB control number 3095-0002 has been assigned to this collection of information requirement. Researchers are encouraged to consult informally with NARA before submitting the formal request. The request must include the following information:

- (1) Name and mailing address;
- (2) Institutional affiliation and position, if applicable;
- (3) List of published research, if applicable;
- (4) References from two persons who have first-hand knowledge of the requester’s qualifications to perform the research;
- (5) A statement of the nature of the research to be conducted and any plans for publication or presentation of the research findings;
- (6) A listing of all sources of grant funds supporting the research project or its publication;
- (7) A statement of the methodology to be used;
- (8) A statement of the administrative, technical, and physical safeguards to be employed by the researcher to prevent unauthorized use or disclosure of the records;
- (9) A listing of the record groups and series titles to be used; and
- (10) A statement that the researcher will abide by the conditions of access to be prescribed by NARA and that the

researcher will assume responsibility for the action of all persons working with the researcher on the project.

(c) *Access Review Committee.* Requests made under paragraph (b) of this section will be reviewed by NARA's Access Review Committee, which is composed of the Deputy Archivist of the United States, the Assistant Archivist for the Office of Records Services—Washington, DC, the Assistant Archivist for the Official of Regional Records Services, and the director(s) of the NARA division(s) that has custody of the requested records. The Committee may consult other persons within and outside the Federal Government who are knowledgeable in the research field for assistance in evaluating a request.

(1) The Committee will examine the request to determine whether:

(i) The requested information is of such a highly sensitive personal nature that disclosure must not be permitted even for biomedical or social science research;

(ii) The methodology proposed by the requester will permit the researcher to obtain the projected research results without revealing personally identifying information;

(iii) The research results are intended to be published or presented at an academic or research conference;

(iv) The requester is a biomedical or social science researcher who has previous research experience and has submitted or intends to submit articles or books on such research for publication;

(v) The safeguards proposed by the requester will adequately protect the personal information; and

(vi) NARA has sufficient staff and space available to safeguard privacy interests necessary to accommodate the research project.

(2) The decision of the Committee will be made in writing to the requester within 15 workdays after receipt of a completed request. At the discretion of the Committee, the researcher may meet with the Committee to discuss the project or to discuss revising the research proposal to meet possible objections of the Committee.

(d) *Conditions of access.* Researchers who are granted access to restricted records, all others associated with the

research project who will have access to personally identifiable information from the records, and the manager of any facility handling the records containing personal identifiers must agree in writing to maintain the confidentiality of the information and to adhere to the conditions of access imposed by NARA. NARA will impose the following conditions of access on any project; additional conditions may be imposed on the use of specific records or on specific projects:

(1) The records may be used only for the purpose of the research and for the reporting of research findings as described in the approved research project. The records may not be used for any other purpose;

(2) The records and any authorized copies of records may not be transferred to any person or institution not directly involved with the approved research project and subject to a written agreement to maintain confidentiality specified in §1256.28(d);

(3) Reasonable administrative, technical, and physical safeguards, as approved by NARA, to prevent unauthorized use or disclosure of the records must be established by the researcher and followed by all persons associated with the project;

(4) When required by NARA, the records must be consulted at the NARA facility where the records are located;

(5) The researcher's notes must not contain any individually identifiable information. The researcher must use an alternate code system to render personally identifiable information as anonymous in all research notes;

(6) Persons who are identified in the records may not be contacted by or on behalf of the researcher;

(7) Before publication or public presentation of the data, the final research product(s) must be provided to the Deputy Archivist of the United States for review. NARA's review is limited to ensuring that there is no possible identification of individuals in the research findings. NARA will not evaluate the validity of the research findings.

(e) *Noncompliance with conditions of access.* If we discover that a researcher has violated any of the conditions of access, we will take steps to revoke the

NARA research privileges of that person and will consult with NARA's General Counsel or his or her designee to determine any other steps to be taken to prevent any further disclosure of the personal information concerned. NARA may also inform the following persons and organizations of the researcher's failure to follow the conditions of use:

- (1) The institution with which the researcher is affiliated, if applicable;
- (2) Persons who served as references in the application for access;
- (3) Organizations that provided grant funds for the project;
- (4) The sponsor of the publication or public presentation; and
- (5) Appropriate professional organizations.

Subpart C—Access to Donated Historical Materials

§ 1256.30 How do I obtain access to donated historical materials?

NARA encourages researchers to confer about donated historical materials with the appropriate director or reference staff member at the facilities listed in part 1253 of this chapter. Some donated historical materials have restrictions on their use and availability as stated in writing by the donors in the Donor's Deed of Gift. Some may have other restrictions imposed by statute or Executive Order. If warranted, the Archivist may apply general restrictions to donated materials even when not specified in the donor's deed of gift. NARA staff can assist you with questions about restrictions or copyright protection that may apply to donated materials. See § 1256.36 for information on appealing closure of donated materials and subpart D of this part for information about general restrictions.

§ 1256.32 How do I request access to restricted information in donated historical materials?

(a) At Presidential libraries and regional archives, you may write to the appropriate director at the facilities in part 1253 of this chapter. In the Washington, DC, area, you may write to the Director of Access Programs (NWC) for donated textual materials or the Director of Modern Records Programs

(NWM) for donated electronic records. The mailing address for NWC and NWM is Office of Records Services—Washington, DC, 8601 Adelphi Road, College Park, MD 20740-6001.

(b) You may request a review of documents restricted under terms of a donor's deed of gift or other legal instrument to determine whether the conditions originally requiring the closure still exist. Your request must describe each document requested so that the staff can locate it with a reasonable amount of effort. For files that NARA previously screened, you may cite the reference to the withheld document as it appears on the withdrawal sheet.

(c) In many instances, the director or his or her designated representative will determine whether entire documents or portions of them can be opened. However, a donor or his or her representative reserves the right to determine whether the donor's materials, a series, or a document or portions of it should remain closed (*see* § 1256.36).

(d) For classified information in donated historical materials, you may file a mandatory review request under Executive Order 12958, as amended, as described in § 1256.74.

§ 1256.34 How long may access to some donated historical materials be denied?

Some donated historical materials are closed for long periods, either under the provisions of the deed of gift, our general restrictions described in subpart D of this part, or another governing authority. We are sometimes able to make a copy of materials with restricted information redacted.

§ 1256.36 When can I appeal decisions about access to donated historical materials?

(a) If you wish to appeal a denial of access from the director or his designated representative in implementing the provisions of a donor's deed of gift, you may write a letter addressed to the Deputy Archivist of the United States, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. The Deputy Archivist, the Assistant Archivist for Presidential Libraries, and the

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Assistant Archivist for Records Services—Washington, DC, or their designated representatives, compose the Board of Review for appeals relating to donated historical materials.

(b) The board's decision is final. If the board cannot make a determination on your request within 30 working days of receipt, NARA informs you of the reason for the delay. If the board determines that a document should remain closed, you may not file a new appeal for two years. Similarly, you may not file an appeal on documents in collections that have been open for research for less than 2 years.

(c) In some cases, the donor or his representative may reserve the right to determine whether the donor's materials, a series, or a document or portions of it should remain closed; you cannot appeal such decisions.

(d) For information on filing appeals for requests made under mandatory review of White House originated information, see § 1260.62 of this chapter.

Subpart D—General Restrictions

§ 1256.40 What are general restrictions?

General restrictions apply to certain kinds of information or classes of records, regardless of the record group to which the records have been allocated. These general restrictions may apply to records and materials not covered by the Freedom of Information Act. The general restrictions are listed and explained in §§ 1256.46 through 1256.62.

§ 1256.42 Who imposes general restrictions?

The Archivist of the United States imposes all general restrictions in accordance with 5 U.S.C. 552, as amended, and 44 U.S.C. 2107(4), 2108, and 2111.

§ 1256.44 Does NARA ever waive general restrictions?

NARA may provide access to records withheld under a general restriction only to:

(a) NARA employees for work purposes;

(b) The creating agency or its authorized agent in the conduct of agency business;

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(c) The donor, in the case of donated historical materials; or

(d) The subject of the records in some cases or the subject's authorized agent.

§ 1256.46 National security-classified information.

In accordance with 5 U.S.C. 552(b)(1), NARA cannot disclose records containing information regarding national defense or foreign policy that is properly classified under the provisions of the pertinent Executive Order on Classified National Security Information and its implementing directive (Executive Order 12958, as amended).

§ 1256.48 Information about internal agency rules and practices.

(a) NARA may withhold from disclosure, in accordance with 5 U.S.C. 552(b)(2), the following:

(1) Records that contain information on substantial internal matters of agencies that, if disclosed, could risk circumvention of a legal requirement, such as a statute or an agency regulation.

(2) Records containing information that states or assesses an agency's vulnerability to outside interference or harm. NARA withholds records that identify agency programs, systems, or facilities deemed most sensitive. NARA also withholds records describing specific measures that can be used to counteract such agency vulnerabilities.

(b) The Archivist of the United States may determine that this general restriction does not apply to specific records because enough time has passed that agency statutes or regulations would not be compromised and programs, systems, and facilities would not be harmed.

§ 1256.50 Information exempted from disclosure by statute.

In accordance with 5 U.S.C. 552(b)(3), NARA withholds records containing information that is specifically exempted from disclosure by statute when that statute:

(a) Requires withholding information from the public, leaving no discretion; or

(b) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

§ 1256.52 Trade secrets and commercial or financial information.

In accordance with 5 U.S.C. 552(b)(4), NARA may withhold records that contain trade secrets and commercial or financial information, obtained from a person, that is privileged or confidential. Such records may be disclosed only if:

- (a) The person who provided the information agrees to its release; or
- (b) In the judgment of the Archivist of the United States, enough time has passed that release of the information would not result in substantial competitive harm to the submitter of the information. See 36 CFR 1250.82 for additional regulatory guidance.

§ 1256.54 Inter- and intra-agency memoranda (subject to privilege).

(a) In accordance with 5 U.S.C. 552(b)(5), NARA may withhold information found in inter-agency or intra-agency records if that information is subject to a legally recognized privilege, including the:

- (1) Deliberative process privilege;
- (2) Attorney work product privilege; and
- (3) Attorney-client privilege.

(b) The Archivist of the United States may determine that this general restriction does not apply to specific records because enough time has passed that release of the information would not result in the harm that the privilege was intended to protect or confidential attorney-client communications.

§ 1256.56 Information that would invade the privacy of a living individual.

(a) In accordance with 5 U.S.C. 552(b)(6), NARA will withhold records in personnel and medical and similar files containing information about a living individual that reveals details of a highly personal nature that, if released, would cause a clearly unwarranted invasion of personal privacy. Privacy information may include, but is not limited to, information about the physical or mental health or the medical or psychiatric care or treatment of the individual, and that:

(1) Contains personal information not known to have been previously made public, and

(2) Relates to events less than 75 years old.

(b) The Archivist of the United States may determine that this general restriction does not apply to:

- (1) Specific records because enough time has passed that the privacy of living individuals is not compromised; or
- (2) Researchers for the purpose of biomedical and social science research when such researchers have provided NARA with adequate written assurance that the record(s) will be used solely as a research or reporting record and that no individually identifiable information will be disclosed.

§ 1256.58 Information related to law enforcement investigations.

(a) In accordance with 5 U.S.C. 552(b)(7), NARA will withhold records compiled for law enforcement purposes. Unless otherwise determined by the Archivist in accordance with paragraph (b) of this section, records compiled for law enforcement purposes may be disclosed only if all of the following conditions are met:

(1) The release of the information does not interfere with law enforcement proceedings;

(2) The release of the information would not deprive a person of a right to a fair trial or an impartial adjudication;

(3) The release of the information would not constitute an unwarranted invasion of personal privacy;

(4) Confidential sources and information provided by a confidential source are not revealed;

(5) Confidential investigation techniques are not described; and

(6) Release of the information would not endanger the life or physical safety of any person.

(b) The Archivist of the United States may determine that this general restriction does not apply to specific records because enough time has passed that:

(1) The safety of persons is not endangered, and

(2) The public interest in disclosure outweighs the continued need for confidentiality.

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§ 1256.60 Information relating to financial institutions.

(a) In accordance with 5 U.S.C. 552(b)(8), NARA may withhold information in records contained in or relating to the examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(b) The Archivist of the United States may determine that this general restriction does not apply to specific records because enough time has passed that current financial information is not compromised.

§ 1256.62 Geological and geophysical information relating to wells.

(a) In accordance with 5 U.S.C. 552(b)(9), NARA may withhold information in records that relates to geological and geophysical information and data, including maps, concerning wells.

(b) The Archivist of the United States may determine that this general restriction does not apply to specific records because enough time has passed that current proprietary rights are not compromised.

Subpart E—Access to Materials Containing National Security-Classified Information

§ 1256.70 What controls access to national security-classified information?

(a) The declassification of and public access to national security-classified information, hereinafter referred to as “classified information” is governed by Executive Order 12958 of April 17, 1995 (3 CFR, 1995 Comp., p. 333) and as amended by Executive Order 13292 of March 25, 2003 (68 FR 15315, 3 CFR, 2003 Comp. 196), 32 CFR part 2001, and the Freedom of Information Act (5 U.S.C. 552, as amended).

(b) Public access to documents declassified in accordance with this regulation may be restricted or denied for other reasons under the provisions of 5 U.S.C. 552(b) for accessioned agency records; §§ 1256.30 through 1256.36 of this part for donated historical materials; 44 U.S.C. 2111, 44 U.S.C. 2201 *et seq.*, and 36 CFR part 1270 for Presidential records; and 44 U.S.C. 2111 note and 36

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CFR part 1275 for Nixon Presidential materials.

§ 1256.72 What are FOIA requests and mandatory review requests?

(a) You may file a FOIA request for Executive Branch agency records, regardless of whether they contain classified information. The FOIA also applies to Presidential records as cited in § 1256.74(b). The FOIA does not apply to records of the Judicial and Legislative Branches or to donated historical materials.

(b) You may only file a mandatory review request if the records contain classified information. NARA handles mandatory review requests for records we hold for the Executive, Judicial, and Legislative Branches as well as donated historical materials under E.O. 12958, as amended, section 3.5.

§ 1256.74 How does NARA process Freedom of Information Act (FOIA) requests for classified information?

(a) NARA processes FOIA requests for access to classified information in Federal records in accordance with the provisions of 36 CFR part 1250. Time limits for responses to FOIA requests for classified information are those provided in the FOIA, rather than the longer time limits provided for responses to mandatory review requests specified by Executive Order 12958, Classified National Security Information (3 CFR, 1995 Comp., p. 333), as amended by Executive Order 13292 (68 FR 15315, 3 CFR, 2003 Comp., p. 196).

(b) NARA processes requests for access to classified information in Presidential records under the FOIA and the Presidential Records Act (PRA) in accordance with the provisions of part 1270 of this chapter. Time limits for responses to FOIA requests for classified information are those provided in the FOIA, the PRA, and Executive Order 13233, Further Implementation of the Presidential Records Act (3 CFR, 2001 Comp., p. 815).

§ 1256.76 How do I request mandatory review of classified information under Executive Order 12958, as amended?

(a) You may request mandatory review of classified information that is in the legal custody of NARA, as well as

in legislative and judicial records NARA holds. Your mandatory review request must describe the document or material containing the information with sufficient specificity to enable NARA to locate it with a reasonable amount of effort. When possible, a request must include the name of the originator and recipient of the information, as well as its date, subject, and file designation. Information we reviewed within the previous 2 years is not subject to mandatory review. We notify you if this provision applies to your request.

(b) You must address your mandatory review request to the appropriate staff in the following table.

If the documents are then address your request to
(1) Presidential records and donated historical materials at a Presidential library.	The appropriate library cited in 36 CFR part 1253.
(2) Nixon Presidential materials.	Director, Nixon Presidential Materials Staff (NLNS), 8601 Adelphi Road, College Park, MD 20740-6001.
(3) Presidential materials maintained in the Washington, DC, area.	Director, Presidential Materials Staff (NLMS), 700 Pennsylvania Avenue, NW., Washington, DC 20408.
(4) Federal records, donated historical materials related to Federal records, judicial records, legislative records maintained in the Washington, DC, area.	Chief, Special Access/FOIA Staff (NWCTF), 8601 Adelphi Road, College Park, MD 20740-6001.
(5) Federal records and judicial records maintained at a regional archives.	The appropriate regional archives cited in 36 CFR part 1253.

§ 1256.78 How does NARA handle my mandatory review request?

(a) You may find our procedures for mandatory review and appeals of denials in part 1260 of this chapter, Declassification of National Security Information.

(1) When agencies provide declassification guidance and delegate declassification authority to the Archivist of the United States, NARA reviews for declassification and releases the requested information or those declassified portions of the request that constitute a coherent segment unless withholding is otherwise warranted under applicable law.

(2) When we do not have guidance from agencies, we coordinate the declassification review with the original

classifying agency or agencies under the provisions of part 1260, subchapter D of this chapter.

(b) If we cannot identify the information you seek from the description you provide or if the volume of information you seek is so large that processing it would interfere with our capacity to serve all requesters on an equitable basis, we notify you that, unless you provide additional information or narrow the scope of your request, we cannot take further action.

§ 1256.80 How does NARA provide classified access to historical researchers and former Presidential appointees?

(a) In accordance with the requirements of section 4.4 of E.O. 12958, as amended, we may grant access to classified information to certain eligible persons. These persons are engaged in historical research projects or previously occupied policy-making positions to which they were appointed by the President. If you seek permission to examine materials under this special historical researcher/Presidential appointees access program, you must contact NARA in advance. We need at least 4 months before you wish to have access to the materials to permit time for the responsible agencies to process your request for access. If you seek access to classified Presidential records under section 4.4 of E.O. 12958, you must first qualify under special access provisions of 44 U.S.C. 2205. NARA informs you of the agencies to which you have to apply for permission to examine classified information, including classified information originated by the White House or classified information in the custody of the National Archives which was originated by a defunct agency.

(b) You may examine records under this program only after the originating or responsible agency:

(1) Determines in writing that access is consistent with the interest of national security; and

(2) Takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with Executive Order 12958, as amended.

§ 1256.90

(c) The originating or responsible agency limits the access granted to former Presidential and Vice Presidential appointees to items that the person originated, reviewed, signed, or received while serving as an appointee.

(d) To protect against the possibility of unauthorized access to restricted documents, a director may issue instructions supplementing the research room rules provided in 36 CFR part 1254.

Subpart F—Domestic Distribution of United States Information Agency Audiovisual Materials in the National Archives of the United States

§ 1256.90 What does this subpart cover?

This subpart contains procedures governing the public availability of audiovisual records and other materials subject to 22 U.S.C. 1461(b) that have been transferred to the National Archives of the United States by the United States Information Agency (USIA).

§ 1256.92 What is the purpose of this subpart?

This subpart implements section 501 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1461), as amended by section 202 of Public Law 101-246 (104 Stat. 49, Feb. 16, 1990). This subpart also outlines procedures that permit the public to inspect and obtain copies of USIA audiovisual records and other materials in the United States that were prepared for dissemination abroad and that have been transferred to NARA for preservation and domestic distribution.

§ 1256.94 Definition.

For the purposes of this subpart, “Audiovisual records” mean motion picture films, videotapes, and sound recordings, and other materials regardless of physical form or characteristics that were prepared for dissemination abroad.

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§ 1256.96 What provisions apply to the transfer of USIA audiovisual records to the National Archives of the United States?

The provisions of 44 U.S.C. 2107 and 36 CFR part 1228 apply to the transfer of USIA audiovisual records to NARA, and to their deposit with the National Archives of the United States. At the time the audiovisual records are transferred to NARA, the Director of USIA, in accordance with § 1228.266(e) of this chapter, will also transfer any production or title files bearing on the ownership of rights in the productions in connection with USIA’s official overseas programming.

§ 1256.98 Can I get access to and obtain copies of USIA audiovisual records transferred to the National Archives of the United States?

NARA provides access to USIA audiovisual records after the appropriate time period of restriction has passed.

(a) No USIA audiovisual records in the National Archives of the United States that were prepared for dissemination abroad are available for copying until at least 12 years after USIA first disseminated these materials abroad, or, in the case of materials prepared for foreign dissemination but not disseminated abroad, until at least 12 years after the preparation of the materials.

(b) If the appropriate time has passed, you may have access to USIA audiovisual records that do not have copyright protection and do not contain copyright material. USIA audiovisual records prepared for dissemination abroad that NARA determines do not have copyright protection nor contain copyrighted material are available for examination and copying as described in the regulations in parts 1252, 1253, 1254, 1256, and 1258 of this chapter. To determine whether materials have copyright protection or contain copyrighted material, NARA relies on information contained within or fastened to individual records (for example, copyright notices); information contained within relevant USIA production, title, or other files that USIA transferred to NARA; information provided by requesters under § 1256.100(b) (for example, evidence from the Copyright Office that copyright has lapsed or expired);

and information provided by copyright or license holders.

§ 1256.100 What is the copying policy for USIA audiovisual records that either have copyright protection or contain copyrighted material?

If the appropriate time has passed, as stated in § 1256.98(a), USIA audiovisual records that either have copyright protection or contain copyrighted material may be copied as follows:

(a) USIA audiovisual records prepared for dissemination abroad that NARA determines may have copyright protection or may contain copyrighted material are made available for examination in NARA research facilities as described in the regulations in this title.

(b) Copies of USIA audiovisual records prepared for dissemination abroad that NARA determines may have copyright protection or may contain copyrighted material are provided to you if you seek the release of such materials in the United States once NARA has:

(1) Ensured, as described in paragraph (c) of this section, that you have secured and paid for necessary United States rights and licenses;

(2) Been provided with evidence from the Copyright Office demonstrating that copyright protection in the materials sought, or relevant portions in the materials, has lapsed or expired; or

(3) Received your signed certification in accordance with paragraph (d) of this section that you will use the materials sought only for purposes permitted by the Copyright Act of 1976, as amended, including the fair use provisions of 17 U.S.C. 107. No copies of USIA audiovisual records will be provided until the fees authorized under part 1258 of this chapter have been paid.

(c) If NARA determines that a USIA audiovisual record prepared for dissemination abroad may have copyright protection or may contain copyrighted material, you may obtain copies of the material by submitting to NARA written evidence from all copyright and license owner(s) that any necessary fees have been paid or waived and any necessary licenses have been secured.

(d) If NARA has determined that a USIA audiovisual record prepared for

dissemination abroad may have copyright protection or may contain copyrighted material, persons seeking the release of such material in the United States may obtain copies of the material by submitting to NARA the following certification statement:

I, (printed name of individual), certify that my use of the copyrighted portions of the (name or title and NARA identifier of work involved) provided to me by the National Archives and Records Administration (NARA), will be limited to private study, scholarship, or research purposes, or for other purposes permitted by the Copyright Act of 1976, as amended. I understand that I am solely responsible for the subsequent use of the copyrighted portions of the work identified above.

(e) In every instance where NARA provides a copy of an audiovisual record under this subpart, and NARA has determined that the work reproduced may have copyright protection or may contain copyrighted material, NARA must provide you with a warning notice of copyright.

(f) Nothing in this section limits NARA's ability to make copies of USIA audiovisual records for preservation, arrangement, repair and rehabilitation, description, exhibition, security, or reference purposes.

§ 1256.102 What fees does NARA charge?

Copies of audiovisual records will only be provided under this subpart upon payment of fees in accordance with 44 U.S.C. 2116(c) and 22 U.S.C. 1461(b)(3). See § 1258.4(b) for additional information.

PART 1258—FEES

Sec.

1258.1 [Reserved]

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1258.18 Where can I find NARA's current fees and information on how to order reproductions?

AUTHORITY: 44 U.S.C. 2116(c) and 44 U.S.C. 2307.

SOURCE: 76 FR 62632, October 11, 2011, unless otherwise noted.

§ 1258.1 [Reserved]

§ 1258.2 What definitions apply to the regulations in this part?

Accession means the method of acquiring archival records or donated materials from various Governmental bodies.

Archival records means records that have been accessioned into the legal custody of NARA, donated historical materials in the legal custody of NARA and its Presidential libraries, and Congressional, Supreme Court, and other historical materials in NARA's physical custody and for which NARA has a formal agreement for their permanent retention.

Certification means affixing a seal to copies certifying the copies are a valid reproduction of a file; this service is available for an additional fee.

Cost means the total amount of money spent by the NATF for providing services including, but not limited to, salaries; benefits; rent; communication and utilities; printing and reproductions; consulting and other services; payments to other agencies/funds; supplies and materials; depreciation; system upgrades/replacements; *etc.*

Custodial units mean NARA's Federal Records Centers, National Personnel Records Center, archival reference operations nationwide, and Presidential Libraries.

Fee means the price researchers pay for reproductions of records. Certification of records is also a reproduction fee.

Records center records means Federal records in the physical custody of NARA records centers, but still in the legal custody of the agencies that created and maintained them.

§ 1258.4 What costs make up the NARA fees?

(a) 44 U.S.C. 2116(c) allows the NATF to recover all of its costs for providing records reproduction services to the

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public. The vast majority of materials that are reproduced are from the holdings of NARA, which require special handling, due to the age, condition and historical significance. Examples of special handling include the following:

(1) *The placement of each record by hand on the reproduction equipment.* Many of the records are fragile and have historical uniqueness; reproduction equipment operators must take great care in handling these records. For example, each page of a document must be carefully placed by hand on the reproduction equipment, a copy made, the page removed, and the process re-started.

(2) *Clarity and legibility of the reproduced records.* Older records may be handwritten and darkened from age, which requires extra time to make sure we produce copies that are as clear and legible as possible.

(3) *Inability to use automatic document feeders.* Because of the requirements in paragraph (a)(1) of this section, automatic document feeders cannot be used for the duplication of paper materials. This adds time and cost to the price of copying these irreplaceable documents.

(b) The NATF costs, at a minimum, include:

(1) Salaries and benefits of the NATF staff involved in all aspects of the records reproduction process (includes, but is not limited to, compensation for full- and part-time employees, temporary appointments, overtime, awards, Civil Service Retirement Service and Federal Employees' Retirement System contributions, health benefits, life insurance benefits and Thrift Savings Plan contributions).

(2) Travel and transportation (includes, but is not limited to, travel and transportation of persons, transportation of things, and contract mail service).

(3) Rent, communications and utilities (includes, but is not limited to, telecommunications, equipment rental, and postage).

(4) Printing and reproductions (includes, but is not limited to, commercial printing, advertising, and printing of forms).

(5) Consulting and other services (includes, but is not limited to, management and professional services, contract labor, work performed in support of reproduction orders, and maintenance of equipment).

(6) Payments to other agencies/funds (includes, but is not limited to, reimbursements and payments to other agencies and other funds within NARA). Specifically, the NATF “hires” the NARA custodial units to do reproduction work. In return, the NATF reimburses the custodial units for the cost of salaries and benefits.

(7) Supplies and materials (includes, but is not limited to, general supplies, and materials and parts).

(8) Depreciation (spreading the cost of an asset over the span of several years).

(9) System upgrades/replacement (includes, but is not limited to, installation of operating equipment, software upgrades, and system changes).

§ 1258.6 How does NARA calculate fees for individual products?

NARA calculates the fees for individual products using the following:

(a) *Cost summary.* A summary of all costs incurred by the NATF in providing records reproduction services.

(b) *Percent of revenue.* The percentage of the total NATF revenue represented by sales of a product. This is determined and used where a more accurate percentage based upon actual usage is not available. To calculate this percentage, an analysis is made to determine the current percent of NATF sales revenue represented by each product line. The sales volume is then reviewed with the custodial units to determine if this represents anticipated sales.

(c) *Actual cost percent calculation.* Using the information calculated in the Cost Summary, the actual revenue cost percentage is determined. In some cases, the actual percentage of cost can be calculated from available data or known constraints of the product line. For example, if the contractor responsible for providing copy support does not support the reproduction of a given product line then zero (0) percent of the contractor’s costs would be allocated to that product line.

(d) *Forecasted volume.* The prediction of a product’s sales volume in future year(s). These estimates are made by working with the custodial units and taking into account historical sales volume. An annual percent change is then estimated.

(e) *Reimbursements to the custodial units.* The amount paid to the custodial units for records reproductive services in support of NATF customer orders. The NATF reimburses the custodial units for services rendered to the NATF for the reproduction of NARA holdings. To determine the reimbursement per copy for an item, past reimbursement fees are changed by the compounded annual Government salary changes as issued by the Office of Personnel Management for the fiscal years being projected. The new rates are reviewed with custodial unit personnel and adjustments are made as required.

(f) *Additional cost allocation.* The costs unique to a given product line. Each product line is evaluated to determine the costs that are unique to that product line, such as purchase and installation costs of specialty equipment, replacement costs for aging equipment, copier leases and maintenance costs, etc. These costs are then allocated against those product lines that use the equipment. Where costs cross product lines, the allocations are apportioned based upon the percent of the estimated copy volume for each product line.

(g) *Fee calculation.* The product fee is calculated by the following formula: $\{[(\text{Percent of Revenue} * \text{NATF Overhead Costs}) + \text{Reimbursement} + \text{Additional Costs}] / \text{Projected Sales Volume}\}$. This calculation is completed for each product.

(h) *Final review.* After the suggested new fees are calculated, NATF reviews them to establish the final fees. Fees may be adjusted across product lines to ensure that the NATF can succeed in total cost recovery.

§ 1258.8 How does NARA change fees for existing records reproductions?

(a) The NATF conducts periodic reviews of its fees to ensure that the costs of providing services to the public are properly recovered.

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(b) Existing records reproduction fees may be adjusted annually based on the following factors:

- (1) Inflation.
- (2) The Office of Personnel Management (OPM) salary changes.
- (3) Reallocation of shared costs across product lines using the methodology described in §1258.6.
- (4) The projected sales volume for the product.
- (5) The actual sales volume for the product.
- (6) The approval of the Archivist of the United States.

(d) NARA will place a notice on our Web site (<http://www.archives.gov>) annually when announcing that records reproduction fees will be adjusted in accordance with this regulation.

§ 1258.10 How does NARA develop and publicize new records reproduction fees?

(a) Custodial units prepare a justification proposal for a proposed records reproduction service and send the justification to the custodial unit office head, through appropriate channels, for concurrence and forwarding to NATF. The justification proposal includes, at a minimum, the following information:

- (1) Estimated monthly volume of product orders based on available historical data;
- (2) Identification of the equipment and supplies required to provide the product and service;
- (3) Brief description of the process required to provide the product and service, including the amount of time for each number and grade level of staff.
- (4) Identification of any services or products that will be replaced by the proposed products and services;
- (5) Identification of other NARA units that may have a demand for the proposed services; and
- (6) Any other relevant information.

(b) After receiving the proposal, NATF staff:

- (1) Assesses the potential customer base for the proposed products and services, consulting other NARA offices.
- (2) If the potential demand does not warrant establishing fees for new records reproduction products and

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services, NATF notifies the proposing office that the new product and service are not approved and the reasons why.

(3) If the potential demand warrants, NATF prepares a cost analysis following the methodology in §1258.6 and develops a proposed recommended fee for review by NARA's Financial Resources Division and approval by the Archivist of the United States.

(c) *Notification of new records reproduction services and trial periods:* (1) The public will be notified of new records reproduction services, including the business case for determining initial fee, on-line at <http://www.archives.gov>, by press releases, and through NARA's social media outlets.

(2) New records reproduction services fees have an initial trial period of one year. During this time, the public is encouraged to provide feedback to NARA about the new records reproduction services and their fees as directed in the notification of the new services.

(3) Prior to the expiration of a trial period, NATF will assess the validity of the fees for the new records reproduction products and services, and make one of three determinations:

- (i) Retain products, services and fees;
- (ii) Retain products or services but adjust fees up or down; or
- (iii) Discontinue products or services.

(d) The public will be notified of NATF determination, including business case for determination, in NARA research rooms nationwide, on-line at <http://www.archives.gov>, press releases, and through NARA's social media outlets.

§ 1258.12 When does NARA provide records reproductions without charge?

At the discretion of the Secretary of the NATF, customers are not charged a fee for records reproductions or certifications in the instances described in this section.

(a) When NARA furnishes copies of records to other elements of the Federal Government. However, a fee may be charged if the appropriate director determines that the service cannot be performed without reimbursement;

(b) When NARA wishes to disseminate information about its activities to the general public through press, radio,

television, and newsreel representatives;

(c) When the reproduction is to furnish the donor of a document or other gift with a copy of the original;

(d) When the reproduction is for individuals or associations having official voluntary or cooperative relations with NARA in its work;

(e) When the reproduction is for a foreign, State, or local government or an international agency and furnishing it without charge is an appropriate courtesy; and

(f) For records of other Federal agencies in NARA Federal records centers only:

(1) When furnishing the service free conforms to generally established business custom, such as furnishing personal reference data to prospective employers of former Government employees;

(2) When the reproduction of not more than one copy of the document is required to obtain from the Government financial benefits to which the requesting person may be entitled (*e.g.*, veterans or their dependents, employees with workmen's compensation claims, or persons insured by the Government);

(3) When the reproduction of not more than one copy of a hearing or other formal proceeding involving security requirements for Federal employment is requested by a person directly concerned in the hearing or proceeding; and

(4) When the reproduction of not more than one copy of a document is for a person who has been required to furnish a personal document to the Government (*e.g.*, a birth certificate required to be given to an agency where the original cannot be returned to the individual).

§ 1258.14 What is NARA's payment policy?

Fees may be paid:

(a) By check or money order made payable to the *National Archives Trust Fund*.

(b) By selected credit cards.

(c) Payments from outside the United States must be made by international money order payable in U.S. dollars or a check drawn on a U.S. bank.

(d) In cash (note that some locations do not accept cash).

§ 1258.16 What is NARA's refund policy?

Due to the age, original media type, and general condition of many of the items in NARA's holdings, it is occasionally difficult to make a legible reproduction. NARA staff will notify customers if they anticipate that the original will result in a reproduction of questionable legibility before requesting the reproduction and after approval of the customer. After a records reproduction is completed, the product undergoes a review to determine if it is an accurate representation of the original item. Because of the preapproval process, NARA does not provide refunds except in special cases. If a customer requests a refund, a review is made of the order to determine if the customer was properly notified of the questionable nature of the original and if the product is a true representation of the original. If the customer authorized proceeding and the product is a true representation of the original, no refund will be issued.

§ 1258.18 Where can I find NARA's current fees and information on how to order reproductions?

(a) NARA's fee schedule and ordering portal are located at <http://www.archives.gov>.

(b) Fee schedules for reproductions made from the holdings of Presidential libraries may differ because of regional cost variations. Presidential library fee schedules are available at <http://www.archives.gov/presidential-libraries/>. Some services may not be available at all NARA facilities.

(c) In order to preserve certain records which are in poor physical condition, NARA may restrict customers to photographic or other kinds of duplication instead of electrostatic copies.