

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**

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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.

## § 1258.10

(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.