AUTHENTICATED
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for other types of vehicles, particularly light rail vehicles, where appropriate.

1.Where destination or route information is displayed on the exterior of a vehicle, each vehicle should have illuminated signs on the front and boarding side of the vehicle.

2. Characters on signs covered by paragraph IV.B.1 of this appendix should have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case ''X'') of 1 inch for signs on the boarding side and a minimum character height of 2 inches for front ''headsigns'', with ''wide'' spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and should contrast with the background, either dark-on-light or light-on-dark, or as recommended above.

C. Designation of Accessible Vehicles

The International Symbol of Accessibility should be displayed as shown in Figure 6.

V. PUBLIC INFORMATION SYSTEMS

There is currently no requirement that vehicles be equipped with an information system which is capable of providing the same or equivalent information to persons with hearing loss. While the Department of Transportation assesses available and soon-to-be available technology during a study to be conducted during Fiscal Year 1992, entities are encouraged to employ whatever services, signage or alternative systems or devices that provide equivalent access and are available. Two possible types of devices are visual display systems and listening systems. However, it should be noted that while visual display systems accommodate persons who are deaf or are hearing impaired, assistive listening systems aid only those with a partial loss of hearing.

A. Visual Display Systems

Announcements may be provided in a visual format by the use of electronic message boards or video monitors.

Electronic message boards using a light emitting diode (LED) or ''flip-dot'' display are currently provided in some transit stations and terminals and may be usable in vehicles. These devices may be used to provide real time or pre-programmed messages; however, real time message displays require the availability of an employee for keyboard entry of the information to be announced.

Video monitor systems, such as visual paging systems provided in some airports (e.g., Baltimore-Washington International Airport), are another alternative. The Architectural and Transportation Barriers Compliance Board (Access Board) can provide technical assistance and information on these systems (''Airport TDD Access: Two Case Studies,'' (1990)).

B. Assistive Listening Systems

Assistive listening systems (ALS) are intended to augment standard public address and audio systems by providing signals which can be received directly by persons with special receivers or their own hearing aids and which eliminate or filter background noise. Magnetic induction loops, infra-red and radio frequency systems are types of listening systems which are appropriate for various applications.

An assistive listening-system appropriate for transit vehicles, where a group of persons or where the specific individuals are not known in advance, may be different from the system appropriate for a particular individual provided as an auxiliary aid or as part of a reasonable accommodation. The appropriate device for an individual is the type that individual can use, whereas the appropriate system for a station or vehicle will necessarily be geared toward the ''average'' or aggregate needs of various individuals. Earphone jacks with variable volume controls can benefit only people who have slight hearing loss and do not help people who use hearing aids. At the present time, magnetic induction loops are the most feasible type of listening system for people who use hearing aids equipped with ''T-coils'', but people without hearing aids or those with hearing aids not equipped with inductive pick-ups cannot use them without special receivers. Radio frequency systems can be extremely effective and inexpensive. People without hearing aids can use them, but people with hearing aids need a special receiver to use them as they are presently designed. If hearing aids had a jack to allow a by-pass of microphones, then radio frequency systems would be suitable for people with and without hearing aids. Some listening systems may be subject to interference from other equipment and feedback from hearing aids of people who are using the systems. Such interference can be controlled by careful engineering design that anticipates feedback sources in the surrounding area.

The Architectural and Transportation Barriers Compliance Board (Access Board) has published a pamphlet on Assistive Listening Systems which lists demonstration centers across the country where technical assistance can be obtained in selecting and installing appropriate systems. The state of New York has also adopted a detailed technical specification which may be useful.

PARTS 1193—1199 [RESERVED]

CHAPTER XII—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

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SUBCHAPTER A—GENERAL RULES

PART 1200—OFFICIAL SEALS

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1200.2 Description and design.
1200.4 Authority to affix seals.
1200.6 Use of the seals.

AUTHORITY: 44 U.S.C. 2104(e), 2116(b), 2302.

SOURCE: 50 FR 27196, July 1, 1985, unless otherwise noted.

§ 1200.1 Definitions.

For the purposes of this part—

Embossing seal means a display of the form and content of the official seal made on a die so that the seal can be embossed on paper or other medium.

NARA means all organizational units of the National Archives and Records Administration.

Official seal means the original(s) of the seal showing the exact form, content and color.

Replica or *reproduction* means a copy of the official seal displaying the form, content and color.

§ 1200.2 Description and design.

(a) *National Archives and Records Administration seal.* The design is illustrated below and described as follows:

Centered on a disc with a double-line border a solid line rendition of an heraldic eagle displayed holding in its left talon thirteen arrows, in its right talon a branch of olive, bearing on its breast a representation of the shield of the United States and displayed above its head a partially unrolled scroll inscribed with the words LITTERA SCRIPTA MANET one above the other; all within the circumscription NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, with the date 1985 at bottom center.

(b) *National Archives seal.* The design is illustrated below and described as in paragraph (a) of this section, encircled by the circumscription THE NATIONAL ARCHIVES OF THE UNITED STATES, with the date 1934 at the bottom center.

(c) *National Archives Trust Fund Board seal.* The design is illustrated below and described as in paragraph (a) of

this section, encircled by the circumscription NATIONAL ARCHIVES TRUST FUND BOARD, with the date 1941 at the bottom center.

§ 1200.4 Authority to affix seals.

The Archivist of the United States and the Archivist's designees are authorized to affix the official seals, embossing seals, replicas and reproductions to appropriate documents, certifications and other material for all purposes authorized by this part.

§ 1200.6 Use of the seals.

(a) The seals are the official emblems of NARA and their use is therefore permitted only as provided in this part.

(b) Use by any person or organization outside NARA may be made only with prior written approval by NARA.

(c) Requests by any person or organization outside NARA for permission to use the seals must be made in writing to the Archivist of the United States, National Archives (N), Washington, DC 20408, and must specify, in detail, the exact use to be made. Any permission granted applies only to the specific use for which it was granted and is not to be construed as permission for any other use.

(d) Use of the NARA and the National Archives of the United States seals shall be primarily for informational purposes and for authentication of documents. The National Archives Trust Fund Board seal shall be used only for Trust Fund documents and publications. The seals may not be used on any article or in any manner which may discredit the seals or reflect unfavorably upon NARA or which implies NARA endorsement of commercial products or services, or of the user's policies or activities.

(e) Falsely making, forging, counterfeiting, mutilating, or altering the official seals, replicas, reproductions or embossing seals, or knowingly using or possessing with fraudulent intent any altered seal is punishable under section 506 of title 18, United States Code.

(f) Any person using the official seals, replicas, reproductions, or embossing seals in a manner inconsistent with the provisions of this part is subject to the provisions of 18 U.S.C. 1017, which provides penalties for the wrongful use of an official seal, and to other provisions of law as applicable.

PART 1202—REGULATIONS IMPLEMENTING THE PRIVACY ACT OF 1974

Sec.

1202.1 Scope of part.
1202.2 Purpose.
1202.4 Definitions.

Subpart A—General Policy

1202.10 Collection and use.
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1202.16 Safeguarding systems of records.
1202.18 Inconsistent issuances of NARA superseded.
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1202.22 Subpoenas and other legal demands.

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1202.30 Conditions of disclosure.
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1202.80 Reporting requirement.
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1202.84 Effective date of new system of records or alteration of an existing system of records.

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1202.90 Specific exemptions.

Subpart G—Assistance and Referrals

1202.100 Requests for assistance and referrals.

AUTHORITY: 44 U.S.C. 2104(a); 5 U.S.C. 552a.

SOURCE: 50 FR 27197, July 1, 1985, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 1202 appear at 54 FR 32067, Aug. 4, 1989.

§1202.1 Scope of part.

This part sets forth policies and procedures concerning the collection, use, and dissemination of records maintained by NARA which are subject to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a. These policies and procedures govern only those records as defined in §1202.4. Policies and procedures governing the disclosure and availability of NARA administrative records in general are in part 1250 of this chapter. This part also covers exemptions from disclosure of personal information; procedures for guidance of subject individuals in obtaining information and inspecting and disagreeing with the content of records; accounting for disclosures of information; special requirements for medical records; and fees.

§1202.2 Purpose.

This part implements the provisions of 5 U.S.C. 552a, popularly known as the ''Privacy Act of 1974'' (hereinafter referred to as the Act). This part prescribes procedures for notifying an individual of NARA systems of records which may contain a record pertaining to him or her, procedures for gaining access and contesting the contents of such records, and other procedures for carrying out the provisions of the Act.

§1202.4 Definitions.

For the purposes of this part 1202:

Access means a transfer of a record, a copy of a record, or the information in a record to the subject individual, or the review of a record by the subject individual.

Agency means agency as defined in 5 U.S.C. 552(e).

Disclosure means a transfer of a record, a copy of a record, or the information contained in a record to a recipient other than the subject individual, or the review of a record by someone other than the subject individual.

Individual means a citizen of the United States or an alien lawfully admitted for permanent residence.

Maintain includes maintain, collect, use, and disseminate.

NARA Privacy Act appeal official means the Deputy Archivist of the United States for appeals of denials of access to or amendment of records maintained in a system of records, except where the system manager is the Inspector General or the Archivist of the United States. The term means the Archivist of the United States for appeals of denial of access to or amendment of records in systems of records maintained by the Inspector General.

Record means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history and criminal or employment history and that contains his or her name or an identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or photograph.

Routine use means, with respect to the disclosure of a record, the use of

that record for a purpose which is compatible with the purpose for which it was collected.

Solicitation means a request by a NARA officer or employee that an individual provide information about himself or herself.

Statistical record means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

Subject individual means the individual named or discussed in a record or the individual to whom a record otherwise pertains.

System manager means the NARA employee who is responsible for the maintenance of a system of records and for the collection, use, and dissemination of information therein.

System of records means a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to that individual.

[50 FR 27197, July 1, 1985, as amended at 54 FR 32067, Aug. 4, 1989]

Subpart A—General Policy

§ 1202.10 Collection and use.

(a) *General.* Any information used in whole or in part in making a determination about an individual's rights, benefits, or privileges under NARA programs will be collected directly from the subject individual to the extent practicable. The system manager also shall ensure that information collected is used only in conformance with the provisions of the Act and these regulations.

(b) *Solicitation of information.* System managers shall ensure that at the time information is solicited the solicited individual is informed of the authority for collecting that information, whether providing the information is mandatory or voluntary, the purposes for which the information will be used, the routine uses of the information, and the effects on the individual, if any, of not providing the information. The Assistant Archivist for Management and Administration shall ensure that forms used to solicit information are in compliance with the Act and these regulations.

(c) *Solicitation of social security number.* Before a NARA employee requests an individual to disclose his or her social security number, the officer or employee shall ensure that either:

(1) The disclosure is required by Federal law, or;

(2) The disclosure was required under a Federal law or regulation adopted before January 1, 1975, to verify the identity of an individual, and the social security number will become a part of a system of records in existence and operating before January 1, 1975.

If solicitation of the social security number is authorized under paragraph (c)(1) or (2) of this section, the NARA employee who requests an individual to disclose his or her social security number shall first inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and the uses that will be made of it.

(d) *Soliciting information from third parties.* A NARA employee shall inform third parties who are requested to provide information about another individual of the purposes for which the information will be used.

§ 1202.12 Standards of accuracy.

The system manager shall ensure that all records which are used by NARA to make a determination about any individual are maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual.

§ 1202.14 Rules of conduct.

All NARA employees involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, shall review the provisions of 5 U.S.C. 552a and the regulations in this part, and shall conduct himself or herself in accordance with the rules of conduct concerning the protection of personal information in the NARA Standards of Conduct.

§1202.16 Safeguarding systems of records.

The system manager shall ensure that appropriate administrative, technical, and physical safeguards are established to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained. Personnel information contained in both manual and automated systems of records shall be protected by implementing the following safeguards:

(a) Official personnel folders, authorized personnel operating or work folders, and other records of personnel actions effected during a NARA employee's Federal service or affecting the employee's status and service, including information on experience, education, training, special qualifications and skills, performance appraisals, and conduct, shall be stored in a lockable metal filing cabinet when not in use by an authorized person. A system manager may employ an alternative storage system providing that it furnishes an equivalent degree of physical security as storage in a lockable metal filing cabinet.

(b) System managers, at their discretion, may designate additional records of unusual sensitivity which require safeguards similar to those described in paragraph (a) of this section.

(c) System managers shall permit access to and use of automated or manual personnel records only to persons whose official duties require such access, or to subject individuals or their representatives as provided by this part.

§1202.18 Inconsistent issuances of NARA superseded.

Any policies and procedures in any NARA issuance which are inconsistent with the policies and procedures in this part are superseded to the extent of that inconsistency.

§1202.20 Records of other agencies.

(a) *Other agencies' records managed and administered by NARA.* Rules governing the maintenance of systems of records of agencies other than NARA which are located in the National Archives of the United States and Federal Records Centers are in subchapter C of this chapter.

(b) *Current records of other agencies.* If NARA receives a request for access to records which are the primary responsibility of another agency, but which are maintained by or in the temporary possession of NARA on behalf of that agency, NARA shall refer the request to the agency concerned for appropriate action. NARA shall advise the requester that the request has been forwarded to the responsible agency. Records in the custody of NARA which are the primary responsibility of the U.S. Office of Personnel Management (OPM) are governed by the OPM rules promulgated pursuant to the Act.

§1202.22 Subpoenas and other legal demands.

Access to NARA systems of records by subpoena or other legal process shall be in accordance with the provisions of part 1250 of this chapter for administrative records and part 1254 of this chapter for accessioned records, FRC records, and donated historical materials.

Subpart B—Disclosure of Records

§1202.30 Conditions of disclosure.

No NARA employee may disclose any record to any person or to another agency without the express written consent of the subject individual unless the disclosure is:

(a) To NARA employees who have a need for the information in the official performance of their duties;

(b) Required by the provisions of the Freedom of Information Act;

(c) For a routine use as published in a notice in the FEDERAL REGISTER;

(d) To the Bureau of the Census for uses pursuant to title 13 U.S.C.;

(e) To a recipient who has provided NARA with advance adequate written assurance that the record will be used solely as a statistical research or reporting record. The record shall be transferred in a form that is not individually identifiable. The written statement shall include as a minimum:

(1) A statement of the purpose for requesting the records; and

(2) Certification that the records will be used only for statistical purposes; these written statements shall be maintained as records. In addition to deleting personal identifying information from records released for statistical purposes, the system manager shall ensure that the identity of the individual cannot reasonably be deduced by combining various statistical records.);

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government;

(g) To another agency or instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality or his or her other designated representative has made a written request to NARA specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person showing compelling circumstances affecting the health or safety of an individual, not necessarily the individual to whom the record pertains (upon such disclosure, a notification must be sent to the last known address of the subject individual);

(i) To either House of Congress or to a subcommittee or committee (joint or of either House, to the extent that the subject matter falls within its jurisdiction);

(j) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office;

(k) To a consumer reporting agency in accordance with section 3711(f) of title 31; or

(l) Pursuant to the order of a court of competent jurisdiction.

§ 1202.32 Procedures for disclosure.

(a) Address all requests for disclosure of records pertaining to a third party to the NARA Privacy Act Officer (NAA), National Archives and Records Administration, Washington, DC 20408. Upon receipt of such request, NARA shall verify the right of the requester to obtain disclosure pursuant to § 1202.30. Upon verification, the system manager shall make the requested records available. NARA shall acknowledge requests within 10 workdays and shall make a decision within 30 workdays, unless NARA notifies the requester that the time limit must be extended for good cause.

(b) If NARA determines that the disclosure is not permitted under § 1202.30, the Assistant Archivist for Management and Administration or the Inspector General (for records for which the Inspector General is the system manager) shall deny the request in writing. The requester shall be informed of the right to submit a request for review and final determination to the appropriate NARA Privacy Act Appeal Officer.

(1) Requests for review involving records for which the Inspector General is the system manager shall be addressed to the NARA Privacy Act Appeal Officer (N), National Archives and Records Administration, Washington, DC 20408.

(2) Requests for review involving all other records shall be addressed to the NARA Privacy Act Appeal Officer (ND), National Archives and Records Administration, Washington, DC 20408.

[57 FR 22430, May 28, 1992]

§ 1202.34 Accounting of disclosures.

(a) Except for disclosures made pursuant to § 1202.30(a) and (b), an accurate accounting of each disclosure shall be made and retained for 5 years after the disclosure or for the life of the record, whichever is longer. The accounting shall include the date, nature, and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made.

(b) The system manager also shall maintain in conjunction with the accounting of disclosures:

(1) A full statement of the justification for the disclosures;

(2) All documentation surrounding disclosure of a record for statistical or law enforcement purposes; and

(3) Evidence of written consent by the subject individual to a disclosure.

(c) Except for the accounting of disclosures made to agencies or instrumentalities in law enforcement activities in accordance with §1202.30 or of disclosures made from exempt systems (see subpart F of this part), the accounting of disclosures shall be made available to the individual upon request. Procedures for requesting access to the accounting are in subpart C of this part.

Subpart C—Individual Access to Records

§1202.40 Forms of requests.

(a) Individuals seeking access to their records or to any information pertaining to themselves which is contained in a system of records should notify the system manager or applicable NARA official at the address indicated in the FEDERAL REGISTER notice describing the pertinent system of records.

(b) The request shall be in writing and shall bear the legend ''Privacy Act Request'' both on the request letter and on the envelope. The request letter shall contain:

(1) The complete name and identifying number of the NARA system as published in the FEDERAL REGISTER;

(2) The full name and address of the subject individual;

(3) A brief description of the nature, time, place, and circumstances of the individual's association with NARA; and

(4) Any other information which the individual believes would help the system manager to determine whether the information about the individual is included in the system of records.

The system manager or other NARA official shall answer or acknowledge the request within 10 workdays of its receipt by NARA.

(c) System managers at their discretion, may accept oral requests for access to a NARA system of records, subject to verification of identity.

§1202.42 Special requirements for medical records.

(a) A system manager who receives a request from an individual for access to those official medical records which belong to the Office of Personnel Management and are described in chapter 339 of the Federal Personnel Manual (medical records which are otherwise filed in the Official Personnel Folder), shall refer the pertinent system of records to a Federal Medical Officer for review and determination in accordance with this section. If no Federal medical officer is available to make the determination required by this section, the system manager shall refer the request and the medical reports concerned to the Office of Personnel Management for a determination.

(b) If, in the opinion of a Federal Medical Officer, medical records requested by the subject individual indicate a condition about which a prudent physician would hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the system manager shall not release the medical information to the subject individual nor to any person other than a physician designated in writing by the subject individual, his or her guardian, or conservator.

(c) If, in the opinion of a Federal medical officer, the medical information does not indicate the presence of any condition which would cause a prudent physician to hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the system manager shall release the information to the subject individual or to any person, firm, or organization which the individual authorizes in writing to receive it.

§1202.44 Granting access.

(a) Upon receipt of a request for access to non-exempt records, the system manager shall make such records available to the subject individual or shall acknowledge the request within 10 workdays of its receipt by NARA. The acknowledgment shall indicate when the system manager will make the records available.

(b) If the system manager anticipates more than a 10-day delay in making a record available, he or she also shall include in the acknowledgment specific reasons for the delay.

(c) If a subject individual's request for access does not contain sufficient information to permit the system manager to locate the records, the system

manager shall request additional information from the individual and shall have 10 workdays following receipt of the additional information in which to make the records available or to acknowledge receipt of the request and to indicate when the records will be available.

(d) Records will be made available for authorized access during normal business hours at the NARA offices where the records are located. Requesters should be prepared to identify themselves by signature (i.e., to sign the access log on the date of access and to produce other identification verifying the signature).

(e) Upon request, a system manager shall permit a subject individual to examine the original of a non-exempt record, shall provide the individual with a copy of the record, or both. Fees shall be charged only for copies requested by the individual and not for copies provided to the individual for the convenience of NARA.

(f) Subject individuals may request to pick up a record in person or to receive it by mail, directed to the name and address provided by the individuals in their request. A system manager shall not make a record available to a third party for delivery to the subject individual, except for medical records as outlined in § 1202.42.

(g) Subject individuals who wish to have a person of their choosing review, accompany them in reviewing, or obtain a copy of a record must, prior to the disclosure of their record, sign a statement authorizing the disclosure. The system manager shall maintain this statement with the record.

(h) The procedure for access to an accounting of disclosures is identical to the procedure for access to a record as set forth in this section.

§ 1202.46 Denials of access.

(a) A system manager may deny a subject individual access to his or her record only on the grounds that NARA has published rules in the FEDERAL REGISTER exempting the pertinent system of records from the access requirement. Exempt systems of records are described in subpart F of this part.

(b) Upon receipt of a request for access to a record which the system manager believes is contained within an exempt system of records, he or she shall forward the request to the Assistant Archivist for Management and Administration. The system manager shall append to the request an explanation of the determination that the requested record is contained within an exempt system of records and a recommendation that the request be denied or granted.

(c) If the system manager is the Assistant Archivist for Management and Administration, that person shall retain the responsibility for denying or granting the request.

(d) If the system manager is the Inspector General, that person shall retain the responsibility for denying or granting the request.

(e) The Assistant Archivist for Management and Administration shall, in consultation with legal counsel and such other officials as deemed appropriate, determine if the requested record is in fact contained within an exempt system of records and:

(1) If the record is not contained within an exempt system of records, the Assistant Archivist for Management and Administration shall notify the system manager to grant the request in accordance with § 1202.44, or

(2) If the record is contained within an exempt system of records, the Assistant Archivist for Management and Administration shall:

(i) Notify the requester that the request is denied, including a statement justifying the denial and advising the requester of the right to judicial review of that decision as provided in § 1202.74; or

(ii) Notify the system manager to make the record available to the requester in accordance with § 1202.44, notwithstanding the inclusion of the record within an exempt system of records.

[50 FR 27197, July 1, 1985, as amended at 54 FR 32067, Aug. 4, 1989]

§ 1202.48 Appeal of denial of access within NARA.

(a) Requesters denied access in whole or part to records pertaining to them, exclusive of those records for which the system manager is the Archivist of the

United States, may file with NARA an appeal of that denial.

(1) Appeals involving records for which the Inspector General is the system manager should be addressed to NARA Privacy Act Appeal Official (N), National Archives and Records Administration, Washington, DC 20408.

(2) All other appeals should be addressed to NARA Privacy Act Appeal Official (ND), National Archives and Records Administration, Washington, DC 20408.

(b) Each appeal to the NARA Privacy Act appeal official shall be in writing. The appeal should bear the legend ''Privacy Act—Access Appeal,'' on both the face of the letter and the envelope.

(c) Upon receipt of an appeal, the NARA Privacy Act appeal official shall consult with the system manager, the official who made the denial, legal counsel, and such other officials as may be appropriate. If the NARA Privacy Act appeal official, in consultation with these officials, determines that the request for access should be granted because the subject records are not exempt, the NARA Privacy Act appeal official shall immediately either instruct the system manager in writing to grant access to the record in accordance with § 1202.44 or shall grant access and shall notify the requester of that action.

(d) If the NARA Privacy Act appeal official, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, the NARA Privacy Act appeal official immediately shall notify the requester in writing of that determination. This action shall constitute NARA's final determination on the request for access to the record and shall include:

(1) The reason for the rejection of the appeal; and

(2) Notice of the requester's right to seek judicial review of NARA's final determination, as provided in § 1202.74.

(e) The final NARA determination will be made no later than 30 workdays from the date on which the appeal is received by the NARA Privacy Act appeal official. The NARA Privacy Act appeal official may extend this time limit by notifying the requester in writing before the expiration of the 30 workdays. The NARA Privacy Act appeal official's notification shall include an explanation of the reasons for the extension of time.

(f) Denial of access by the Archivist to records for which the Archivist is the system manager shall constitute the NARA final determination in such instances. Requesters shall be given notice of their right to seek judicial review of the determination, as provided in § 1202.74.

[50 FR 27197, July 1, 1985, as amended at 54 FR 32067, Aug. 4, 1989]

§ 1202.50 Records available at a fee.

The system manager shall provide one electrostatic copy of a record to a requester at a fee of $0.20 per page if NARA makes the copy or $0.10 per page if the requester makes the copy on a NARA self-service copier.

[53 FR 12150, Apr. 13, 1988]

§ 1202.52 Prepayment of fees over $25.

If the system manager determines that the estimated total fee is likely to exceed $25, the system manager shall notify the individual that the estimated fee must be prepaid prior to NARA's making the records available. NARA will remit any excess amount paid by the individual or bill the individual for an additional amount if there is a variation between the final fee charged and the amount prepaid.

§ 1202.54 Form of payment.

Payment shall be by check or money order payable to the National Archives and Records Administration and shall be addressed to the system manager.

[53 FR 12150, Apr. 13, 1988]

Subpart D—Requests To Amend Records

§ 1202.60 Submission of requests to amend records.

Subject individuals who desire to amend any record containing personal information about themselves should write to the NARA system manager specified in the pertinent FEDERAL REGISTER notice concerning NARA's systems of records. A current NARA

employee who desires to amend personnel records should write to the Director of Personnel, National Archives (NAP), Washington, DC 20408. Each request shall include evidence of and justification for the need to amend the pertinent record. Each request should bear the legend ''Privacy Act—Request To Amend Record'' prominently marked on both the face of the request letter and the envelope.

§ 1202.62 Review of requests to amend records.

(a) The system manager shall acknowledge receipt of a request to amend a record within 10 workdays. If possible, the acknowledgment should include the system manager's determination either to amend the record or to deny the request to amend as provided in § 1202.66.

(b) When reviewing a record in response to a request to amend, the system manager shall assess the accuracy, relevance, timeliness, and completeness of the existing record in light of the proposed amendment. The system manager shall determine whether the amendment is justified. With respect to a request to delete information, the system manager also shall review the request and existing record to determine whether the information is relevant and necessary to accomplish an agency purpose required to be accomplished by law or Executive order.

§ 1202.64 Approval of requests to amend.

If the system manager determines that amendment of a record is proper in accordance with the request to amend, he or she promptly shall make the necessary amendment to the record and shall send a copy of the amended record to the subject individual. Where an accounting of disclosure has been maintained, the system manager shall advise all previous recipients of the record of the fact that an amendment has been made and give the substance of the amendment. Where practicable, the system manager shall send a copy of the amended record to previous recipients. The system manager shall advise the Assistant Archivist for Management and Administration that a request to amend has been approved.

§ 1202.66 Denial of requests to amend.

(a) Except where the system manager is the Inspector General, if the system manager determines that an amendment of a record is improper or that the record should be amended in a manner other than that requested by an individual, the request to amend and the system manager's determinations and recommendations shall be referred to the Assistant Archivist for Management and Administration. If the system manager is the Inspector General, that person shall retain the responsibility for granting or denying the request to amend.

(b) If the Assistant Archivist for Management and Administration, after reviewing the request to amend a record, determines to amend the record in accordance with the request, the Assistant Archivist promptly shall return the request to the system manager with instructions to make the requested amendments in accordance with § 1202.64.

(c) If the Assistant Archivist for Management and Administration, after reviewing the request to amend a record, determines not to amend the record in accordance with the request, the Assistant Archivist promptly shall advise the requester in writing of the decision. The denial letter shall state the reasons for the denial of the request to amend; include proposed alternative amendments, if appropriate; state the requester's right to appeal the denial of the request to amend; and state the procedure for appealing.

[50 FR 27197, July 1, 1985, as amended at 54 FR 32068, Aug. 4, 1989]

§ 1202.68 Agreement to alternative amendments.

If the denial of a request to amend a record includes proposed alternative amendments, and if the requester agrees to accept them, the requester shall notify the NARA official who signed the denial letter. That official shall immediately instruct the system manager to make the necessary amendments in accordance with § 1202.64.

[54 FR 32068, Aug. 4, 1989]

§1202.70 Appeal of denial of request to amend a record.

(a) A requester who disagrees with a denial of a request to amend a record may file an appeal of that denial.

(1) If the denial was signed by the Assistant Archivist for Management and Administration, the requester shall address the appeal to the NARA Privacy Act Appeal Official (ND), Washington, DC 20408.

(2) If the denial was signed by the Inspector General, the requester shall address the appeal to the NARA Privacy Act Appeal Official (N), Washington, DC 20408.

(3) If the requester is an employee of NARA and the denial to amend involves a record maintained in the employee's Official Personnel Folder, as described in chapter 293 of the Federal Personnel Manual, the appeal should be addressed to the Assistant Director, Workforce Information Office, Compliance and Investigations Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

(b) Each appeal to the NARA Privacy Act appeal official shall be in writing and must be received no later than 30 calendar days from the date of the requester's receipt of a denial of a request to amend a record. The appeal shall bear the legend ''Privacy Act—Appeal,'' both on the face of the letter and the envelope.

(c) Upon receipt of an appeal, the NARA Privacy Act appeal official shall consult with the system manager, the official who made the denial, legal counsel, and such other officials as may be appropriate. If the NARA Privacy Act appeal official, in consultation with these officials, determines that the record should be amended as requested, he or she immediately shall instruct the system manager to amend the record in accordance with §1202.64 and shall notify the requester of that action.

(d) If the NARA Privacy Act appeal official, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, the NARA Privacy Act appeal official immediately shall notify the requester in writing of that determination. This action shall constitute the NARA final determination on the request to amend the record and shall include:

(1) The reasons for the rejection of the appeal;

(2) Proposed alternative amendments, if appropriate, which the requester subsequently may accept in accordance with §1202.68;

(3) Notice of the requester's right to file a Statement of Disagreement for distribution in accordance with §1202.72; and

(4) Notice of the requester's right to seek judicial review of the NARA final determination, as provided in §1202.74.

(e) The NARA final determination shall be made no later than 30 workdays from the date on which the appeal is received by the NARA Privacy Act appeal official. In extraordinary circumstances, the NARA Privacy Act appeal official may extend this time limit by notifying the requester in writing before the expiration of the 30 workdays. The NARA Privacy Act appeal official's notification shall include a justification for the extension of time.

[50 FR 27197, July 1, 1985, as amended at 54 FR 32068, Aug. 4, 1989]

§1202.72 Statements of disagreement.

Upon receipt of a NARA final determination denying a request to amend a record, the requester may file a Statement of Disagreement with the appropriate system manager. The Statement of Disagreement shall include an explanation of why the requester believes the record to be inaccurate, irrelevant, untimely, or incomplete. The system manager shall maintain the Statement of Disagreement in conjunction with the pertinent record and shall include a copy of the Statement of Disagreement in any disclosure of the pertinent record. The system manager shall provide a copy of the Statement of Disagreement to any person or agency to whom the record has been disclosed only if the disclosure was subject to the accounting requirements of §1202.34.

§1202.74 Judicial review.

Within 2 years of receipt of a NARA final determination as provided in §1202.48 or §1202.70, a requester may seek judicial review of that determination. A civil action must be filed in the

Federal District Court in which the requester resides or has his or her principal place of business or in which the NARA records are situated, or in the District of Columbia.

Subpart E—Report on New Systems of Records and Alteration of Existing Systems

§ 1202.80 Reporting requirement.

(a) Prior to the establishment of a new NARA system of records or the alteration of an existing NARA system of records, the system manager shall notify the Assistant Archivist for Management and Administration of the proposed new system or alteration. The system manager shall include with the notification a complete description and justification for each system of records that the system manager proposes to establish or alter. If the Assistant Archivist for Management and Administration determines that the establishment or alteration of a system of records is in the best interest of the Government, the Assistant Archivist for Management and Administration will submit, no later than 60 calendar days prior to the establishment or alteration of a system of records, a report of the proposal to the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget for their evaluation of the probable or potential effect of the proposal on the privacy and other personal or property rights of individuals.

(b) The reports required by this regulation are exempt from reports control.

§ 1202.82 Federal Register notice of establishment of new system or alteration of existing system.

The NARA Assistant Archivist for Management and Administration shall publish in the FEDERAL REGISTER a notice of the proposed establishment or alteration of a system of records when:

(a) Notice is received that the Senate, the House of Representatives, and the Office of Management and Budget do not object to the establishment of a new system of records or to the alteration of an existing system of records, or

(b) No fewer than 30 calendar days have elapsed from the date of submission of the proposal to the Senate, the House of Representatives, and the Office of Management and Budget without receipt by NARA of an objection to the proposal.

§ 1202.84 Effective date of new systems of records or alteration of an existing system of records.

Systems of records proposed to be established or altered in accordance with this subpart shall be effective no sooner than 30 calendar days from the publication of the notice required by § 1202.82.

Subpart F—Exemptions

§ 1202.90 Specific exemptions.

(a) The following NARA systems of records are exempt from subsections (c)(3); (d); (e)(1); (e)(4) (G), (H), and (I); and (f) of the Privacy Act of 1974;

(1) Investigation Case Files, NARA–23.

(2) Personnel Security Case Files, NARA–24.

(b) These systems of records are exempt:

(1) To the extent that the systems consist of investigatory material compiled for law enforcement purposes; however, if any subject individual is denied any right, privilege, or benefit to which the individual would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the indentity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence; and

(2) To the extent the systems of records consist of investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualification for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the

disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

(c) These NARA systems of records have been exempted to maintain the efficacy and integrity of investigations conducted pursuant to NARA's responsibilities in the areas of Federal employment, Government contracts, and access to security classified information.

Subpart G—Assistance and Referrals

§1202.100 Requests for assistance and referrals.

Requests for assistance and referral to the responsible system manager or other NARA employee charged with implementing these regulations should be made to the NARA Privacy Act Officer (NAA), National Archives and Records Administration, Washington, DC 20408.

[57 FR 22430, May 28, 1992]

PART 1206—NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

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AUTHORITY: 44 U.S.C. 2104(a); 44 U.S.C. 2501–2506.

SOURCE: 42 FR 56123, Oct. 21, 1977, unless otherwise noted. Redesignated at 50 FR 15723, Apr. 19, 1985.

EDITORIAL NOTE: Nomenclature changes to part 1206 appear at 50 FR 15723, 15728, Apr. 19, 1985.

Subpart A—General

§1206.1 Scope of part.

This part prescribes the procedures and rules governing the operation of the grant program of the National Historical Publications and Records Commission.

[61 FR 5656, Feb. 13, 1996]

§1206.2 Definitions.

(a) The term *Commission* means the National Historical Publications and Records Commission or the Chairman of the Commission or the Executive Director of the Commission, acting on the Commission's behalf.

(b) The term *historical records* means record material having permanent or enduring value regardless of physical form or characteristics, including but not limited to manuscripts, personal papers, official records, maps, and audiovisual materials.

(c) In §§1206.36 and 1206.38, the term *State* means all 50 States of the Union, plus the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Northern Mariana Islands, and the Trust Territories of the Pacific.

(d) In § 1206.36(a), the term *State-funded agency* means any historical or archival agency that receives a regular State appropriation.

(e) The term *State projects* means records projects directed by organizations operating within and involving records or activities within one State. Records or activities of such projects will typically be under the administrative control of the organization applying for the grant. The records or activities need not relate to the history of the State.

(f) The term *regional projects* means records projects involving records or activities in more than one State in a region. Regional projects include those undertaken by regional archival groups or consortia.

(g) The term *national projects* means records projects involving records or activities in several regions, in widely separated States, or that have an international component. In general, the location of the records and/or the site of grant-funded activities will determine the category of submission.

[42 FR 56123, Oct. 21, 1977. Redesignated at 50 FR 15723, Apr. 19, 1985, and amended at 55 FR 21542, May 25, 1990; 61 FR 5656, Feb. 13, 1996]

§ 1206.4 Purpose of the Commission.

The National Historical Publications and Records Commission makes plans, estimates, and recommendations regarding the preservation and use of historical records that may be important for an understanding and appreciation of the history of the United States. It also cooperates with and encourages appropriate Federal, State, and local agencies and nongovernmental institutions in collecting and preserving and, when it considers it desirable, in editing and publishing the records of outstanding citizens, groups, or institutions and other important documents. On recommendation of the Commission, the Archivist of the United States makes grants to State and local agencies and to non-profit organizations and institutions and to individuals in support of these programs.

[55 FR 21542, May 25, 1990]

§ 1206.6 The Commission's Grant Program.

The Commission operates primarily through a grant program supporting publications projects (subpart B) and records projects (subpart C). Fellowships for individuals in archival administration and documentary editing are also offered, as well as an annual institute for the editing of historical documents.

[61 FR 5657, Feb. 13, 1996]

§ 1206.7 Organization.

The Executive Director, Program Director, and the staff of the Commission administer the publications and records grants under the guidance of the Commission and the immediate administrative direction of its chairman, the Archivist of the United States.

[61 FR 5657, Feb. 13, 1996]

Subpart B—Publications Program

SOURCE: 55 FR 21542, May 25, 1990, unless otherwise noted.

§ 1206.10 General.

This subpart describes the scope, purpose, and operation of that part of the grant program relating to publications projects and prescribes requirements applicable to printed, microform, and electronic publication projects. Grant application and administration procedures are given in subpart D of this part.

[61 FR 5657, Feb. 13, 1996]

§ 1206.12 Scope and purpose.

Publications projects are intended to ensure the dissemination and accessibility of documentary source material important to the study and understanding of U.S. history. Projects should therefore be based upon material of widespread interest among scholars, students, and informed citizens. Documents should have historical value and interest that transcend local and State boundaries.

[61 FR 5657, Feb. 13, 1996]

§1206.16 Project requirements.

(a) Each publications project shall include either the papers of a U.S. leader in a significant phase of life in the United States or documents relating to some outstanding event or to some topic or theme of national significance in U.S. history. These projects shall consist of collecting, compiling, editing, and publishing, either selectively or comprehensively, the papers or documents. Publication may be in the form of printed, microform, or electronic editions. Electronic formats for publication of documentary sources will be considered only when suitable preservation of the data can be assured. Three copies of each book publication should be deposited with the National Historical Publications and Records Commission (NHPRC), Washington, DC 20408. These copies may be included as part of the five complimentary copies to be sent by presses receiving subvention grants.

(b) For microform projects, the grantee shall make positive prints and all finding aids available to institutions, scholars, or students through interlibrary loan and for purchase. Five complimentary copies of guides and indexes produced by the projects shall be sent to the Commission.

[61 FR 5657, Feb. 13, 1996]

§1206.18 Subsidies for printing costs.

(a) The Commission will consider grant applications from university and other nonprofit presses for the subvention of part of the costs of manufacturing and disseminating volumes that have been formally endorsed by the Commission. Grants not exceeding $10,000 per volume ($3,000 for reprints) are awarded upon recommendation of the Commission to promote the availability of Commission-supported documentary editions.

(b) The granting of a subvention shall be used to encourage the highest standards in the production of volumes, particularly the quality of paper and ink.

(c) The Commission shall receive five complimentary copies of each published volume for which a subvention grant is made.

[55 FR 21542, May 25, 1990, as amended at 61 FR 5657, Feb. 13, 1996]

§1206.20 Microform publication standards.

Technical standards for NHPRC-sponsored microform projects are stated in the brochure ''National Historical Publications and Records Commission: Microform Guidelines,'' which will be supplied to applicants upon request and to grantee institutions at the time a grant is made for a microform project.

[61 FR 5657, Feb. 13, 1996]

Subpart C—Records Program

SOURCE: 55 FR 21543, May 25, 1990, unless otherwise noted.

§1206.30 General.

This subpart describes the scope, purpose, and operation of that part of the grant program relating to records projects. Grant application and administration procedures are given in subpart D of this part.

[61 FR 5657, Feb. 13, 1996]

§1206.32 Scope and purpose.

Through its support for records projects, the National Historical Publications and Records Commission encourages a greater effort at all levels of government and by private organizations to preserve and make available for use those records, generated in every facet of life, that further an understanding and appreciation of U.S. history. In the public sector, these historical records document significant activities of State, county, municipal, and other units of government. In the private sector, historical records include manuscripts, personal papers, and family or corporate archives that are maintained by a variety of general repositories as well as materials in special collections relating to particular fields of study, including the arts, business, education, ethnic and minority groups, immigration, labor, politics, professional services, religion, science, urban affairs, and women. In addition to recommending the supporting of projects relating directly to a body of records, the Commission may also recommend support for projects to advance the state of the art, to promote cooperative efforts among institutions and organizations, and to improve the

knowledge, performance, and professional skills of those who work with historical records.

[61 FR 5657, Feb. 13, 1996]

§ 1206.36 State historical records coordinator.

(a) The governor of each State desiring to participate fully in the program shall appoint a State historical records coordinator (coordinator), who shall be the full-time professional official in charge of the State archival program or agency. If the State has another state-funded historical agency or agencies with archival and/or records responsibilities, the official(s) in charge of at least one of these shall be a member of the State historical records advisory board (board). The coordinator is appointed to a minimum four-year term, but may continue to serve until replaced by the governor or until resignation. The coordinator shall serve as chair of the board and shall be the central coordinating officer for the historical records grant program in the State. The person appointed will not be deemed to be an official or employee of the Federal Government and will receive no Federal compensation for such service. The pamphlet ''Guidelines for State Historical Records Coordinators and State Historical Records Advisory Boards,'' which is available from the Commission and from State historical records coordinators, provides further information on the role of the coordinator.

(b) In the event of the resignation of the coordinator or other inability to serve, a deputy coordinator, if one has been designated, will serve as acting State coordinator until the governor makes an appointment. In the absence of a deputy coordinator, the NHPRC will recognize an acting coordinator, selected by the state board, who shall serve until the governor appoints a coordinator in order to conduct the necessary business of the board.

[61 FR 5657, Feb. 13, 1996]

§ 1206.37 Deputy State historical records coordinator.

A deputy State historical records coordinator may be designated to assist in carrying out the duties and responsibilities of the coordinator and to serve as an acting coordinator at the coordinator's direction or upon the coordinator's resignation or other inability to serve.

§ 1206.38 State historical records advisory board.

(a) Each State desiring to participate in the program shall define an appointment process and appoint a State historical records advisory board consisting of at least seven members, including the State historical records coordinator, who chairs the board, unless otherwise specified in state statute. The coordinator shall provide the Commission with a description of the appointment process. A majority of the members shall have recognized experience in the administration of government records, historical records, or archives. The board should be as broadly representative as possible of the public and private archives, records offices, and research institutions and organizations in the State. Board members will not be deemed to be officials or employees of the Federal Government and will receive no Federal compensation for their service on the board. They are appointed for three years with the possibility of renewal; and preferably terms are staggered so that one-third of the board is newly appointed or reappointed each year. If the board is not established in State law, members' terms continue until replacements are appointed. The board may adopt standards for attendance and may declare membership positions open if those standards are not met.

(b) The board is the central advisory body for historical records planning and for Commission-funded projects developed and carried out within the State. The board serves as a coordinating body to facilitate cooperation among historical records repositories and other information agencies within the state and as a state-level review body for grant proposals as defined in the Commission's guidelines. Specifically, the board may perform such duties as sponsoring and publishing surveys of the conditions and needs of historical records in the State; soliciting or developing proposals for projects to be carried out in the State with

NHPRC grants; reviewing proposals by institutions in the State and making recommendations about these to the Commission; developing, revising, and submitting to the Commission State priorities for historical records projects following guidelines developed by the Commission; promoting an understanding of the role and value of historical records; acting in an advisory capacity to the state archives and other statewide archival or records agencies; and reviewing, through reports and otherwise, the operation and progress of projects in the State financed by NHPRC grants.

[61 FR 5658, Feb. 13, 1996]

Subpart D—Grant Procedures

SOURCE: 55 FR 21544, May 25, 1990, unless otherwise noted.

§ 1206.50 Types of grants.

(a) *General.* The Archivist of the United States, after considering the advice and recommendations of the Commission, may make three types of NHPRC grants: Outright grants, matching grants, and combined grants.

(b) *Outright grants.* An application for an outright grant requests an NHPRC grant for the entire cost of a project, minus the share of the cost borne by the applicant. The maximum possible cost sharing is encouraged in every proposal, and the level of cost sharing will be an important factor in the Commission's recommendation on most types of proposals.

(c) *Matching grants.* An application for a matching grant should be made when an applicant has prospects of securing financial support from a third party or, in the case of a State or local government agency, funds from the institution's own appropriation source are provided expressly for the project proposed in the application. Upon Commission approval of a matching grant request, the applicant shall present written documentation certifying that matching funds have been provided for the project by the non-Federal source. In the case of a State or local government agency, the matching requirement may also be met through matching funds from the State or local government, provided that it can be demonstrated to the Commission's satisfaction that the matching amount has been provided above and beyond funds previously allocated or planned for the agency's budget and that the funds are set aside exclusively to support the project proposed for an NHPRC grant. Applicants need not, however, have money in hand to make a matching grant request; they need only assure the Commission that they have reasonable prospects of obtaining the needed amounts.

(d) *Combined grants.* A combined grant comprises both outright funds and matching funds. When the funds an applicant can raise plus the equivalent amount of an NHPRC grant do not equal the required budget, the difference is requested in outright funds. For example, if the applicant needs $75,000 and is able to raise $25,000 in gifts or in a new appropriation for the project, a combined grant of $25,000 outright and $25,000 in matching funds for a total of $50,000 should be requested from the Commission. Rules governing the release of matching funds in matching grants also govern the release of matching funds in combined grants.

[55 FR 21544, May 25, 1990, as amended at 61 FR 5658, Feb. 13, 1996]

§ 1206.52 Grant limitations.

Grant limitations are described in the grant program guidelines pamphlet, available on request from the Commission.

[61 FR 5658, Feb. 13, 1996]

§ 1206.54 Who may apply.

The Commission will consider applications from State and local government agencies, nonprofit organizations and institutions, Federally acknowledged or state-recognized Native American tribes or groups, and, under certain conditions, from individuals. Proposals for State projects falling under the Commission's goals, ''To Assure the Preservation of the Nation's Documentary Heritage through State Collaborative Efforts'' and ''To Achieve Progress in the Preservation and Use of Original Source Material,'' as defined in the grant program guidelines, will be accepted only from applicants in

States in which a State historical records coordinator and a State historical records advisory board are currently appointed. This requirement does not apply to regional or national projects.

[61 FR 5658, Feb. 13, 1996]

§ 1206.56 When to apply.

Grant proposals are considered during Commission meetings held three times during the year. For current application deadlines contact the grant program staff or State historical records coordinators (for records grant proposals). Some State boards have established pre-submission review deadlines for records proposals; further information is available from State coordinators.

[61 FR 5658, Feb. 13, 1996]

§ 1206.58 How to apply.

(a) *Contact with NHPRC staff.* The Commission encourages applicants to discuss proposals through correspondence, by phone, or in person with Commission staff and/or, in the case of records proposals, with the appropriate State historical records coordinator before the proposal is submitted and at all stages of development of the proposal.

(b) *Application forms.* Applicants for NHPRC grants shall use Standard Form 424, Application for Federal Assistance, and NA Form 17001, Budget Form (OMB Control Number 3095–0004). Applicants for subvention grants also submit the NHPRC subvention grant application (OMB Control Number 3095–0021), and applicants for archival administration fellowship host institution grants submit a special application (OMB Control Number 3095–0015). Applicants for NHPRC-sponsored fellowships complete the appropriate fellowship application (OMB Control Numbers 3095–0011, 3095–0012, or 3095–0014). Copies of these applications and forms are available from the commission. Project proposals and related correspondence should be sent to the National Historical Publications and Records Commission (NHPRC), Washington, DC 20408.

(c) *Assurances and certifications.* All grant applications to the Commission must include the following assurances and certifications signed by an authorized representative of the applicant institution, or in the case of an individual applicant, by that individual: Standard Form 424B, Assurances: Non-Construction Programs; the Certification Regarding Debarment, Suspension, and Other Responsibility Matters specified in part 1209, appendix B; the Certification Regarding Drug-free Workplace Requirements specified in part 1209, appendix C, of this chapter; and, if the application requests more than $100,000 in Federal funds, a signed Certification for Grants, Loans, or Cooperative Agreements in Excess of $100,000 (certification regarding lobbying). Assurance and certification language is included in the program pamphlet.

(d) *Program guidelines pamphlet.* Supplementary information for applicants is contained in the pamphlet, ''Program Guidelines: Applications and Grants,'' which is available from the Commission upon request. The pamphlet is also available from State historical records coordinators. This pamphlet includes copies of the application form and certifications, guidelines on the preparation of project budgets and program narrative statements, and other guidance on applying for and administering NHPRC grants. OMB Control Number 3095–0013 has been assigned to this information collection.

[55 FR 21544, May 25, 1990, as amended at 61 FR 5658, Feb. 13, 1996]

§ 1206.66 Review and evaluation of grant proposals.

(a) *Records grant proposals.* For records grant proposals, State historical records advisory boards review and evaluate proposals for State projects and forward recommendations for action to the Commission. Boards may decide that certain proposals are incomplete or require further development; in these instances proposals may be returned to the applicant by the board with a recommendation for revision and resubmission in a future funding cycle. The Commission staff shall be informed of the recommendations. All records grant proposals for which recommendations for Commission action are received from State boards and

regional, national, and State board-sponsored proposals received directly by the Commission are reviewed by the Commission staff for completeness, conformity with application requirements and relevance to the objectives of the grant program. Regional and national proposals and proposals submitted by boards on their own behalf may also be referred by the Commission staff to selected State historical records coordinators, members of boards, or others for appropriate review and evaluation of the projects. Following review and evaluation, proposals are referred to the Commission at regular meetings.

(b) *Publications grant proposals.* The Commission staff reviews publications grant proposals for completeness, conformity with application requirements, and relevance to the objectives of the grant program. Proposals are sent to specialists in American history and documentary editing for review and recommendations. The recommendations are considered by the full Commission at regular meetings.

(c) *Subvention grant applications.* The Commission staff reviews subvention grant applications to ensure their adherence to established technical standards for the production of printed volumes, particular in the quality of paper and ink. Staff recommendations are considered by the full Commission at regular meetings.

[55 FR 21544, May 25, 1990, as amended at 61 FR 5659, Feb. 13, 1996]

§ 1206.68 Grant administration responsibilities.

Primary responsibility for the administration of grants is shared by the grantee institution and the project director designated by the institution. In the case of grants made to individuals, the individual named as project director has primary responsibility for the administration of the grant. Grants shall be administered in conformance with either the regulations in part 1210 of this chapter or, in the case of State and local governments, with the regulations in part 1207 of this chapter. All grants shall be in conformance with part 1209 of this chapter.

(a) *Changes in the grant project*:

(1) *Extension of the grant period.* Requests for extension of the grant period must be made before the end of the grant period and must be signed by the grantee institution's authorized representative as indicated on the grant application form (SF 424). No extensions will be allowed unless grantees are up-to-date in their submission of financial and narrative reports.

(2) *Rebudgeting.* To meet unanticipated program needs, grantees may adjust the amounts allocated to existing budget lines for both grant funds and cost sharing and may transfer grant funds among existing NHPRC-funded direct cost categories that appear in the final project budget approved by the Commission at the time of the grant award. Cost-sharing funds may also be shifted among existing cost-sharing categories. For grants where the NHPRC's award is less than $100,000, grantees may make these transfers without NHPRC approval. When Commission grant awards are for $100,000 or more, grantees must obtain prior approval from the NHPRC when cumulative transfers among direct cost categories total more than 10 percent of the total project budget (i.e., grant funds plus other funds). In addition, the Program Director of the Commission may approve the use of NHPRC grant funds for new cost categories for which Commission funds were not provided in the final approved budget where such action seems appropriate for the fulfillment of the original purposes of the grant and where the amount of funds involved does not exceed 10 percent of the amount of the award or $5,000, whichever is less. Requests to establish these new cost categories must be made in writing and signed by the grantee institution's authorized representative. Requests that exceed this limit are subject to approval by the full Commission.

(3) *Other changes requiring prior approval.* Prior written approval from the Commission must be obtained for financial or programmatic changes in all cases involving the following: revision of the scope or objectives of the project; change of the project director or other key project personnel who have been specifically named in the grant application or award or related

correspondence; and, contracting out, subgranting, or otherwise obtaining the services of a third party to perform activities central to the purposes of the grant, unless specified in the grant proposal.

(b) *Submission of requests for changes.* All requests for approval of budget or programmatic changes must be submitted in the form of a letter signed by the grantee institution's authorized representative for the grant and addressed to the Program Director. A written response signed by the Program Director of the Commission will constitute approval for the changes.

[61 FR 5659, Feb. 13, 1996]

§ 1206.70 Grant instrument.

The grant award instrument is a letter from the Archivist of the United States to the grantee. The letter and attachments specify terms of the grant.

§ 1206.78 Grant reports.

(a) Financial status reports and narrative progress reports are required for all grants. Standard Form 269, Financial Status Report, shall be used for all financial reports. The pamphlet, ''Program Guidelines: Applications and Grants,'' which is provided to each grantee and is available from the Commission on request, specifies the content of the narrative progress reports (OMB Control Number 3095–0013).

(b) Financial reports are due annually 30 days after the end of each reporting period. Narrative progress reports are due 30 days after the end of each six-month period. Final financial and narrative reports are due within 90 days after the expiration or termination of the grant period. Grants with a duration of six months or less require a final report only. Additional rules on financial and performance reports are found in §§ 1210.51 and 1210.52 or §§ 1207.40 and 1207.41 of this chapter, as appropriate.

[61 FR 5659, Feb. 13, 1996]

§ 1206.79 Audits.

Grantees are responsible for obtaining audits in accordance with either the Single Audit Act of 1984 (31 U.S.C. 7501–7), for which audit requirements have been set forth in Office of Management and Budget (OMB) Circular A–128, ''Audits of State and Local Governments,'' or requirements established under OMB Circular A–133, ''Audits of Institutions of Higher Education and Other Nonprofit Organizations,'' as appropriate. Copies are available from the Commission office or from OMB. The grantee is responsible for ensuring that the NHPRC receives a copy of the audit report for any audit performed during the grant period or for three years thereafter. A reasonable portion of grant funds, as defined in the OMB Circular, may be used to comply with audit requirements. The Commission prefers that the grantee assume such costs as institutional cost sharing.

[61 FR 5660, Feb. 13, 1996]

§ 1206.80 Safety precautions.

NARA and the Commission cannot assume any liability for accidents, illnesses, or claims arising out of any work undertaken with the assistance of the grant.

§ 1206.82 Acknowledgment.

Grantee institutions, grant directors, or grant staff personnel may publish results of any work supported by an NHPRC grant without review by the Commission. Publications or other products resulting from the project, shall, however, acknowledge the assistance of the NHPRC grant.

§ 1206.94 Compliance with Governmentwide requirements.

In addition to the grant application and grant administration requirements outlined in this part 1206, grantees are responsible for complying with applicable Governmentwide requirements contained in part 1210 or part 1207 of this chapter, as appropriate, and part 1209 of this chapter.

[61 FR 5660, Feb. 13, 1996]

PART 1207—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

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AUTHORITY: 44 U.S.C. 2104.

SOURCE: 53 FR 8072, 8087, Mar. 11, 1988, unless otherwise noted.

Subpart A—General

§1207.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§1207.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§1207.3 Definitions.

As used in this part:

Accrued expenditures mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

Accrued income means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

Administrative requirements mean those matters common to grants in general, such as financial management,

kinds and frequency of reports, and retention of records. These are distinguished from *programmatic* requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

Contract means (except as used in the definitions for *grant* and *subgrant* in this section and except where qualified by *Federal*) a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing or matching means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost-type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

Expenditure report means: (1) For nonconstruction grants, the SF–269 ''Financial Status Report'' (or other equivalent report); (2) for construction grants, the SF–271 ''Outlay Report and Request for Reimbursement'' (or other equivalent report).

Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Government means a State or local government or a federally recognized Indian tribal government.

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

OMB means the United States Office of Management and Budget.

Outlays (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash

basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Percentage of completion method refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

Prior approval means documentation evidencing consent prior to incurring specific cost.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Share, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of *grant* in this part.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies means all tangible personal property other than *equipment* as defined in this part.

Suspension means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. *Termination* does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance as of the expiration of a grant; (3) refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

Third party in-kind contributions mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the

grantee, or a cost-type contractor under the grant agreement.

Unliquidated obligations for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 1207.4 Applicability.

(a) *General.* Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 1207.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under title V, subtitle D, chapter 2, section 583—the Secretary's discretionary grant program) and titles I–III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and part C of title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (title IV–A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (title IV–D of the Act);

(iii) Foster Care and Adoption Assistance (title IV–E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI–AABD of the Act); and

(v) Medical Assistance (Medicaid) (title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241–1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C.

238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in §1207.4(a) (3) through (8) are subject to subpart E.

§1207.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in §1207.6.

§1207.6 Additions and exceptions

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B—Pre-Award Requirements

§1207.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF–424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§1207.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For

this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 1207.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered ''high risk'' if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grante or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

§ 1207.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 1207.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The

working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 1207.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 1207.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	OMB Circular A–87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A–122 as not subject to that circular.	OMB Circular A–122.
Educational institutions.	OMB Circular A–21.
For-profit organization other than a hospital and an organization named in OBM Circular A–122 as not subject to that circular.	48 CFR part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§1207.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF–269). The Federal agency may extend this deadline at the request of the grantee.

§1207.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in §1207.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in §1207.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions

shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2)(i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 1207.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The

amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§1207.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. ''During the grant period'' is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See §1207.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§1207.31 and 1207.32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be

used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 1207.26 Non-Federal audit.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501–7507) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A–110, ''Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations'' have met the audit requirement. Commercial contractors (private forprofit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local govenments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A–110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 1207.36 shall be followed.

CHANGES, PROPERTY, AND SUBAWARDS

§ 1207.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 1207.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes*—(1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved

budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 1207.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 1207.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 1207.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired

with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 1207.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 1207.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow §1207.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§1207.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§1207.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§1207.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.''

§1207.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State will

follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative anaylsis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition*. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 1207.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a ''brand name'' product instead of allowing ''an equal'' product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equal'' description may be used as a means to define the performance or

other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed*—(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 1207.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the

most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2)(i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price resonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the

complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 1207.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a ''brand name'' product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The ''bid guarantee'' shall consist of a firm commitment such as a bid bond,

certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A ''payment bond'' is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled ''Equal Employment Opportunity,'' as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of $2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the

Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).

[53 FR 8072, Mar. 11, 1988, as amended at 60 FR 19639, 19643, Apr. 19, 1995]

§ 1207.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 1207.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 1207.10;

(2) Section 1207.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in § 1207.21; and

(4) Section 1207.50.

REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

§ 1207.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 1207.41 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a)(2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extend required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with § 1207.41(e)(2)(iii).

(2) *Accounting basis.* Each grantee will report program outlays and program

income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accural basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the ''Remarks'' section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 1207.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs*—(1) *Grants that support construction activities paid by reimbursement method.* (i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 1207.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 1207.41(b)(3).

(2) *Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.* (i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using

Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 1207.41(b)(3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 1207.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 1207.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 1207.41(b)(2).

§ 1207.42 Retention and access requirements for records.

(a) *Applicability*. (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 1207.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal

Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 1207.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to ''Debarment and Suspension'' under E.O. 12549 (see § 1207.35).

§ 1207.44 Termination for convenience.

Except as provided in § 1207.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §1207.43 or paragraph (a) of this section.

Subpart D—After-The-Grant Requirements

§1207.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271) (as applicable).*

(3) *Final request for payment (SF–270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:* In accordance with §1207.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§1207.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in §1207.42;

(d) Property management requirements in §§1207.31 and 1207.32; and

(e) Audit requirements in §1207.26.

§1207.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an adminstrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR chapter II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlement [Reserved]

PART 1208—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 53 FR 25884, 25885, July 8, 1988, unless otherwise noted.

§ 1208.101 Purpose.

The purpose of this regulation is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1208.102 Application.

This regulation (§§ 1208.101–1208.170) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 1208.103 Definitions.

For purposes of this regulation, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (i) of this definition but is treated by the agency as having such an impairment.

Qualified individual with handicaps means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this regulation by §1208.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this regulation, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§1208.104—1208.109 [Reserved]

§1208.110 Self-evaluation.

(a) The agency shall, by September 6, 1989, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this regulation and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 1208.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 1208.112—1208.129 [Reserved]

§ 1208.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this regulation.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this regulation.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§1208.131—1208.139 [Reserved]

§1208.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subject to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§1208.141—1208.148 [Reserved]

§1208.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §1208.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§1208.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §1208.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock,

or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 1208.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § 1208.150(a)(2) or (3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by November 7, 1988, except that where structural changes in facilities are undertaken, such changes shall be made by September 6, 1991, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 6, 1989, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 1208.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 1208.152—1208.159 [Reserved]

§ 1208.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall

give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §1208.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§1208.161—1208.169 [Reserved]

§1208.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Assistant Archivist for Management and Administration shall be responsible for coordinating implementation of this section. Compliants may be sent to National Archives and Records Administration (NA), Washington, DC 20408.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §1208.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[53 FR 25884, 25885, July 8, 1988, as amended at 53 FR 25884, July 8, 1988]

§§ 1208.171—1208.999 [Reserved]

PART 1209—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

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APPENDIX C TO PART 1209—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

AUTHORITY: E.O. 12549; sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D; 41 U.S.C. 701 *et seq.*); 44 U.S.C. 2104(a).

SOURCE: 53 FR 19193, 19194, 19204, May 26, 1988, unless otherwise noted.

CROSS REFERENCE: See also Office of Management and Budget notice published at 55 FR 21679, May 25, 1990, and 60 FR 33036, June 26, 1995.

Subpart A—General

§1209.100 Purpose.

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of E.O. 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the E.O. by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of ''ineligible'' in §1209.105), and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) These regulations also implement Executive Order 12689 (3 CFR, 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Public Law 103–355, sec. 2455, 108 Stat. 3327) by—

(1) Providing for the inclusion in the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* all persons proposed for debarment, debarred or suspended under the Federal Acquisition Regulation, 48 CFR Part 9, subpart 9.4; persons against which governmentwide exclusions have been entered under this part; and persons determined to be ineligible; and

(2) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion.

(d) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

[60 FR 33040, 33058, June 26, 1995]

§1209.105 Definitions.

The following definitions apply to this part:

Adequate evidence. Information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliate. Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, *or*, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

Agency. Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

Civil judgment. The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–3812).

Conviction. A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

Debarment. An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is ''debarred.''

Debarring official. An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

Indictment. Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

Ineligible. Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for exemple, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

Legal proceedings. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

List of Parties Excluded from Federal Procurement and Nonprocurement Programs. A list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Orders 12549 and 12689 and these regulations or 48 CFR part 9, subpart 9.4, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, and those persons who have been determined to be ineligible.

Notice. A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

Participant. Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

Person. Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

Preponderance of the evidence. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Principal. Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

Proposal. A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

Respondent. A person against whom a debarment or suspension action has been initiated.

State. Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United

States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

Suspending official. An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

Suspension. An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is ''suspended.''

Voluntary exclusion or voluntarily excluded. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

NARA. National Archives and Records Administration.

[53 FR 19193, 19194, 19204, May 26, 1988, as amended at 60 FR 33040, 33058, June 26, 1995]

§1209.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as ''covered transactions.''

(1) *Covered transaction.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(*1*) Principal investigators.

(*2*) Providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility

(but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, ''Effect of Action,'' § 1209.200, ''Debarment or suspension,'' sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 1209.110(a). Sections 1209.325, ''Scope of debarment,'' and 1209.420, ''Scope of suspension,'' govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* In accordance with E.O. 12689 and section 2455 of Public Law 103–355, any debarment, suspension, proposed debarment or other governmentwide exclusion initiated under the Federal Acquisition Regulation (FAR) on or after August 25, 1995 shall be recognized by and effective for Executive Branch agencies and participants as an exclusion under this regulation. Similarly, any debarment, suspension or other governmentwide exclusion initiated under this regulation on or after August 25, 1995 shall be recognized by and effective for those agencies as a debarment or suspension under the FAR.

[53 FR 19193, 19194, 19204, May 26, 1988, as amended at 60 FR 33041, 33058, June 26, 1995]

§ 1209.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart B—Effect of Action

§ 1209.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the Executive Branch of the Federal Government for the period of their debarment, suspension, or the period they are proposed for debarment under 48 CFR part 9, subpart 9.4. Accordingly, no agency shall enter into primary covered transactions with such excluded persons during such period, except as permitted pursuant to § 1209.215.

(b) *Lower tier covered transactions.* Except to the extent prohibited by law, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 1209.110(a)(1)(ii)) for the period of their exclusion.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for—

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

[60 FR 33041, 33058, June 26, 1995]

§1209.205 Ineligible persons.

Persons who are ineligible, as defined in §1209.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§1209.210 Voluntary exclusion.

Persons who accept voluntary exclusions under §1209.315 are excluded in accordance with the terms of their settlements. NARA shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§1209.215 Exception provision.

NARA may grant an exception permitting a debarred, suspended, or voluntarily excluded person, or a person proposed for debarment under 48 CFR part 9, subpart 9.4, to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and §1209.200. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with §1209.505(a).

[60 FR 33041, 33058, June 26, 1995]

§1209.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, proposed debarment under 48 CFR part 9, subpart 9.4, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible or voluntary excluded, except as provided in §1209.215.

[60 FR 33041, 33058, June 26, 1995]

§1209.225 Failure to adhere to restrictions.

(a) Except as permitted under §1209.215 or §1209.220, a participant shall not knowingly do business under a covered transaction with a person who is—

(1) Debarred or suspended;

(2) Proposed for debarment under 48 CFR part 9, subpart 9.4; or

(3) Ineligible for or voluntarily excluded from the covered transaction.

(b) Violation of the restriction under paragraph (a) of this section may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

(c) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible, or voluntarily excluded

from the covered transaction (See Appendix B of these regulations), unless it knows that the certification is erroneous. An agency has the burden of proof that a participant did knowingly do business with a person that filed an erroneous certification.

[60 FR 33041, 33058, June 26, 1995]

Subpart C—Debarment

§ 1209.300 General.

The debarring official may debar a person for any of the causes in § 1209.305, using procedures established in §§ 1209.310 through 1209.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ 1209.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 1209.300 through 1209.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 1209.215 or § 1209.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 1209.315 or of any settlement of a debarment or suspension action; or

(5) Violation of any requirement of subpart F of this part, relating to providing a drug-free workplace, as set forth in § 1209.615 of this part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

[53 FR 19193, 19194, 19204, May 26, 1988, as amended at 54 FR 4950, 4961, Jan. 31, 1989]

§ 1209.310 Procedures.

NARA shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 1209.311 through 1209.314.

§ 1209.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any

source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§1209.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under §1209.305 for proposing debarment;

(d) Of the provisions of §1209.311 through §1209.314, and any other NARA procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§1209.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§1209.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c)(1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes

the determination referred to in § 1209.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 1209.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, NARA may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see subpart E).

§ 1209.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of subpart F of this part (*see* § 1209.305(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ 1209.311 through 1209.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

[53 FR 19193, 19194, 19204, May 26, 1988, as amended at 54 FR 4950, 4961, Jan. 31, 1989]

§ 1209.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ 1209.311 through 1209.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper

conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D—Suspension

§1209.400 General.

(a) The suspending official may suspend a person for any of the causes in §1209.405 using procedures established in §§1209.410 through 1209.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in §1209.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§1209.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§1209.400 through 1209.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in §1209.305(a); or

(2) That a cause for debarment under §1209.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§1209.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* NARA shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in §1209.411 through §1209.413.

§1209.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under §1209.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of §1209.411 through §1209.413 and any other NARA procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ 1209.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 1209.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § 1209.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ 1209.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§1209.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see §1209.325), except that the procedures of §§1209.410 through 1209.413 shall be used in imposing a suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

§1209.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§1209.505 NARA responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which NARA has granted exceptions under §1209.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in §1209.500(b) and of the exceptions granted under §1209.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§1209.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in appendix A to this part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in appendix B to this part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not

debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligiblity of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel.).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to NARA if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

Subpart F—Drug-Free Workplace Requirements (Grants)

SOURCE: 55 FR 21688, 21700, May 25, 1990, unless otherwise noted.

§ 1209.600 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR subparts 9.4, 23.5, and 52.2.

§ 1209.605 Definitions.

(a) Except as amended in this section, the definitions of § 1209.105 apply to this subpart.

(b) For purposes of this subpart—

(1) *Controlled substance* means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15;

(2) *Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) *Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

(4) *Drug-free workplace* means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance;

(5) *Employee* means the employee of a grantee directly engaged in the performance of work under the grant, including:

(i) All *direct charge* employees;

(ii) All *indirect charge* employees, unless their impact or involvement is insignificant to the performance of the grant; and,

(iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll.

This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces);

(6) *Federal agency* or *agency* means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) *Grant* means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term

grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management government-wide common rule on uniform administrative requirements for grants and cooperative agreements. The term does not include technical assistance that provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) *Grantee* means a person who applies for or receives a grant directly from a Federal agency (except another Federal agency);

(9) *Individual* means a natural person;

(10) *State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers the instrumentality to be an agency of the State government.

§1209.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government. A determination of such inconsistency may be made only by the agency head or his/her designee.

(c) The provisions of subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

§1209.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certification under §1209.630;

(b) With respect to a grantee other than an individual—

(1) The grantee has violated the certification by failing to carry out the requirements of paragraphs (A)(a)–(g) and/or (B) of the certification (alternate I to appendix C) or

(2) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

(c) With respect to a grantee who is an individual—

(1) The grantee has violated the certification by failing to carry out its requirements (alternate II to appendix C); or

(2) The grantee is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity.

§1209.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in §1209.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to

exceed five years (*see* § 1209.320(a)(2) of this part).

§ 1209.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

§ 1209.630 Certification requirements and procedures.

(a)(1) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the Federal agency providing the grant, as provided in appendix C to this part.

(2) Grantees are not required to make a certification in order to continue receiving funds under a grant awarded before March 18, 1989, or under a no-cost time extension of such a grant. However, the grantee shall make a one-time drug-free workplace certification for a non-automatic continuation of such a grant made on or after March 18, 1989.

(b) Except as provided in this section, all grantees shall make the required certification for each grant. For mandatory formula grants and entitlements that have no application process, grantees shall submit a one-time certification in order to continue receiving awards.

(c) A grantee that is a State may elect to make one certification in each Federal fiscal year. States that previously submitted an annual certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. Except as provided in paragraph (d) of this section, this certification shall cover all grants to all State agencies from any Federal agency. The State shall retain the original of this statewide certification in its Governor's office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency has designated a central location for submission.

(d)(1) The Governor of a State may exclude certain State agencies from the statewide certification and authorize these agencies to submit their own certifications to Federal agencies. The statewide certification shall name any State agencies so excluded.

(2) A State agency to which the statewide certification does not apply, or a State agency in a State that does not have a statewide certification, may elect to make one certification in each Federal fiscal year. State agencies that previously submitted a State agency certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. The State agency shall retain the original of this State agency-wide certification in its central office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency designates a central location for submission.

(3) When the work of a grant is done by more than one State agency, the certification of the State agency directly receiving the grant shall be deemed to certify compliance for all workplaces, including those located in other State agencies.

(e)(1) For a grant of less than 30 days performance duration, grantees shall have this policy statement and program in place as soon as possible, but in any case by a date prior to the date on which performance is expected to be completed.

(2) For a grant of 30 days or more performance duration, grantees shall have this policy statement and program in place within 30 days after award.

(3) Where extraordinary circumstances warrant for a specific grant, the grant officer may determine a different date on which the policy statement and program shall be in place.

§ 1209.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

(a) When a grantee other than an individual is notified that an employee has been convicted for a violation of a criminal drug statute occurring in the workplace, it shall take the following actions:

(1) Within 10 calendar days of receiving notice of the conviction, the grantee shall provide written notice, including the convicted employee's position title, to every grant officer, or other designee on whose grant activity the convicted employee was working, unless a Federal agency has designated a central point for the receipt of such notifications. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(2) Within 30 calendar days of receiving notice of the conviction, the grantee shall do the following with respect to the employee who was convicted.

(i) Take appropriate personnel action against the employee, up to and including termination, consistent with requirements of the Rehabilitation Act of 1973, as amended; or

(ii) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(b) A grantee who is an individual who is convicted for a violation of a criminal drug statute occurring during the conduct of any grant activity shall report the conviction, in writing, within 10 calendar days, to his or her Federal agency grant officer, or other designee, unless the Federal agency has designated a central point for the receipt of such notices. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(Approved by the Office of Management and Budget under control number 0991–0002)

APPENDIX A TO PART 1209—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded,* as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the

method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

[60 FR 33042, 33058, June 26, 1995]

APPENDIX B TO PART 1209—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal,* and *voluntarily excluded,* as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered

transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

[60 FR 33042, 33058, June 26, 1995]

APPENDIX C TO PART 1209—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All *direct charge* employees; (ii) All *indirect charge* employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll

of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

__ _____

__ _____

__ _____

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21700, May 25, 1990]

PART 1210—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

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APPENDIX A TO PART 1210—CONTRACT PROVISIONS

AUTHORITY: 44 U.S.C. 2104(a); 44 U.S.C. 2501–2506.

SOURCE: 60 FR 53515, Oct. 16, 1995, unless otherwise noted.

Subpart A—General

§1210.1 Purpose.

This part establishes uniform administrative requirements for NHPRC grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. Non-profit organizations that implement NHPRC programs for the States are also subject to State requirements.

§1210.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as

the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the NHPRC to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which the NHPRC determines that all applicable administrative actions and all required work of the award have been completed by the recipient and the NHPRC.

(h) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) *Cost sharing or matching* means that portion of project or program costs not borne by the NHPRC.

(j) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which NHPRC sponsorship ends.

(k) *Disallowed costs* means those charges to an award that the NHPRC determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(l) *Equipment* means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(m) *Excess property* means property under the control of the NHPRC that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(n) *Exempt property* means tangible personal property acquired in whole or in part with NHPRC funds, where the NHPRC has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(o) *Federal awarding agency* means the Federal agency that provides an award to the recipient.

(p) *Federal funds authorized* means the total amount of NHPRC funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by NHPRC regulations or NHPRC implementing instructions.

(q) *Federal share of real property, equipment, or supplies* means that percentage of the property's acquisition costs and any improvement expenditures paid with NHPRC funds.

(r) *Funding period* means the period of time when NHPRC funding is available for obligation by the recipient.

(s) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(t) *NARA* means the National Archives and Records Administration.

(u) *NHPRC* means the National Historical Publications and Records Commission.

(v) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(w) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(x) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(y) *Prior approval* means written approval by an authorized official evidencing prior consent.

(z) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 1210.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in NHPRC regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(aa) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(bb) *Project period* means the period established in the award document during which NHPRC sponsorship begins and ends.

(cc) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(dd) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(ee) *Recipient* means an organization receiving financial assistance directly from the NHPRC to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the NHPRC. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(ff) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. ''Research'' is defined as a systematic study directed toward fuller scientific knowledge or understanding

of the subject studied. ''Development'' is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(gg) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000).

(hh) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of ''award'' in paragraph (e) of this section.

(ii) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the NHPRC.

(jj) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (''subject inventions''), as defined in 37 CFR Part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.''

(kk) *Suspension* means an action by the NHPRC that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the NHPRC. Suspension of an award is a separate action from suspension under NARA regulations implementing E.O. 12549 and E.O. 12689, ''Debarment and Suspension'' (36 CFR Part 1209).

(ll) *Termination* means the cancellation of NHPRC sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(mm) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(nn) *Unliquidated obligations*, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(oo) *Unobligated balance* means the portion of the funds authorized by the NHPRC that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(pp) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(qq) *Working capital advance* means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 1210.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 1210.4.

§ 1210.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. The NHPRC may apply more restrictive requirements to a class of recipients when approved by OMB. The NHPRC may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by the NHPRC.

§ 1210.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' published at 36 CFR part 1207.

Subpart B—Pre-Award Requirements

§ 1210.10 Purpose.

Sections 1210.11 through 1210.17 prescribes forms and instructions and other pre-award matters to be used in applying for NHPRC awards.

§ 1210.11 Pre-award policies.

(a) *Use of grants and cooperative agreements, and contracts.* In each instance, the NHPRC shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, ''substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.'' Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public notice and priority setting.* The NHPRC shall notify the public of its intended funding priorities for discretionary grant programs.

§ 1210.12 Forms for applying for Federal assistance.

(a) The NHPRC shall comply with the applicable report clearance requirements of 5 CFR Part 1320, ''Controlling Paperwork Burdens on the Public,'' with regard to all forms used by the NHPRC in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 (Application for Federal Assistance) and NA Form 17001 (Budget Form) forms and instructions prescribed by the NHPRC Program Guidelines. OMB Control Number 3095–0004 has been assigned to the Budget Form. OMB Control Number 3095–0013 has been assigned to the NHPRC Program Guidelines.

(c) Applicants shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC) under E.O. 12372, ''Intergovernmental Review of Federal Programs.'' The name and address of the SPOC for a particular State can be obtained from the NHPRC or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

§ 1210.13 Debarment and suspension.

The NHPRC and recipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.s 12549 and 12689, ''Debarment and Suspension'' (36 CFR Part 1209). This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 1210.14 Special award conditions.

If an applicant or recipient has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in this part, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible, the NHPRC may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

§ 1210.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires NARA to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in NARA's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. NARA shall follow the provisions of E.O. 12770, ''Metric Usage in Federal Government Programs.''

§ 1210.16 Resource Conservation and Recovery Act.

Under the Resource Conservation and Recovery Act ((RCRA) (Pub. L. 94–580 codified at 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR Parts 247 through 254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 1210.17 Certifications and representations.

Unless prohibited by statute or codified regulation, the NHPRC is authorized to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if they have an ongoing and continuing relationship with the NHPRC. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Subpart C—Post-Award Requirements

FINANCIAL AND PROGRAM MANAGEMENT

§ 1210.20 Purpose of financial and program management.

Sections 1210.21 through 1210.28 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 1210.21 Standards for financial management systems.

(a) The NHPRC shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following.

(1) Accurate, current and complete disclosure of the financial results of each NHPRC-sponsored project or program in accordance with the reporting requirements set forth in § 1210.52.

(2) Records that identify adequately the source and application of funds for NHPRC-sponsored activities. These records shall contain information pertaining to NHPRC awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR Part 205, ''Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs.''

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the NHPRC, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The NHPRC may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described in this section, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR Part 223, ''Surety Companies Doing Business with the United States.''

§ 1210.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR Part 205.

(b) Recipients will be paid in advance, provided they maintain or demonstrate the willingness to maintain written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and financial management systems that meet the standards for fund control and accountability as established in § 1210.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the NHPRC to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR Part 205.

(3) Recipients can submit requests for advances and reimbursements at least monthly when a predetermined schedule of electronic funds transfer is not used.

(d) Requests for Treasury check advance payment shall be submitted on SF–270, ''Request for Advance or Reimbursement,'' or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special NHPRC instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met.

(1) When the reimbursement method is used, the NHPRC shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients can submit a request for reimbursement at least monthly when a predetermined schedule of electronic funds transfer is not used.

(f) If a recipient cannot meet the criteria for advance payments and the NHPRC has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the NHPRC may provide cash on a working capital advance basis. Under this procedure, the NHPRC shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the NHPRC shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, the NHPRC shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraph (h)(1) or (2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or NHPRC reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, ''Managing Federal Credit Programs.'' Under such conditions, the NHPRC may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, the NHPRC shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of NHPRC funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of NHPRC funds in interest bearing accounts, unless paragraphs (k)(1), (2) or (3) of this section apply.

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) In keeping with Electronic Funds Transfer rules (31 CFR Part 206), interest earned should be remitted annually to the Department of Health and Human Services (HHS) Payment Management System through an electronic medium such as the FEDWIRE Deposit system. Recipients which do not have this capability should use a check and mail it to the Payment Management System, P.O. Box 6021, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the NHPRC, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this part, only the SF–270, Request for Advance or Reimbursement, shall be authorized for the recipients in requesting advances and reimbursements. The NHPRC requires an original and two copies of this form.

§ 1210.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the NHPRC.

(7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the NHPRC.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If the NHPRC authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of paragraph (c)(1) or (2) of this section.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the NHPRC may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in

the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraph (g)(1) or (2) of this section apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the NHPRC has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

§ 1210.24 Program income.

(a) The NHPRC applies the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with these regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following.

(1) Added to funds committed to the project by the NHPRC and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When the NHPRC authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the NHPRC does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section shall apply automatically unless the NHPRC indicates in the terms and conditions another alternative on the award or the recipient is

subject to special award conditions, as indicated in § 1210.14.

(e) Unless NHPRC regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by NHPRC regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§ 1210.30 through 1210.37).

(h) Unless NHPRC regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 1210.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon NHPRC requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) Recipients shall request prior approvals from the NHPRC for one or more of the following program or budget related reasons.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional NHPRC funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the NHPRC.

(6) The inclusion, unless waived by the NHPRC, of costs that require prior approval in accordance with OMB Circular A–21, ''Cost Principles for Institutions of Higher Education,'' OMB Circular A–122, ''Cost Principles for Non-Profit Organizations,'' or 45 CFR Part 74 Appendix E, ''Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals,'' or 48 CFR Part 31, ''Contract Cost Principles and Procedures,'' as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items will be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, the NHPRC is authorized, at their option, to waive cost-related and administrative prior written approvals required by this Circular and OMB Circulars A–21 and A–122. Such waivers may include authorizing recipients to do any one or more of the following.

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the NHPRC. All pre-award costs are incurred at the recipient's risk (i.e., the NHPRC is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the NHPRC in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional NHPRC funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the NHPRC provides otherwise in the award or in NHPRC's regulations, the prior approval requirements described in paragraph (e) of this section are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.

(f) The NHPRC may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the NHPRC. The NHPRC shall not permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j), do not require prior approval.

(h) [Reserved]

(i) No other prior approval requirements for specific items will be imposed unless a deviation has been approved by OMB.

(j) The NHPRC shall require recipients to notify the NHPRC in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5,000 or five percent of the NHPRC award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(k) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the NHPRC indicates a letter of request suffices.

(l) Within 30 calendar days from the date of receipt of the request for budget revisions, the NHPRC shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the NHPRC shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 1210.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations shall be subject to the audit requirements contained in OMB Circular A–133, ''Audits of Institutions of Higher Education and Other Non-Profit Institutions.''

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act (31 U.S.C. 7501–7) and the cognizant Federal agency regulations implementing OMB Circular A–128, ''Audits of State and Local Governments.''

(c) Hospitals not covered by the audit provisions of OMB Circular A–133 shall be subject to the audit requirements of the cognizant Federal agency.

§ 1210.27 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State and Local Governments.'' The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB

Circular A–122, ''Cost Principles for Non-Profit Organizations.'' The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR Part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.'' The allowability of costs incurred those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR Part 31.

§ 1210.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the NHPRC.

PROPERTY STANDARDS

§ 1210.30 Purpose of property standards.

Sections 1210.31 through 1210.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by an NHPRC award. The NHPRC requires recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 1210.31 through 1210.37.

§ 1210.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with NHPRC funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 1210.32 Real property.

The NHPRC shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following.

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the NHPRC.

(b) The recipient shall obtain written approval by the NHPRC for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the NHPRC.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from the NHPRC or its successor Federal awarding agency. The NHPRC shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the NHPRC and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 1210.33 Federally-owned and exempt property.

(a) Federally-owned property.

(1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the NHPRC. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the NHPRC for further Federal agency utilization.

(2) If the NHPRC has no further need for the property, it shall be declared excess and reported to the General Services Administration. Appropriate instructions shall be issued to the recipient by the NHPRC.

(b) Exempt property. When statutory authority exists, the NHPRC has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the NHPRC considers appropriate. Such property is ''exempt property.'' Should the NHPRC not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§ 1210.34 Equipment.

(a) Title to equipment acquired by a recipient with NHPRC funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with NHPRC funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the NHPRC. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the NHPRC which funded the original project, then

(2) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the NHPRC that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the NHPRC. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the NHPRC.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the NHPRC for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the NHPRC.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5,000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the NHPRC or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the NHPRC. The NHPRC shall determine whether the equipment can be used to meet the NHPRC's requirements. If no requirement exists within the NHPRC, the availability of the equipment shall be reported to the General Services Administration by the NHPRC to determine whether a requirement for the equipment exists in other Federal agencies. The NHPRC shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the NHPRC an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the NHPRC for such costs incurred in its disposition.

(4) The NHPRC reserves the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under

existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) The NHPRC shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If the NHPRC fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When the NHPRC exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

§ 1210.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the NHPRC for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with NHPRC funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 1210.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The NHPRC reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.''

(c) Unless waived by the NHPRC, the Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the NHPRC. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 1210.34(g).

§ 1210.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with NHPRC funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The NHPRC may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

PROCUREMENT STANDARDS

§ 1210.40 Purpose of procurement standards.

Sections 1210.41 through 1210.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property

and other services with NHPRC funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the NHPRC upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 1210.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the NHPRC, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 1210.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 1210.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 1210.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that paragraphs (a) (1), (2) and (3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following.

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of ''brand name or equal'' descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The ''cost-plus-a-percentage-of-cost'' or ''percentage of construction cost'' methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by NARA implementation of E.O.s 12549 and 12689, ''Debarment and Suspension'' (36 CFR Part 1209).

(e) Recipients shall, on request, make available for the NHPRC, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the NHPRC's implementation of this part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a ''brand name'' product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more

than the amount of the small purchase threshold.

§1210.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§1210.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection,

(b) Justification for lack of competition when competitive bids or offers are not obtained, and

(c) Basis for award cost or price.

§1210.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§1210.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the NHPRC, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(d) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this Part, as applicable.

REPORTS AND RECORDS

§1210.50 Purpose of reports and records.

Sections 1210.51 through 1210.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§1210.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in §1210.26.

(b) Except as provided in paragraph (f) of this section, interim performance reports shall be submitted every six months and shall be due 30 days after the reporting period; final reports shall be due 90 calendar days after the end of the grant period.

(c) If inappropriate, a final performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the NHPRC of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) The NHPRC may make site visits, as needed.

(h) The NHPRC shall comply with clearance requirements of 5 CFR Part 1320 when requesting performance data from recipients.

§ 1210.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF–269 or SF–269A, Financial Status Report.

(i) The NHPRC requires recipients to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. The NHPRC may, however, have the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF–269 or SF–269A shall be required at the completion of the project when the SF–270 is used only for advances.

(ii) The report may be on a cash or accrual basis.

(iii) The NHPRC shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The NHPRC shall require recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by NHPRC upon request of the recipient.

(2) SF–272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients the NHPRC shall require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a. The NHPRC shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) The NHPRC may require forecasts of Federal cash requirements in the ''Remarks'' section of the report.

(iii) When practical and deemed necessary, the NHPRC may require recipients to report in the ''Remarks'' section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. The NHPRC may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) The NHPRC may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the NHPRC's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or,

(C) When the electronic payment mechanisms provide adequate data.

(b) When the NHPRC needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, the NHPRC shall issue instructions to require recipients to submit such information under the ''Remarks'' section of the reports.

(2) When the NHPRC determines that a recipient's accounting system does not meet the standards in § 1210.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The NHPRC, in obtaining this information, shall comply with report clearance requirements of 5 CFR Part 1320.

(3) The NHPRC is encouraged to shade out any line item on any report if not necessary.

(4) The NHPRC may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) The NHPRC may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§ 1210.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. The NHPRC will not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the NHPRC. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with NHPRC funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the NHPRC, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the NHPRC.

(d) The NHPRC shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, the NHPRC may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The NHPRC, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, the NHPRC will place no restrictions on recipients that limit public access to the

records of recipients that are pertinent to an award, except when the NHPRC can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the NHPRC.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the recipient submits to the cognizant Federal agency or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If not submitted for negotiation. If the recipient is not required to submit to the NHPRC or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

TERMINATION AND ENFORCEMENT

§ 1210.60 Purpose of termination and enforcement.

Sections 1210.61 and 1210.62 set forth uniform suspension, termination and enforcement procedures.

§ 1210.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraphs (1), (2) or (3) of this section apply.

(1) By the NHPRC, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the NHPRC with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the NHPRC written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the NHPRC determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 1210.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 1210.62 Enforcement.

(a) Remedies for noncompliance. If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the NHPRC may, in addition to imposing any of the special conditions outlined in § 1210.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the NHPRC.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) Hearings and appeals. In taking an enforcement action, the NHPRC shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the

recipient is entitled under any statute or regulation applicable to the action involved.

(c) Effects of suspension and termination. Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the NHPRC expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (c)(1) and (2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and NARA implementing regulations (see § 1210.13).

Subpart D—After-the-Award Requirements

§ 1210.70 Purpose.

Sections 1210.71 through 1210.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 1210.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The NHPRC may approve extensions when requested by the recipient.

(b) Unless the NHPRC authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The NHPRC shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the NHPRC has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the NHPRC shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 1210.31 through 1210.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the NHPRC shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 1210.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following.

(1) The right of the NHPRC to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 1210.26.

(4) Property management requirements in §§ 1210.31 through 1210.37.

(5) Records retention as required in § 1210.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the NHPRC and the recipient, provided the responsibilities of the recipient referred to in § 1210.73(a), including those for property

management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 1210.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the NHPRC may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements;

(2) Withholding advance payments otherwise due to the recipient; or

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the NHPRC shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, ''Federal Claims Collection Standards.''

APPENDIX A TO PART 1210—CONTRACT PROVISIONS

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. Equal Employment Opportunity—All contracts shall contain a provision requiring compliance with E.O. 11246, ''Equal Employment Opportunity,'' as amended by E.O. 11375, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and as supplemented by regulations at 41 CFR part 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

2. Copeland ''Anti-Kickback'' Act (18 U.S.C. 874 and 40 U.S.C. 276c)—All contracts and subgrants in excess of $2,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction''). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)—Where applicable, all contracts awarded by recipients in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. Rights to Inventions Made Under a Contract or Agreement—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under

Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

6. Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), as amended—Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. Debarment and Suspension (E.O. 12549 and E.O. 12689)—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O. 12549 and E.O. 12689, ''Debarment and Suspension.'' This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

SUBCHAPTER B—RECORDS MANAGEMENT

PART 1220—FEDERAL RECORDS; GENERAL

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AUTHORITY: 44 U.S.C. 2104(a) and chs. 29 and 33.

SOURCE: 50 FR 26930, June 28, 1985, unless otherwise noted.

§ 1220.1 Scope of subchapter.

Subchapter B prescribes policies for Federal agencies' records management programs relating to records creation and maintenance, adequate documentation, and proper records disposition.

§ 1220.2 Responsibility for records management programs.

The National Archives and Records Administration Act of 1984 amended the records management statutes to divide records management responsibilities between the National Archives and Records Administration (NARA) and the General Services Administration (GSA). Under the Act, NARA is responsible for adequacy of documentation and records disposition and GSA is responsible for economy and efficiency in records management. NARA regulations are codified in this subchapter. GSA records management regulations are codified in 41 CFR chapter 201, Subchapters A and B. Federal agency records management programs must be in compliance with regulations promulgated by both NARA and GSA.

[57 FR 19807, May 8, 1992]

Subpart A—General Provisions

§ 1220.10 Authority.

The regulations in this part are issued under the provisions of the National Archives and Records Administration Act of 1984 (Pub. L. 98–497, 44 U.S.C. 101 *note*).

§ 1220.12 Applicability.

The regulations in subchapter B apply to all Federal agencies as defined in § 1220.14.

§ 1220.14 General definitions.

As used in subchapter B—

Agency (see *Executive agency* and *Federal agency*).

Adequate and proper documentation means a record of the conduct of Government business that is complete and accurate to the extent required to document the organization, functions, policies, decisions, procedures, and essential transactions of the agency and that is designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.

Appraisal is the process by which the National Archives and Records Administration (NARA) determines the value and thus the final disposition of Federal records, making them either temporary or permanent.

Comprehensive schedule is a printed agency manual or directive containing descriptions of and disposition instructions for all documentary materials,

record and nonrecord, created by a Federal agency or major component of an Executive department. Unless taken from the General Records Schedules (GRS) issued by NARA, the disposition instructions for agency records must be approved by NARA on one or more Standard Form(s) 115, Request for Records Disposition Authority, prior to issuance by the agency. The disposition instructions for the nonrecord material are established by the agency and do not require NARA approval.

Contingent records are records whose final disposition is dependent on an action or event, such as sale of property or destruction of a facility, which will take place at some unspecified time in the future.

Disposition means those actions taken, after appraisal by NARA, regarding records no longer needed for the conduct of the regular current business of the agency. 44 U.S.C. 2901(5) defines *records disposition* as any activity with respect to:

(a) Disposal of temporary records no longer needed for the conduct of business by destruction or donation to an eligible person or organization outside of Federal custody in accordance with the requirements of part 1228 of this chapter.

(b) Transfer of records to Federal agency storage facilities or records centers;

(c) Transfer to the National Archives of the United States of records determined to have sufficient historical or other value to warrant continued preservation; or

(d) Transfer of records from one Federal agency to any other Federal agency in accordance with the requirements of part 1228 of this chapter.

Documentary materials is a collective term for records and nonrecord materials that refers to all media on which information is recorded, regardless of the nature of the medium or the method or circumstances of recording.

Evaluation means the selective or comprehensive inspection, audit, or review of one or more Federal agency records management programs for effectiveness and for compliance with applicable laws and regulations. It includes recommendations for correcting or improving records management policies, procedures, and activities, and follow-up activities, including reporting on such activities, for implementing the recommendations.

Executive agency means any executive department or independent establishment in the executive branch of the Government, including any wholly-owned Government corporation.

Federal agency means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Supreme Court, Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction). (44 U.S.C. 2901(14)).

File means an arrangement of records. The term is used to denote papers, photographs, photographic copies, maps, machine-readable information, or other recorded information regardless of physical form or characteristics, accumulated or maintained in filing equipment, boxes, or machine-readable media, or on shelves, and occupying office or storage space.

National Archives of the United States means those records that have been determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the Federal Government and that have been transferred to the legal custody of the Archivist of the United States on a Standard Form 258 (Request to Transfer, Approval, and Receipt of Records to National Archives of the United States).

Nonrecord materials are those Federally owned informational materials that do not meet the statutory definition of records (44 U.S.C. 3301) or that have been excluded from coverage by the definition. Excluded materials are extra copies of documents kept only for reference, stocks of publications and processed documents, and library or museum materials intended solely for reference or exhibit.

Permanent record means any Federal record that has been determined by NARA to have sufficient value to warrant its preservation in the National Archives. Permanent records include all records accessioned by NARA's Office of the National Archives and later increments of the same records, and

those for which the disposition is *permanent* on SF 115s, Request for Records Disposition Authority, approved by NARA on or after May 14, 1973.

Recordkeeping requirements means all statements, in statutes, regulations, and agency directives or authoritative issuances, providing general and specific guidance for Federal agency personnel on particular records to be created and maintained by the agency.

Recordkeeping system is a manual or automated system in which records are collected, organized, and categorized to facilitate their preservation, retrieval, use, and disposition.

Records include all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational value of the data in them (44 U.S.C. 3301).

Records maintenance and use, as used in subchapter B, means any activity involving location of records of a Federal agency or the storage, retrieval, and handling of records kept at office file locations by or for a Federal agency.

Records management, as used in subchapter B, means the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations.

Records schedule or *schedule* means

(a) An SF 115, Request for Records Disposition Authority, that has been approved by NARA to authorize the disposition of Federal records;

(b) A General Records Schedule (GRS) issued by NARA; or

(c) A printed agency manual or directive containing the records descriptions and disposition instructions approved by NARA on one or more SF 115s or issued by NARA in the GRS. (See also the definition *Comprehensive schedule.*)

Series means file units or documents arranged according to a filing system or kept together because they relate to a particular subject or function, result from the same activity, document a specific kind of transaction, take a particular physical form, or have some other relationship arising out of their creation, receipt, or use, such as restrictions on access and use. Also called a *records series.*

Temporary records. A temporary record is any record which has been determined by the Archivist of the United States to have insufficient value (on the basis of current standards) to warrant its preservation by the National Archives and Records Administration. This determination may take the form of:

(a) A series of records designated as disposable in an agency records disposition schedule approved by NARA (Standard Form 115, Request for Records Disposition Authority); or

(b) A series of records designated as disposable in a General Records Schedule.

Unscheduled records are records the final disposition of which has not been approved by NARA. Unscheduled records are those that have not been included on a Standard Form 115, Request for Records Disposition Authority, approved by NARA; those described but not authorized for disposal on an SF 115 approved prior to May 14, 1973; and those described on an SF 115 but not approved by NARA (withdrawn, canceled, or disapproved).

[45 FR 5705, Jan. 24, 1980 and 50 FR 26931, 26933, June 28, 1985, as amended at 52 FR 34134, Sept. 9, 1987; 55 FR 27423, 27427, July 2, 1990; 57 FR 19807, May 8, 1992; 59 FR 28783, June 3, 1994; 60 FR 44639, Aug. 28, 1995]

§ 1220.16 Reports to the Congress and the Director of the Office of Management and Budget.

Under 44 U.S.C. 2904(c)(8), the Archivist of the United States is required to report to Congress and the Office of Management and Budget annually on

the results of records management activities, including evaluations of responses by Federal agencies to any recommendations resulting from studies or inspections conducted by NARA.

§1220.18 Inspection of records subject to the Privacy Act of 1974.

In accordance with 44 U.S.C. 2906, when NARA inspects an agency record which is contained in a system of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), the records shall be maintained by the Archivist or his designee as a record contained in a system of records or considered to be a record contained in a system of records for the purposes of subsections (b), (c), and (i) of section 552a of title 5.

Subpart B—Agency Records Management Programs

§1220.30 Authority.

Section 3101 of title 44 U.S.C. requires the head of each Federal agency to make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.

§1220.32 Program content.

Agency programs shall, among other things, provide for:

(a) Cooperation with NARA in developing and applying standards, procedures, and techniques designed to improve the management of records, promote the maintenance and security of records deemed appropriate for permanent preservation, and facilitate the segregation and disposal of temporary records.

(b) Compliance with sections 2101–2117, 2501–2507, 2901–2909, 3101–3107, and 3301–3314 of title 44 U.S.C. and with NARA regulations issued in title 36 of the Code of Federal Regulations.

§1220.34 Creation of records.

Adequate records management controls over the creation of Federal agency records shall be instituted to ensure that agency functions are adequately and properly documented. Federal agencies shall also comply with GSA regulations on creation of records found in 41 CFR part 201-9.

[57 FR 19807, May 8, 1992]

§1220.36 Maintenance and use of records.

Adequate records management controls over the maintenance and use of records shall be instituted to ensure that permanent records can be located when needed and that they are preserved for eventual transfer to the National Archives of the United States. Agencies shall also be in compliance with GSA regulations on the maintenance and use of records found in 41 CFR part 201-9.

[57 FR 19807, May 8, 1992]

§1220.38 Disposition of records.

Provision shall be made to ensure that permanent records are preserved but that records no longer of current use to an agency are promptly disposed of or retired. Effective techniques for the accomplishment of these ends are the development of records disposition schedules; the transfer of records to records centers and the National Archives of the United States; the conversion of the information to other media; and the disposal of valueless records. Disposition of any records requires the approval of the Archivist of the United States (see part 1228 of this chapter).

§1220.40 Liaison offices.

An office or offices within each Federal agency shall be assigned responsibility for the development of the records management program required by this part. The office to which responsibility is assigned shall be reported to the Office of Records Administration, National Archives (NIA), Washington, DC 20408. The name, title, and telephone number of the official or officials authorized by the head of the agency to approve records disposition schedules and transfers of records to the custody of the National Archives shall also be submitted to the Office of Records Administration.

§ 1220.42 Agency internal evaluations.

Each agency shall periodically evaluate its records management programs relating to records creation and recordkeeping requirements, maintenance and use of records, and records disposition. These evaluations shall include periodic monitoring of staff determinations of the record status of documentary materials, including electronic mail, and implementation of these decisions. These evaluations should determine compliance with NARA regulations in subchapter B of this chapter and assess the effectiveness of the agency's records management program.

[60 FR 44639, Aug. 28, 1995]

Subpart C—NARA Evaluation Program

SOURCE: 59 FR 28783, June 3, 1994, unless otherwise noted.

§ 1220.50 Authority.

44 U.S.C. chapter 29 vests in the Archivist of the United States the responsibility for providing guidance and assistance to Federal agencies with respect to ensuring adequate and proper documentation and proper records disposition. Sections 2904 and 2906 specifically authorize the Archivist to conduct inspections or surveys of records and records management programs and practices within and between Federal agencies and require officers and employees of agencies to cooperate fully in such inspections. Section 2904 also authorizes the Archivist to report to the appropriate oversight and appropriations committees of the Congress and the Director of OMB on the results of inspections, the responses by agencies to NARA evaluation recommendations, and estimates of the costs to the Federal government resulting from the failure to implement such recommendations.

§ 1220.52 Purpose and scope.

(a) NARA evaluations assess how effectively Federal agencies make and preserve complete and accurate records of their organization, functions, policies, decisions, procedures, and essential transactions; and maintain an active, continuing records management program including proper records disposition. Agencies shall be evaluated for compliance with requirements in 44 U.S.C. chapters 31 and 33 and all the regulations issued thereunder in 36 CFR subchapter B.

(b) NARA evaluations may include comprehensive reviews of agency records management programs, or selective reviews focused on adequate and proper documentation, on records disposition, on the management of specific types of record media or on the management of records in particular program areas. NARA evaluations may be of one agency or may be multi-agency. These evaluations may be conducted solely within headquarters offices, only at field locations, or at a combination of field sites and headquarters.

(c) Evaluations will involve site visits by NARA; submission by NARA to the agency of a written report containing findings, analyses, and recommendations; and submission to NARA by the agency of an action plan for implementing the recommendations followed by regular progress reports. Interagency report control number 0153–NARA–AR has been assigned to the action plan and progress reports in accordance with 41 CFR subpart 201–45.6.

§ 1220.54 Evaluation process.

(a) NARA shall select Federal agencies to be evaluated on the basis of perceived need by NARA or specific request by the agency, or on the basis of a compliance monitoring cycle developed by NARA. NARA will determine the scope of the evaluation. An agency may request an evaluation of its records management program by contacting the Assistant Archivist for Records Administration; however, the final determination of agencies to be evaluated will be made by NARA. The heads of agencies will be notified in writing by the Archivist of the United States of the intent to conduct an evaluation and the scope of the evaluation at least 180 calendar days prior to initiating the evaluation.

(b) Once NARA has notified the agency, the agency head will, by the date specified in the Archivist's letter:

(1) Acknowledge in writing NARA's intention to evaluate, and provide the Archivist with the name and telephone number of the senior official with overall responsibility for records management and of a headquarters official who will work with NARA to facilitate the evaluation process;

(2) Provide written notification of the evaluation to all appropriate offices and employees and contractors potentially involved; this notification will include instructions to cooperate with NARA by setting up interviews, providing requested information, and making records available for inspection;

(3) Provide NARA with a copy of the written notification in paragraph (b)(2) of this section and with a list of names and telephone numbers of officials responsible for records management in field sites, if applicable, who will work with NARA during the evaluation;

(4) For comprehensive evaluations, provide NARA with a set of internal records management directives, orders, bulletins, or similar authoritative issuances; copies of the two most recent internal records management evaluations; and any special records-related reports. Included may be: issuances relating to adequate and proper documentation and record-keeping requirements; personal papers; management and disposition of textual, electronic, audiovisual, cartographic and architectural, micrographic, and vital records; disaster mitigation and recovery; and any other records-related documentation requested by NARA. A subset of this documentation will be requested for more limited evaluations;

(5) Provide NARA with a current version of the agency manual(s) covering records creation, maintenance, storage, and disposition, and a list of information systems maintained as required by OMB Circular A–130, section 9a(5), and a list of offices and/or functions and activities not currently covered by schedules;

(6) Arrange for appropriate management and program officials in headquarters and, if applicable, at field sites to be briefed by NARA at the beginning and at the end of the evaluation process; and

(7) Take immediate corrective action regarding any serious problems that NARA may bring to the agency's attention during the course of the evaluation process such as the unauthorized destruction of records or the unauthorized donation or other transfer of records to non-NARA facilities.

§ 1220.56 Evaluation report.

(a) NARA will submit a draft evaluation report for factual review and comment to the agency within 120 calendar days of the last evaluation site visit or exit briefing. After receipt of agency comments, NARA will finalize the report, incorporating any changes resulting from factual errors identified by the agency. The final report will be transmitted by the Archivist to the head of the agency within 30 calendar days of receiving comments from the agency.

(b) The head of the agency will:

(1) Comment within 60 calendar days, in writing, on the contents of the draft report. If necessary, agencies can request extensions. No response from the agency within the allotted time will indicate that the agency concurs in the factual accuracy of the draft report.

(2) Review the final report and assign implementation responsibility; and

(3) Distribute the final report to all concerned and appropriate persons and offices.

§ 1220.58 Agency action plans and progress reports.

(a) *Action plans.* (1) The action plan will be submitted to NARA within 90 calendar days after the date of transmittal of the final report. If necessary, agencies can request extensions. The plan shall be submitted by the agency head or the designated senior official for information resources management. The action plan will include:

(i) The name of the senior official and the office responsible for coordinating implementation agency-wide;

(ii) The specific action(s) the agency will take to implement each evaluation report recommendation. If an agency is unable to implement a recommendation, the rationale for not acting shall be documented in the action plan;

(iii) The name of the official and office or program responsible for the

overall coordination of the agency's followup actions who will be the liaison with NARA;

(iv) The estimated time needed to complete each action and the proposed quarter and year for starting and completing each action;

(v) Major milestones with dates for tracking the completion of implementation actions that are expected to extend longer than 3 years past the date of the action plan; and,

(vi) If requested by NARA, separate action plans for each field site visited, incorporating the information required by paragraphs (a)(1)(i) through (a)(1)(v) of this section.

(2) NARA will analyze the action plan(s) submitted by the agency for adequacy and effectiveness in implementing the recommendations contained in the evaluation report. NARA will provide comments to the agency on the plan(s) within 60 calendar days.

(3) The agency will revise the action plan until it is approved by NARA.

(b) *Progress reports.* (1) Once the action plan(s) has been approved by NARA, the head of the agency will submit progress reports to NARA every 6 months. The reports will include:

(i) A description of what has been accomplished on each action since the last report;

(ii) The current status of the action;

(iii) Any changes in the offices or programs responsible for over-all or specific action implementation; and,

(iv) If appropriate, explanation of any delays in implementation and revised target dates and milestones for completion of the action.

(2) The agency will continue to submit these progress reports until NARA and the agency agree all actions have been completed, NARA and the agency agree that the agency has implemented the recommendation(s) to the fullest extent possible, or NARA indicates in writing that regular progress reports are no longer required.

(3) NARA will review and comment on agency progress reports, and work closely with the agency to provide assistance in evaluation implementation.

§ 1220.60 Follow-up notification and reviews.

(a) If NARA determines that there is not substantial progress in the full implementation of evaluation recommendations or that the agency has not corrected serious problems identified in the report, the Archivist, after notifying the head of the agency, may notify Congress and appropriate Federal oversight agencies of the evaluation findings and the agency response.

(b) NARA may initiate follow-up reviews at specific offices or field sites. Results of these follow-up reviews shall be communicated to the head of the agency and, if NARA determines it to be appropriate, to Congress and Federal oversight agencies.

PART 1222—CREATION AND MAINTENANCE OF FEDERAL RECORDS

Subpart A—General

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AUTHORITY: 44 U.S.C. 2904, 3101, and 3102.

SOURCE: 55 FR 27423, July 2, 1990, unless otherwise noted.

Subpart A—General

§ 1222.10 Authority.

(a) 44 U.S.C. 2904, vests in the Archivist of the United States responsibility

for providing guidance and assistance to Federal agencies with respect to ensuring adequate and proper documentation of the policies and transactions of the Federal Government, including developing and issuing standards to improve the management of records.

(b) 44 U.S.C. 3101, requires that the head of each Federal agency shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.

(c) 44 U.S.C. 3102, requires that the head of each Federal agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of the agency. The program, among other things, shall provide for—

(1) Effective controls over the creation, and over the maintenance and use of records in the conduct of current business;

(2) Cooperation with the Administrator of General Services and the Archivist in applying standards, procedures, and techniques designed to improve the management of records, promote the maintenance and security of records deemed appropriate for preservation, and facilitate the segregation and disposal of records of temporary value.

§ 1222.12 Defining Federal records.

(a) The statutory definition of Federal records is contained in 44 U.S.C. 3301 and is stated in § 1220.14 of this chapter.

(b) Several key terms, phrases, and concepts in the statutory definition of records are defined as follows:

(1) *Documentary materials* is a collective term for records, nonrecord materials, and personal papers that refers to all media containing recorded information, regardless of the nature of the media or the method(s) or circumstance(s) of recording.

(2) *Regardless of physical form or characteristics* means that the medium may be paper, film, disk, or other physical type or form; and that the method of recording may be manual, mechanical, photographic, electronic, or any other combination of these or other technologies.

(3) *Made* means the act of creating and recording information by agency personnel in the course of their official duties, regardless of the method(s) or the medium involved. The act of recording is generally identifiable by the circulation of the information to others or by placing it in files accessible to others.

(4) *Received* means the acceptance or collection of documentary materials by agency personnel in the course of their official duties regardless of their origin (for example, other units of their agency, private citizens, public officials, other agencies, contractors, Government grantees) and regardless of how transmitted (in person or by messenger, mail, electronic means, or by any other method). In this context, the term does not refer to misdirected materials. It may or may not refer to loaned or seized materials depending on the conditions under which such materials came into agency custody or were used by the agency. Advice of legal counsel should be sought regarding the ''record'' status of loaned or seized materials.

(5) *Preserved* means the filing, storing, or any other method of systematically maintaining documentary materials by the agency. This term covers materials not only actually filed or otherwise systematically maintained but also those temporarily removed from existing filing systems.

(6) *Appropriate for preservation* means documentary materials made or received which in the judgment of the agency should be filed, stored, or otherwise systematically maintained by an agency because of the evidence of agency activities or information they contain, even though the materials may not be covered by its current filing or maintenance procedures.

[55 FR 27423, July 2, 1990; 55 FR 31982, Aug. 6, 1990]

Subpart B—Program Requirements

§ 1222.20 Agency responsibilities.

(a) The head of each Federal agency, in meeting the requirements of 44 U.S.C. 2904, 3101, and 3102, shall observe the responsibilities and standards set forth in this part. Agencies are also subject to regulations issued by the General Services Administration (GSA) in 41 CFR chapter 201.

(b) Each Federal agency shall:

(1) Assign to one or more offices of the agency the responsibility for the development and implementation of agency-wide programs to identify, develop, issue, and periodically review recordkeeping requirements for records for all agency activities at all levels and locations in all media including paper, microform, audiovisual, cartographic, and electronic (including those created or received using electronic mail);

(2) Integrate programs for the identification, development, issuance, and periodic review of recordkeeping requirements with other records and information resources management programs of the agency, including the requirement of close coordination between the office designated in 36 CFR 1222.20(b)(1) and the office assigned overall records management responsibility in accordance with 36 CFR 1220.40, if the two are different;

(3) Issue a directive(s) establishing program objectives, responsibilities, and authorities for agency recordkeeping requirements. Copies of the directive(s) (including subsequent amendments or supplements) shall be disseminated throughout the agency, as appropriate, and a copy shall be sent to NARA (NI);

(4) Establish procedures for the participation of records management officials in developing new or revised agency programs, processes, systems, and procedures in order to ensure that adequate recordkeeping requirements are established and implemented;

(5) Ensure that adequate training is provided to all agency personnel on policies, responsibilities, and techniques for the implementation of recordkeeping requirements and the distinction between records and nonrecord materials, regardless of media, including those materials created by individuals using computers to send or receive electronic mail.

(6) Develop and implement records schedules for all records created and received by the agency and obtain NARA approval of the schedules in accordance with 36 CFR part 1228;

(7) Ensure compliance with applicable Governmentwide policies, procedures, and standards relating to recordkeeping requirements as may be issued by the Office of Management and Budget, the General Services Administration, the National Archives and Records Administration, the National Institute of Standards and Technology, or other agencies, as appropriate;

(8) Review recordkeeping requirements, as part of the periodic information resources management reviews required by 44 U.S.C. 3506, or the periodic records management evaluations required by 36 CFR 1220.54, in order to validate their currency and to ensure that recordkeeping requirements are being implemented.

(9) Remind all employees annually of the agency's recordkeeping policies and of the sanctions provided for the unlawful removal or destruction of Federal records (18 U.S.C. 2071).

[55 FR 27423, July 2, 1990, as amended at 58 FR 49194, Sept. 22, 1993; 60 FR 44640, Aug. 28, 1995]

Subpart C—Standards for Agency Recordkeeping Requirements

§ 1222.30 Purpose.

(a) The clear articulation of recordkeeping requirements by Federal agencies is essential if agencies are to meet the requirements of 44 U.S.C. 3101 and 3102 with respect to creating, receiving, maintaining, and preserving adequate and proper documentation, and with respect to maintaining an active, continuing program for the economical and efficient management of agency records.

(b) Although many agencies regularly issue recordkeeping requirements for routine operations, many do not adequately specify such requirements for documenting policies and decisions, nor do they provide sufficient guidance on distinguishing between records and nonrecord materials, and maintaining

records created or received on electronic mail systems.

(c) Since agency functions, activities, and administrative practices vary so widely, NARA cannot issue a comprehensive list of all categories of documentary materials appropriate for preservation by an agency as evidence of its activities or because of the information they contain. In all cases, the agency must consider the intent or circumstances of creation or receipt of the materials to determine whether their systematic maintenance shall be required.

[55 FR 27423, July 2, 1990, as amended at 60 FR 44640, Aug. 28, 1995]

§ 1222.32 General requirements.

Agencies shall identify, develop, issue, and periodically review their recordkeeping requirements for all agency operations and for records in all media, including those records created or received on electronic mail systems. Recordkeeping requirements shall:

(a) Identify and prescribe specific categories of documentary materials to be systematically created or received and maintained by agency personnel in the course of their official duties;

(b) Prescribe the use of materials and recording techniques that ensure the preservation of records as long as they are needed by the Government;

(c) Prescribe the manner in which these materials shall be maintained wherever held; and

(d) Distinguish records from nonrecord materials and, with the approval of the Archivist of the United States, prescribe action for the final disposition of agency records when they are no longer needed for current business.

[55 FR 27423, July 2, 1990, as amended at 60 FR 44640, Aug. 28, 1995]

§ 1222.34 Identifying Federal records.

(a) *General.* To ensure that complete and accurate records are made and retained in the Federal Government, it is essential that agencies distinguish between records and nonrecord materials by the appropriate application of the definition of records (see 44 U.S.C. 3301 and 36 CFR 1220.14) to agency documentary materials. Applying the definition of records to most documentary materials created or received by agencies presents few problems when agencies have established and periodically updated recordkeeping requirements covering all media and all agency activities at all levels and locations.

(b) *Record status.* Documentary materials are records when they meet both of the following conditions:

(1) They are made or received by an agency of the United States Government under Federal law or in connection with the transaction of agency business; and

(2) They are preserved or are appropriate for preservation as evidence of agency organization and activities or because of the value of the information they contain.

(c) *Working files and similar materials.* Working files, such as preliminary drafts and rough notes, and other similar materials shall be maintained for purposes of adequate and proper documentation if:

(1) They were circulated or made available to employees, other than the creator, for official purposes such as approval, comment, action, recommendation, follow-up, or to communicate with agency staff about agency business; and

(2) They contain unique information, such as substantive annotations or comments included therein, that adds to a proper understanding of the agency's formulation and execution of basic policies, decisions, actions, or responsibilities.

(d) *Record status of copies.* The determination as to whether a particular document is a record does not depend upon whether it contains unique information. Multiple copies of the same document and documents containing duplicative information, including messages created or received on electronic mail systems, may each have record status depending on how they are used to transact agency business. See paragraph (f)(2) of this section concerning the nonrecord status of extra copies.

(e) *Electronic mail messages.* Messages created or received on electronic mail systems may meet the definition of record in 44 U.S.C. 3301.

(f) *Nonrecord materials.* Nonrecord materials are Government-owned documentary materials that do not meet the conditions of record status (see § 1222.34(b)) or that are specifically excluded from status as records by statute (see 44 U.S.C. 3301):

(1) Library and museum material (but only if such material is made or acquired and preserved solely for reference or exhibition purposes);

(2) Extra copies of documents (but only if the sole reason such copies are preserved is for convenience of reference); and

(3) Stocks of publications and of processed documents. (Each agency shall create and maintain serial or record sets of its publications and processed documents, as evidence of agency activities and for the information they contain, including annual reports, brochures, pamphlets, books, handbooks, posters and maps.)

(g) *Agency responsibilities.* Agencies shall take appropriate action to ensure that all staff are capable of identifying Federal records. For electronic mail systems, agencies shall ensure that all staff are informed of the potential record status of messages, transmittal and receipt data, directories, and distribution lists.

[55 FR 27423, July 2, 1990, as amended at 60 FR 44640, Aug. 28, 1995]

§ 1222.36 Identifying personal papers.

(a) Personal papers are documentary materials, or any reasonably segregable portion thereof, of a private or nonpublic character that do not relate to, or have an effect upon, the conduct of agency business. Personal papers are excluded from the definition of Federal records and are not owned by the Government. Examples of personal papers include:

(1) Materials accumulated by an official before joining Government service that are not used subsequently in the transaction of Government business;

(2) Materials relating solely to an individual's private affairs, such as outside business pursuits, professional affiliations, or private political associations that do not relate to agency business; and

(3) Diaries, journals, personal correspondence, or other personal notes that are not prepared or used for, or circulated or communicated in the course of, transacting Government business.

(b) Personal papers shall be clearly designated as such and shall at all times be maintained separately from the office's records.

(c) If information about private matters and agency business appears in the same document, the document shall be copied at the time of receipt, with the personal information deleted, and treated as a Federal record.

(d) Materials labeled ''personal,'' ''confidential,'' or ''private,'' or similarly designated, and used in the transaction of public business, are Federal records subject to the provisions of pertinent laws and regulations. The use of a label such as ''personal'' is not sufficient to determine the status of documentary materials in a Federal office.

[55 FR 27423, July 2, 1990; 55 FR 28136, July 9, 1990; 55 FR 31982, Aug. 6, 1990]

§ 1222.38 Categories of documentary materials to be covered by recordkeeping requirements.

Agency recordkeeping requirements shall prescribe the creation and maintenance of records of the transaction of agency business that are sufficient to:

(a) Document the persons, places, things, or matters dealt with by the agency.

(b) Facilitate action by agency officials and their successors in office.

(c) Make possible a proper scrutiny by the Congress or other duly authorized agencies of the Government.

(d) Protect the financial, legal, and other rights of the Government and of persons directly affected by the Government's actions.

(e) Document the formulation and execution of basic policies and decisions and the taking of necessary actions, including all significant decisions and commitments reached orally (person to person, by telecommunications, or in conference).

(f) Document important board, committee, or staff meetings.

§ 1222.40 Removal of records.

Agencies shall develop procedures to ensure that departing officials do not

remove Federal records from agency custody.

§ 1222.42 Removal of nonrecord materials.

(a) Nonrecord materials, including extra copies of agency records kept only for convenience of reference, may be removed from Government agencies only with the approval of the head of the agency or the individual authorized to act for the agency on matters pertaining to agency records.

(b) Agencies shall ensure that when nonrecord material containing classified information is removed from the executive branch, it is protected under conditions equivalent to those required of executive branch agencies. The originating agency or its successor in function retains control over access to such classified information, even after it is properly removed from the agency.

(c) Agencies shall ensure the appropriate protection of nonrecord material containing information which is restricted from release under the Privacy Act or other statutes, when such restricted nonrecord material is removed from Government agencies.

[56 FR 26336, June 7, 1991]

§ 1222.44 Directives documenting agency programs, policies, and procedures.

Agency recordkeeping requirements shall prescribe that the programs, policies, and procedures of the agency shall be adequately documented in appropriate directives. A record copy of each such directive (including those superseded) shall be maintained by the appropriate agency directives management officer(s) as part of the official files.

§ 1222.46 Recordkeeping requirements of other agencies.

When statutes, regulations, directives or authoritative issuances of other agencies prescribe an agency's recordkeeping requirements, the agency so affected shall include these in appropriate directives or other authoritative issuances prescribing its organization, functions, or activities.

§ 1222.48 Data created or received and maintained for the Government by contractors.

(a) Contractors performing Congressionally-mandated program functions are likely to create or receive data necessary to provide adequate and proper documentation of these programs and to manage them effectively. Agencies shall specify the delivery of the Government of all data needed for the adequate and proper documentation of contractor-operated programs in accordance with requirements of the Federal Acquisition Regulation (FAR) and, where applicable, the Defense Federal Acquisition Regulation Supplement (DFARS).

(b) When contracts involve the creation of data for the Government's use, in addition to specifying a final product, agency officials may need to specify the delivery of background data that may have reuse value to the Government. Before specifying the background data that contractors must deliver to the agency, program and contracting officials shall consult with agency records and information managers and historians and, when appropriate, with other Government agencies to ensure that all agency and Government needs are met, especially when the data deliverables support a new agency mission or a new Government program.

(c) Deferred ordering and delivery-of-data clauses and rights-in-data clauses shall be included in contracts whenever necessary to ensure adequate and proper documentation or because the data have reuse value to the Government.

(d) When data deliverables include electronic records, the agency shall require the contractor to deliver sufficient technical documentation to permit the agency or other Government agencies to use the data.

(e) All data created for Government use and delivered to, or falling under the legal control of, the Government are Federal records and shall be managed in accordance with records management legislation as codified at 44 U.S.C. chapters 21, 29, 31, and 33, the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act (5 U.S.C.

552a), and shall be scheduled for disposition in accordance with 36 CFR part 1228.

§ 1222.50 Records maintenance.

(a) Agencies shall prescribe an appropriate records maintenance program so that complete records are filed or otherwise identified and preserved, records can be found when needed, the identification and retention of permanent records are facilitated, and permanent and temporary records are physically segregated or, for electronic records, segregable.

(b) Each Federal agency, in providing for effective controls over the maintenance of records, shall:

(1) Establish and implement standards and procedures for classifying, indexing, and filing records as set forth in GSA and NARA handbooks;

(2) Formally specify official file locations for records in all media and prohibit the maintenance of records at unauthorized locations;

(3) Formally specify which officials are responsible for maintenance and disposition of electronic records and which computer systems are used for recordkeeping;

(4) Standardize reference service procedures to facilitate the finding, charging out, and refiling of paper, audiovisual, and cartographic and architectural records, and to ensure that reference to electronic records minimizes the risk of unauthorized additions, deletions, or alterations;

(5) Make available to all agency employees published standards, guides, and instructions designed for easy reference and revision;

(6) Review its records maintenance program periodically to determine its adequacy; audit a representative sample of its paper, audiovisual, electronic, cartographic, and architectural files for duplication, misclassification, or misfiles;

(7) Maintain microform, audiovisual, and electronic records in accordance with 36 CFR parts 1230, 1232, and 1234, respectively;

(8) Establish and implement procedures for maintaining records and nonrecord materials separately; ensure that record materials generated electronically are clearly identified as records and protected from unauthorized change or deletion for the length of their scheduled retention period; and

(9) Establish and implement procedures for the separate maintenance of any personal papers in accordance with § 1222.36.

[55 FR 27423, July 2, 1990, as amended at 60 FR 44640, Aug. 28, 1995]

PART 1228—DISPOSITION OF FEDERAL RECORDS

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AUTHORITY: 44 U.S.C. chs. 21, 29, and 33.

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EDITORIAL NOTE: See Derivation Table appearing in the Finding Aids section of this volume.

§1228.1 Scope of part.

This part sets policies and establishes standards, procedures, and techniques for the disposition of all Federal records in accordance with 44 U.S.C. chapters 21, 29, 31, and 33. The disposition of documentary materials created or acquired by a Federal agency, regardless of physical form or characteristics, is controlled by this part if any of the following conditions are met:

(a) The materials are created or received in the course of business and contain information related to the organization, functions, policies, decisions, procedures, operations, or other official activities of the agency. Also included is documentation of oral exchanges such as telephone conversations and meetings during which policy was discussed or formulated or other significant activities of the agency were planned, discussed, or transacted.

(b) The creation, retention, or disposition of the materials is mandated by statute or agency or other Federal regulations, directives, policies, or procedures.

(c) The materials are controlled, maintained, preserved, processed, filed, or otherwise handled following established agency procedures for records.

(d) The material contains unique information, such as substantive annotations, including drafts, transmittal sheets, and final documents or other materials circulated or made available to employees other than the creator for official purposes, such as approval, comment, action, recommendation, follow-up, or to keep agency staff informed regarding agency business.

(e) The material was created or received on an electronic mail system and it meets the definition of record. For specific instructions on the disposition of records created or received

on electronic mail systems, see 36 CFR 1234.32.

[55 FR 27428, July 2, 1990, as amended at 60 FR 44640, Aug. 28, 1995]

Subpart A—Records Disposition Programs

§ 1228.10 Authority.

The head of each agency (in accordance with 44 U.S.C. 2904, 3102, and 3301) is required to establish and maintain a records disposition program to ensure efficient, prompt, and orderly reduction in the quantity of records and to provide for the proper maintenance of records designated as permanent by NARA.

[55 FR 27428, July 2, 1990]

§ 1228.12 Basic elements of disposition programs.

The primary steps in managing a records disposition program are given below. Details of each element are contained in the NARA records management handbook, Disposition of Federal Records (NSN 7610–01–055–8704).

(a) Issue a program directive assigning authorities and responsibilities for records disposition activities in the agency and keep that directive up to date.

(b) Develop, implement, and maintain an accurate, current, and comprehensive records schedule.

(c) Train all agency personnel taking part in the agency's records disposition activities.

(d) Publicize the program to make all agency employees aware of their records disposition responsibilities.

(e) Evaluate the results of the program to ensure adequacy, effectiveness, and efficiency.

[55 FR 27428, July 2, 1990]

Subpart B—Scheduling Records

SOURCE: 55 FR 27429, July 2, 1990, unless otherwise noted.

§ 1228.20 Authorities.

(a) The head of each agency shall direct the creation and preservation of records containing accurate and complete documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency (44 U.S.C. 3101). The National Archives and Records Administration shall establish standards for the retention of those records having continuing value, and assist Federal agencies in applying the standards to records in their custody (44 U.S.C. 2905).

(b) No Federal records shall be destroyed or otherwise alienated from the Government except in accordance with procedures described in this part 1228 (44 U.S.C. 3314).

§ 1228.22 Developing records schedules.

The primary steps in developing agency records schedules are given below. Details in each step are contained in the NARA records management handbook, Disposition of Federal Records (NSN 7610–01–055–8704). Ultimately, all records of an agency must be scheduled, but they need not all be scheduled at the same time. An agency may schedule the records of one function, program or organizational element at a time.

(a) Determine the functions and activities documented by the records to be scheduled.

(b) Prepare an inventory of the records including a description of their medium, location, volume, inclusive dates, informational content and use.

(c) Evaluate the period of time the agency needs each records series or system by reference to its uses and value to agency operations or legal obligations.

(d) Based on agency need, formulate specific recommended disposition instructions for each records series or each part of an automated information system, including file breaks, retention periods for temporary records, transfer periods for permanent records, and instructions for the retirement of records to Federal records centers, when appropriate. Recommended retention periods take into account the rights of the Government and the rights of those directly affected by agency actions.

(e) Assemble into a draft schedule the descriptions and recommended disposition instructions for logical blocks of records, i.e., entire agency, organizational component, or functional area.

(f) Obtain approval of the records schedules from NARA (and from the General Accounting Office, when so required under title 8 of the GAO ''Policy and Procedures Manual for the Guidance of Federal Agencies'').

§ 1228.24 Formulation of agency records schedules.

(a) *General.* Agency records schedules approved by the Archivist of the United States specify the disposition for agency records. Records of continuing (permanent) value will be scheduled for retention and immediate or eventual transfer to the legal custody of NARA. All other records will be scheduled for destruction or donation after a specific period of time based on administrative, fiscal, and legal values.

(b) *Characteristics of schedules.* Though records disposition authority may be requested from NARA on a program-by-program, function-by-function, or office-by-office basis, all agency records must be scheduled. Schedules must follow the guidelines provided below:

(1) Schedules shall identify and describe clearly each series or system and shall contain disposition instructions that can be readily applied. (Additional information is required for permanent records as specified in § 1228.28(b).) Schedules must be prepared so that each office will have standing instructions detailing the disposal, transfer, or retention of records.

(2) SF 115s shall include only new records not covered by the General Records Schedules (GRS) (see subpart C), deviations from the GRS (see § 1228.42), or previously scheduled records requiring changes in retention periods or substantive changes in description.

(3) All schedules shall take into account the physical organization of records or the filing system so that disposal or transfer can be handled in blocks.

(4) The disposition of nonrecord materials is controlled by instructions in the agency's printed or published records disposition manual. These instructions do not require NARA approval. Such items shall not be included on SF 115s. Non-record materials, such as extra copies of documents preserved solely for reference, and stocks of processed documents, and personal materials shall be maintained separately from official agency files to aid in records disposition.

(c) *Provisions of schedules.* Records schedules shall provide for:

(1) The destruction of records that have served their statutory, fiscal, or administrative uses and no longer have sufficient value to justify further retention. Procedures for obtaining disposal authorizations are prescribed in § 1228.30;

(2) The removal to a Federal records center (or to an agency records center approved under subpart K) of records not eligible for immediate destruction or other disposition but which are no longer needed in office space. These records are maintained by the records center until they are eligible for further disposition action;

(3) The retention of the minimum volume of current records in office space consistent with effective and efficient operations; and

(4) The identification of records of permanent value in accordance with § 1228.28, and the establishment of cutoff periods and dates when such records will be transferred to the legal custody of NARA.

§ 1228.26 Request for records disposition authority.

(a) *Submission.* Requests for records disposition authority shall be initiated by Federal agencies by submitting Standard Form 115, Request for Records Disposition Authority, to NARA (NIR). An SF 115 is used for requesting authority to schedule (or establish the disposition for) permanent and temporary records, either on a recurring or one-time basis.

(1) New Federal agencies shall apply General Records Schedules to eligible records and shall submit to NARA SF 115s covering all remaining records within 2 years of their establishment.

(2) Agencies shall submit to NARA schedules for the records of new programs and of programs that are reorganized or otherwise changed in a way that results in the creation of new or different records within 1 year of the implementation of the change.

(b) *Certification.* The signature of the authorized agency representative on the SF 115 shall constitute certification that the records recommended for disposal do not or will not have sufficient administrative, legal, or fiscal value to the agency to warrant retention beyond the expiration of the specified period and that records described as having permanent value will be transferred to the National Archives upon expiration of the stated period.

(c) *Disapproval of requests for disposition authority.* Requests for records disposition authority may be returned to the agency if the SF 115 is improperly prepared. The agency shall make the necessary corrections and resubmit the form to NARA (NIR). NARA may disapprove the disposition request for an item if, after appraisal of the records, NARA determines that the proposed disposition is not consistent with the value of the records. In such cases, NARA will notify the agency in writing.

[55 FR 27429, July 2, 1990; 55 FR 28136, July 9, 1990]

§ 1228.28 Scheduling permanent records.

(a) *Initiation.* Federal agencies propose permanent retention of records in accordance with guidelines contained in the NARA records management handbook, Disposition of Federal Records (NSN 7610–01–055–8704).

(b) *Requirements.* Each item proposed for permanent retention on an SF 115 shall include the following:

(1) Records series title used by agency personnel to identify the records;

(2) Complete description of the records including physical type and information contents;

(3) Inclusive dates;

(4) An arrangement statement;

(5) Statement of restrictions on access which NARA should impose in conformity with the Freedom of Information Act if the records are proposed for immediate transfer;

(6) An estimate of the volume of records accumulated annually if the records are current and continuing;

(7) The total volume to date; and

(8) Disposition instructions, developed using the following guidelines:

(i) If the records series or system is current and continuing, the SF 115 will include a disposition instruction specifying the period of time after which the records will be transferred to the National Archives, normally within 30 years for paper records, 5–10 years for audiovisual or microform records, and as soon as the records become inactive or the agency cannot meet the maintenance requirements found in § 1228.188 of this part for electronic records.

(ii) If the records series or system is nonrecurring, i.e., no additional records will be created or acquired, the agency may propose either immediate or future transfer to the National Archives.

(c) *Determination.* NARA will determine whether or not records are of permanent value and when the transfer of the permanent records will take place.

(1) If NARA determines that records are not permanent, it will notify the agency and negotiate an appropriate disposition. The disposition instruction on the SF 115 will be modified prior to NARA approval.

(2) If NARA determines that records are permanent, but that the transfer instructions are not appropriate, it will negotiate appropriate transfer terms with the agency. The disposition instruction on the SF 115 will be modified prior to NARA approval.

[55 FR 27429, July 2, 1990; 55 FR 31982, Aug. 6, 1990]

§ 1228.30 Scheduling temporary records.

(a) *Initiation.* Federal agencies request authority to dispose of records, either immediately or on a recurring basis. Requests for immediate disposal are limited to records already in existence which no longer accumulate. For recurring records, approved schedules provide continuing authority to destroy the records. The retention periods approved by NARA are mandatory, and the agency shall dispose of the records after expiration of the retention period, except as provided in § 1228.54.

(b) *Requirements.* Each item on an SF 115 proposed for eventual destruction shall include the following:

(1) Records series title used by agency personnel to identify the records;

(2) Description of the records including physical type and informational content;

(3) If the records are contained in a Privacy Act system of records, a citation to the agency's alpha-numeric or numeric code designation for the system of records. If the system of records was added or deleted since the publication of the current Office of the Federal Register compilation of Privacy Act Issuances, the agency shall also cite the date and page of the FEDERAL REGISTER on which the new system notice appears or the deleted system is announced.

(4) Disposition instructions, developed using the following guidelines:

(i) If the records series or system is current and continuing, the SF 115 will include a disposition instruction specifying the period of time after which the records will be destroyed.

(ii) If the records series or system is nonrecurring, i.e., no additional records will be created or acquired, the agency may propose either immediate destruction or destruction on a future date.

(c) *Determination.* NARA may determine that records proposed as temporary merit permanent retention and transfer to the National Archives. In such cases, NARA arranges with the agency to change the disposition instruction prior to approval of the SF 115.

(d) *General Accounting Office concurrence.* Each Federal agency shall obtain the approval of the Comptroller General for the disposal of program records less than 3 years old and for certain classes of records relating to claims and demands by or against the Government, and to accounts in which the Government is concerned in accordance with the GAO ''Policy and Procedures Manual for Guidance of Federal Agencies,'' title 8—Records Management (44 U.S.C. 3309). This approval must be obtained before the approval of the disposal request by NARA, but the request may be submitted concurrently to GAO and NARA.

(e) *Withdrawn items.* Agencies may request that items listed on the SF 115 be withdrawn in order to aid in NARA's processing (appraisal) of the remaining items on the schedule.

(1) If, during the course of the appraisal process, NARA determines that records described by an item(s) on the proposed schedule do not exist or are not arranged as stated on the SF 115, NARA may request the agency to withdraw the item(s) from consideration, if the agency is unable to offer sufficient clarification.

(2) If NARA and the agency cannot agree on the retention period for an item(s), the items(s) may be withdrawn. In these cases, the agency will submit an SF 115 with a revised proposal for disposition within 6 months of the date of the approval of the original SF 115.

[55 FR 27429, July 2, 1990, as amended at 57 FR 22432, May 28, 1992]

§ 1228.32 Request to change disposition authority.

(a) Agencies desiring to change the approved retention period of a series or system of records shall submit an SF 115. Disposition authorities contained in an approved SF 115 are automatically superseded by approval of a later SF 115 applicable to the same records unless the later SF 115 specified an effective date. Agencies submitting revised schedules shall indicate on the SF 115 the relevant schedule and item numbers to be superseded, the citation to the current printed records disposition schedule, if any, and/or the General Records Schedules and item numbers that cover the records.

(b) Agencies proposing to change the retention period of a series or system of records shall submit with the SF 115 an explanation and justification for the change. The need to retain records longer than the retention period specified in the disposition instructions on an approved SF 115 for purposes of audit, court order, investigation, litigation, study, or any other administrative purpose that justifies the temporary extension of the retention period shall be governed by the procedures set forth in § 1228.54. Agencies shall not submit an SF 115 to change the retention period in such cases.

[61 FR 19554, May 2, 1996; 61 FR 24702, May 16, 1996]

Subpart C—General Records Schedules

SOURCE: 55 FR 27430, July 2, 1990, unless otherwise noted.

§ 1228.40 Authority.

The Archivist of the United States shall issue schedules authorizing disposal, after specified periods of time, of records common to several or all agencies after determining that the records lack value for continued retention by the U.S. Government. General Records Schedules constitute authority to destroy records described therein after expiration of the stated retention period. Application of the disposition instructions in these schedules is mandatory (44 U.S.C. 3303a).

§ 1228.42 Applicability.

(a) New items or changes in the disposition of GRS records supersede approved agency schedules for the same series or system of records, unless the agency schedule provides for a shorter retention period, or unless NARA indicates that the GRS standard must be applied without exception. Agencies shall not request authority to apply GRS authorizations (see § 1228.24(b)(2)).

(b) Agencies may request exceptions to disposition instructions in the GRS by submitting an SF 115 in accordance with § 1228.30 accompanied by a written justification explaining why the agency needs the records for a different period of time from other agencies.

(c) Provisions of the General Records Schedules may be applied to records in the custody of the National Archives at NARA's discretion subject to the provisions of § 1228.200.

§ 1228.44 Current schedules.

The following General Records Schedules governing the disposition of records common to several or all agencies were developed by the National Archives and Records Administration after consultation with other appropriate agencies. They have been approved by the Archivist of the United States.

SCHEDULE NUMBER AND TYPE OF RECORDS GOVERNED

1. Civilian Personnel Records.
2. Payrolling and Pay Administration Records.
3. Procurement, Supply and Grant Records.
4. Property Disposal Records.
5. Budget Preparation, Presentation, and Apportionment Records.
6. Accountable Officers' Accounts Records.
7. Expenditure Accounting Records.
8. Stores, Plant, and Cost Accounting Records.
9. Travel and Transportation Records.
10. Motor Vehicle Maintenance and Operation Records.
11. Space and Maintenance Records.
12. Communications Records.
13. Printing, Binding, Duplication, and Distribution Records.
14. Information Services Records.
15. Housing Records.
16. Administrative Management Records.
17. Cartographic, Aerial Photographic, Architectural, and Engineering Records.
18. Security and Protective Services Records.
19. Research and Development Records: RESCINDED.
20. Electronic Records.
21. Audiovisual Records.
22. Inspector General Records.
23. Records Common to Most Offices Within Agencies.

§ 1228.46 Availability.

The GRS and instructions for their use are available from NARA (NI). The Archivist of the United States distributes new schedules and schedule revisions under sequentially numbered GRS transmittals.

Subpart D—Implementing Schedules

SOURCE: 55 FR 27431, July 2, 1990, unless otherwise noted.

§ 1228.50 Application of schedules.

The application of approved schedules is mandatory (44 U.S.C. 3303a). The Archivist of the United States will determine whether or not records may be destroyed or transferred to the National Archives. If the Archivist approves the request for disposition authority, NARA will notify the agency by returning one copy of the completed SF 115. This shall constitute mandatory authority for the final disposition of the records (for withdrawal of disposal authority or the extension of retention periods, see §§ 1228.52 and 1228.54). The authorized destruction shall be accomplished as prescribed in

§ 1228.58. The head of each Federal agency shall direct the application of records schedules to ensure the agency maintains recorded information necessary to conduct Government business, avoid waste, and preserve permanent records for transfer to the National Archives. The agency head shall take the following steps to ensure proper dissemination and application of approved schedules:

(a) Issue an agency directive incorporating the disposition authorities approved by NARA, i.e., SF 115s (except for one-time authorities covering nonrecurring records) and the General Records Schedules. Also include nonrecord materials with disposition instructions developed by the agency. Once all records and nonrecord materials are included, this document is the agency's comprehensive schedule. Agencies may also issue other directives containing instructions relating to agency records disposition procedures.

(1) Published schedules do not include nonrecurring records for which NARA has granted authority for immediate disposal or transfer to the National Archives. They do include general instructions for retirement of records to the Federal records centers, transfer of records to the National Archives, and other records disposition procedures.

(2) Comprehensive schedules are formally published manuals or directives that provide for the disposition of all recurring records and nonrecord materials created by an agency. These schedules must cite the GRS or SF 115 and item numbers that provide the legal disposition authority for items covering record material.

(3) Prior to issuance, agencies may consult with NARA concerning directives or other issuances containing approved schedules, instructions for use of the Federal records centers, transfer of records to the National Archives, or other matters covered by NARA procedures or regulations.

(4) Agencies shall forward to the National Archives and Records Administration (NIR) three copies of each final directive or other issuance relating to records disposition and 20 copies of all published records schedules (printed agency manuals) and changes.

(b) Establish internal training programs to acquaint appropriate personnel with the requirements and procedures of the records disposition program.

(c) Apply the approved records disposition schedules to the agency's records.

(1) Records described by items marked ''disposition not approved'' or ''withdrawn'' may not be destroyed until a specific disposition has been approved by NARA.

(2) Disposition authorities for items on approved SF 115s that specify an organizational component of the department or independent agency as the creator or custodian of the records may be applied to the same records after internal reorganization, but only if the nature, content, and functional importance of the records remain the same. Authority approved for items described in a functional format may be applied to any organizational component within the department or independent agency that is responsible for the relevant function.

(3) Disposition authorities approved for one department or independent agency may not be applied by another. Departments or agencies that acquire records from another department or agency, and/or continue creating the same series of records previously created by another department or agency through interagency reorganization must submit an SF 115 to NARA for disposition authorization for the records within one year of the reorganization.

(4) Unless otherwise specified, disposition authorities apply retroactively to all existing records as described in the schedule, including records acquired by transfer of function within or between agencies, as long as the nature, content, and functional importance of the records series is unchanged.

(d) Review approved schedules, and, if necessary, update them annually. Additions and changes to the GRS shall be incorporated or otherwise disseminated within 6 months of issuance from NARA.

§ 1228.52 Withdrawal of disposal authority.

In an emergency or in the interest of efficiency of Government operations, NARA will withdraw disposal authorizations in approved disposal schedules (44 U.S.C. 2909). This withdrawal may apply to particular items on schedules submitted by agencies or may apply to all existing authorizations for the disposal of a specified type of record obtained by any or all agencies of the Government. If the withdrawal is applicable to only one agency, that agency will be notified of this action by letter signed by the Archivist; if applicable to more than one agency, notification may be by NARA bulletin issued and signed by the Archivist.

§ 1228.54 Temporary extension of retention periods.

(a) Approved agency records schedules and the General Records Schedules are mandatory (44 U.S.C. 3303a). Except as specified in § 1228.32(b), records series or systems approved for destruction shall not be maintained longer without the prior written approval of the National Archives and Records Administration (NIR). However, extended retention of an individual shipment of records to a Federal Records Center for a period up to 6 months is governed by procedures in § 1228.164(c).

(b) Upon submission of adequate justification, NARA may authorize a Federal agency to extend the retention period of a series or system of records (44 U.S.C. 2909). These extensions of retention periods will be granted for records which are required to conduct Government operations because of special circumstances which alter the normal administrative, legal, or fiscal value of the records.

(c) The head of a Federal agency may request approval of a temporary extension of a retention period by sending a letter to NARA (NIR), Washington DC 20408. The request shall include:

(1) A concise description of the records series for which the extension is requested.

(2) A complete citation of the specific provisions of the agency records schedule or the General Records Schedule currently governing disposition of the records;

(3) A statement of the estimated period of time that the records will be required; and

(4) A statement of the current and proposed physical location of the records including information on whether the records have been or will be transferred to one or more Federal records centers.

(d) Approval of a request for extension of retention periods may apply to records in the custody of one Federal agency or records common to several or all Federal agencies. If approval of a request is applicable to records in the custody of one agency, that agency will be notified by letter. If approval is applicable to records common to several agencies, notification may be made by NARA bulletin.

(e) Upon approval of a request for a change in retention periods applicable to records that have been or will be transferred to one or more Federal records centers, centers will be notified of the change and agencies will be furnished a copy of the notification. Agencies shall forward to the National Archives and Records Administration (NIR) 20 copies of all formally issued instructions which extend retention periods.

(f) Upon expiration of an approved extension of retention period, NARA will notify all affected agencies to apply normal retention requirements.

(g) Except when NARA agrees to continue to store and service records on a reimbursable basis or waives the requirements of this paragraph under a condition specified in paragraph (h) of this section, agencies shall remove from Federal records centers at the agency's expense records that, because of audit, court order, investigation, litigation, study, or any other administrative reason, the agency wishes to retain longer than the scheduled retention period for the records. The removal of records must be accomplished within 90 days of the date of the notification from the Federal records center that the retention period has expired. Agencies that wish to establish an agreement or inquire about their records should write to NARA, Office of Federal Records Centers (NC), 8601 Adelphi Road, College Park, MD 20740–6001.

(h) NARA will waive the requirements specified in paragraph (g) of this section when:

(1) The temporary extension of retention period has been imposed by NARA, for instance when NARA plans to reappraise the archival value of records or when NARA is working on a new or revised General Records Schedule item;

(2) The agency has submitted an SF 115, Request for Disposition Authority, to NARA to request a change in the scheduled disposition of a series of records;

(3) NARA and the agency mutually agree that a temporary extension is required to meet exceptional records management situations such as a NARA-agency screening project to separate permanent from disposable records or application of a new records disposition schedule to previously unscheduled records; or

(4) The administrative cost to NARA to implement a reimbursable agreement would exceed the reimbursement received.

[55 FR 27431, July 2, 1990, as amended at 61 FR 19554, May 2, 1996; 61 FR 24702, May 16, 1996]

§ 1228.56 Transfer of permanent records.

All records scheduled as permanent shall be transferred to the National Archives after the period specified on the SF 115 in accordance with procedures specified under subpart J.

§ 1228.58 Destruction of temporary records.

(a) *Authority.* Federal agencies are required to follow regulations issued by the Archivist of the United States governing the methods of destroying records (44 U.S.C. 3302). Only the methods described in this section shall be used.

(b) *Sale or salvage.* Paper records to be disposed of normally must be sold as wastepaper. If the records are restricted because they are national security classified or exempted from disclosure by statute, including the Privacy Act, or regulation, the wastepaper contractor must be required to pulp, macerate, shred, or otherwise definitively destroy the information contained in the records, and their destruction must be witnessed either by a Federal employee or, if authorized by the agency that created the records, by a contractor employee. The contract for sale must prohibit the resale of all other paper records for use as records or documents. Records other than paper records (audio, visual, and data tapes, disks, and diskettes) may be salvaged and sold in the same manner and under the same conditions as paper records. All sales must be in accordance with the established procedures for the sale of surplus personal property. (See 41 CFR part 101–45, Sale, Abandonment, or Destruction of Personal Property.)

(c) *Destruction.* If the records cannot be sold advantageously or otherwise salvaged, the records may be destroyed by burning, pulping, shredding, macerating, or other suitable means.

§ 1228.60 Donation of temporary records.

(a) When the public interest will be served, a Federal agency may propose the transfer of records eligible for disposal to an appropriate person, organization, institution, corporation, or government (including a foreign government) that has requested them. Records will not be transferred without prior written approval of NARA.

(b) The head of a Federal agency shall request the approval of such a transfer by sending a letter to NARA (NIR), Washington, DC 20408. The request shall include:

(1) The name of the department or agency, and subdivisions thereof, having custody of the records;

(2) The name and address of the proposed recipient of the records;

(3) A list containing:

(i) An identification by series or system of the records to be transferred,

(ii) The inclusive dates of the records,

(iii) The NARA disposition of job (SF 115) or GRS and item numbers that authorize disposal of the records;

(4) A statement providing evidence:

(i) That the proposed transfer is in the best interests of the Government,

(ii) That the proposed recipient agrees not to sell the records as records or documents, and

(iii) That the transfer will be made without cost to the U.S. Government;

(5) A certification that:

(i) The records contain no information the disclosure of which is prohibited by law or contrary to the public interest, and/or

(ii) That records proposed for transfer to a person or commercial business are directly pertinent to the custody or operations of properties acquired from the Government, and/or

(iii) That a foreign government desiring the records has an official interest in them.

(c) NARA will consider such request and determine whether the donation is in the public interest. Upon approval NARA will notify the requesting agency in writing. If NARA determines such a proposed donation is contrary to the public interest, the request will be denied and the agency will be notified that the records must be destroyed in accordance with the appropriate disposal authority.

Subpart E—Loan of Permanent and Unscheduled Records

SOURCE: 55 FR 27433, July 2, 1990, unless otherwise noted.

§ 1228.70 Authority.

The Archivist of the United States has authority over the placement of permanent records (44 U.S.C. 2107 and 2904). As unscheduled records have not been appraised, they will be deemed permanent for the purposes of this section and are also covered by this authority.

§ 1228.72 Approval.

No permanent or unscheduled records shall be loaned to non-Federal recipients without prior written approval from NARA. This authorization is not required for temporary loan of permanent and unscheduled records between Federal agencies.

§ 1228.74 Agency action.

(a) An agency proposing to loan permanent or unscheduled records shall execute a written loan agreement with the proposed recipient. The agreement shall include:

(1) The name of the department or agency and subdivisions thereof having custody of the records;

(2) The name and address of the proposed recipient of the records;

(3) A list containing:

(i) An identification by series or system of the records to be loaned,

(ii) The inclusive dates for each series,

(iii) The volume and media of the records to be loaned, and

(iv) The NARA disposition job (SF 115) and item numbers covering the records, if any;

(4) A statement of the purpose and duration of the loan;

(5) A statement specifying any restrictions on the use of the records and how these restrictions will be administered by the donee; and

(6) A certification that the records will be stored according to the environmental specifications for archival records.

(b) The Archivist of the United States shall be a signatory on all loan agreements for permanent and unscheduled records. An agreement may not be implemented until the Archivist has signed.

(c) The head of the Federal agency shall request approval for the loan by sending a letter to NARA (NIR), Washington, DC 20408, transmitting the proposed loan agreement and specifying the name, title, and telephone number of the person NARA should contact about the proposed loan.

[57 FR 22432, May 28, 1992]

§ 1228.76 NARA action on request.

NARA will review the request and, if found acceptable, return the approved agreement to the agency. NARA will deny the request if the records should be transferred to the National Archives in accordance with subpart J of this part or if the loan would endanger the records or otherwise contravene the regulations in 36 CFR chapter XII, subchapter B. If NARA disapproves the loan, the Archivist will notify the agency in writing and provide instructions for the disposition of the records.

[57 FR 22432, May 28, 1992; 57 FR 24308, June 8, 1992]

§ 1228.78 Retrieval of records.

An agency shall contact the recipient of the loan of permanent or unscheduled records 30 days prior to the expiration of the loan period (as stated in the loan agreement) to arrange for the return of the records. If the agency extends the duration of the loan, it shall notify NARA (NIR) in writing, specifying the reason for the extension and providing a new time limit for the loan.

[57 FR 22432, May 28, 1992]

Subpart F—Emergency Authorization to Destroy Records

§ 1228.90 General provisions.

Under certain conditions, records may be destroyed without regard to the provisions of subpart D.

[45 FR 5705, Jan. 24, 1980. Redesignated at 50 FR 15723, Apr. 19, 1985, and 55 FR 27433, July 2, 1990]

§ 1228.92 Menaces to human life or health or to property.

(a) Agencies may destroy records that constitute a continuing menace to human health or life or to property (44 U.S.C. 3310). When such records are identified, the agency head shall notify NARA (NIR), specifying the nature of the records, their location and quantity, and the nature of the menace. If NARA concurs in the determination, the Archivist will direct the immediate destruction of the records or other appropriate means of destroying the recorded information. However, if the records are still or motion picture film on nitrocellulose base that has deteriorated to the extent described in paragraph (b) of this section, the head of the agency may follow the procedure therein provided.

(b) Whenever any radarscope, aerial, or other still or motion picture film on nitrocellulose base has deteriorated to the extent that it is soft and sticky, is emitting a noxious order, contains gas bubbles, or has retrograded into acrid powder, and the head of the agency having custody of it shall determine that it constitutes a menace to human health or life or to property, then the agency shall without prior authorization of the Archivist:

(1) Arrange for its destruction in a manner that will salvage its silver content if the silver content is of sufficient quantity and market value per troy ounce to warrant such salvage;

(2) Authorize burial in approved landfills, in the event the quantity is not sufficiently large to justify the salvaging of its silver content; or

(3) Effect other appropriate methods in the event that the methods provided in paragraph (b)(1) or (2) of this section are not feasible.

(c) These films should be removed from inhabited buildings as soon as possible.

(d) Within 30 days after the destruction of the film as provided in this section, the head of the agency who directed its destruction shall submit a written statement to NARA (NIR), Washington, DC 20408, describing the film and showing when, where, and how the destruction was accomplished.

(e) This report has been cleared in accordance with 41 CFR part 201–45 and assigned Interagency Report Control Number 1095–NAR–AR.

[45 FR 5705, Jan. 24, 1980. Redesignated and amended at 50 FR 15723, 15725, Apr. 19, 1985; 51 FR 23538, June 30, 1986. Redesignated and amended at 55 FR 27433, July 2, 1990]

§ 1228.94 State of war or threatened war.

(a) Destruction of records outside the territorial limits of the continental United States is authorized whenever, during a state of war between the United States and any other nation or when hostile action by a foreign power appears imminent, the head of the agency that has custody of the records determines that their retention would be prejudicial to the interest of the United States, or that they occupy space urgently needed for military purposes and are without sufficient administrative, legal, research, or other value to warrant their continued preservation (44 U.S.C. 3311).

(b) Within 6 months after the destruction of any records under this authorization, a written statement describing the character of the records

and showing when and where the disposal was accomplished shall be submitted to NARA (NIR) by the agency official who directed the disposal.

[55 FR 27433, July 2, 1990]

Subpart G—Damage to, Alienation, and Unauthorized Destruction of Records

§ 1228.100 Responsibilities.

(a) The Archivist of the United States and the heads of Federal agencies are responsible for preventing the alienation or unauthorized destruction of records, including all forms of mutilation. Records may not be removed from Federal custody or destroyed without regard to the provisions of agency records schedules (SF 115) approved by NARA or the General Records Schedules issued by NARA (44 U.S.C. 2905, 3106, and 3303a).

(b) The heads of Federal agencies are responsible for ensuring that all employees are aware of the provisions of the law relating to unauthorized destruction, alienation, or mutilation of records, and should direct that any such action be reported to them.

[55 FR 27433, July 2, 1990]

§ 1228.102 Criminal penalties.

The maximum penalty for the willful and unlawful destruction, damage, or alienation of Federal records is a $2,000 fine, 3 years in prison, or both (18 U.S.C. 2071).

[55 FR 27434, July 2, 1990]

§ 1228.104 Reporting.

(a) The head of a Federal agency shall report any unlawful or accidental destruction, defacing, alteration, or removal of records in the custody of that agency to NARA (NIR) Washington, DC 20408. The report shall include:

(1) A complete description of the records with volume and dates if known;

(2) The office of origin;

(3) A statement of the exact circumstances surrounding the alienation, defacing, or destruction of the records;

(4) A statement of the safeguards established to prevent further loss of documentation; and

(5) When appropriate, details of the actions taken to salvage, retrieve, or reconstruct the records.

(b) This report has been cleared in accordance with 41 CFR part 201–45 and assigned Interagency Report Control Number 0285–NAR–AR.

(c) The Archivist of the United States will assist the head of the agency in contacting the Attorney General for the recovery of any unlawfully removed records.

[45 FR 5705, Jan. 24, 1980, as amended at 46 FR 60205, Dec. 9, 1981. Redesignated and amended at 50 FR 15723, 15725, Apr. 19, 1985; 51 FR 23538, June 30, 1986. Redesignated and amended at 55 FR 27434, July 2, 1990]

§ 1228.106 Exclusions.

Private or personal files are not governed by these provisions. 36 CFR 1222.20(d) provides the legal definition of personal papers and prescribes standards for their maintenance.

[45 FR 5705, Jan. 24, 1980. Redesignated and amended at 50 FR 15723, 15725, Apr. 19, 1985. Further redesignated at 55 FR 27433, July 2, 1990]

Subpart H—Transfer of Records from the Custody of One Executive Agency to Another

SOURCE: 45 FR 5705, Jan. 24, 1980, unless otherwise noted. Redesignated at 50 FR 15723, Apr. 19, 1985, and 55 FR 27433, July 2, 1990.

§ 1228.120 Authority.

The Archivist of the United States will issue regulations governing the transfer of records from the custody of one executive agency to another (44 U.S.C. 2908).

§ 1228.122 Approval.

No records shall be transferred from the custody of one executive agency to another without the prior written approval of the National Archives and Records Administration except as provided in § 1228.136.

§ 1228.124 Agency request.

The head of any executive agency may request the transfer of records to or from his or her agency. Approval

shall be requested by letter addressed to the National Archives (NIR), in which are included:

(a) A concise description of the records to be transferred, including the volume in cubic feet;

(b) A statement of the restrictions imposed on the use of records;

(c) A statement of the agencies and persons using the records and the purpose of this use;

(d) A statement of the current and proposed physical and organizational locations of the records; and

(e) A justification for the transfer including an explanation of why it is in the best interests of the Government.

[45 FR 5705, Jan. 24, 1980. Redesignated at 50 FR 15723, Apr. 19, 1985, and amended at 50 FR 26934, June 28, 1985. Redesignated and amended at 55 FR 27434, July 2, 1990]

§1228.126 Agency concurrences.

Copies of the concurrence or nonconcurrence in the transfer by the heads of any agencies concerned shall be attached to the agency request.

§1228.128 Records of terminated agencies.

Transfers of records of executive agencies whose functions are terminated or are in process of liquidation are expressly subject to this part 1228 and no such transfers shall be made except in accordance with its provisions.

§1228.130 Equipment.

Records storage equipment shall be transferred with the records contained therein in accordance with arrangements previously agreed to by the agencies concerned.

§1228.132 Costs of transfers.

Approved transfers shall be made without reimbursement to the agency of original custody for any cost involved, except when this reimbursement is previously agreed to by the agencies concerned.

§1228.134 Restrictions on use of records.

Whenever any records that are transferred are subject to restrictions upon their use imposed under a statute, Executive order, or agency determination, these restrictions shall continue in effect after the transfer. Restrictions imposed by agency determination may be removed by agreement between the agencies concerned.

§1228.136 Exceptions.

Prior written approval of NARA is not required when:

(a) Records are transferred to Federal records centers or the National Archives in accordance with subparts I and J.

(b) Records are loaned for official use.

(c) The transfer of records or functions or both is required by statute, Executive Order, Presidential reorganization plan, or Treaty, or by specific determinations made thereunder.

(d) The records are transferred between two components of the same Executive department.

(e) Records accessioned by the National Archives, later found to lack sufficient value for continued retention by the National Archives are governed exclusively for further disposition in accordance with §1228.200.

[55 FR 27434, July 2, 1990]

Subpart I—Transfer of Records to Federal Records Centers

§1228.150 Authority.

The Archivist of the United States is authorized to establish, maintain, and operate records centers for the storage, processing, and servicing of records for Federal agencies (44 U.S.C. 2907). These centers are known as Federal records centers. In addition, a National Personnel Records Center is maintained for designated records of the Department of Defense and the Office of Personnel Management and for other designated records pertaining to former Federal civilian employees. A list of these records centers follows:

Area served	Federal records center
District of Columbia, Maryland, West Virginia, and Virginia (except U.S. Court records).	Washington National Records Center, 4205 Suitland Rd., Washington, DC 20409–0002.
Designated records of the Military Departments and the U.S. Coast Guard.	National Personnel Records Center (Military Personnel Records), 9700 Page Ave., St. Louis, MO 63132–5100.
The entire Federal Government personnel records of separated Federal employees; medical and pay records of all Federal employees; designated medical records of Army and Air Force military personnel and their dependents; and records of agencies in the St. Louis area (Missouri only), of Scott AFB, IL, and of the Memphis Service Center, Internal Revenue Service.	National Personnel Records Center (Civilian Personnel Records), 111 Winnebago St., St. Louis, MO 63118–4199.
National collection of long term records	Federal Records Center, 100 Dan Fox Dr., Pittsfield, MA 01201–8230.
Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.	Federal Records Center, 380 Trapelo Rd., Waltham, MA 02154–6399.
New York, New Jersey, Puerto Rico, and the Virgin Islands	Federal Records Center, Military Ocean Terminal, Bldg. 22, Bayonne, NJ 07002–5388.
Delaware, Pennsylvania, and U.S. court records for Maryland, Virginia, and West Virginia.	Federal Records Center, 14700 Townsend Rd., Philadelphia, PA 19154–1025.
North Carolina, South Carolina, Tennessee, Mississippi, Alabama, Georgia, Florida, and Kentucky.	Federal Records Center, 1557 St. Joseph Ave., East Point, GA 30344–2593.
Illinois, Wisconsin, Minnesota, and U.S. court records for Indiana, Michigan, and Ohio.	Federal Records Center, 7358 S. Pulaski Rd., Chicago, IL 60629–5898.
Indiana, Michigan, and Ohio except for U.S. court records	Federal Records Center, 3150 Springboro Drive, Dayton, OH 45439–1883.
Kansas, Iowa, Nebraska, and Missouri except greater St. Louis area.	Federal Records Center, 2312 E. Bannister Rd., Kansas City, MO 64131–3060.
Texas, Oklahoma, Arkansas, Louisiana, and New Mexico	Federal Records Center, P.O. Box 6216, Fort Worth, TX 76115–0216.
Colorado, Wyoming, Utah, Montana, North Dakota, and South Dakota.	Federal Records Center, Denver Federal Center Bldg. 48, P.O. Box 25307, Denver, CO 80225–0307.
Nevada except Clark County, California except southern California, American Samoa.	Federal Records Center, 1000 Commodore Dr., San Bruno, CA 94066–2350.
Arizona; Clark County, Nevada, and southern California (counties of San Luis Obispo, Kern, San Bernadino, Santa Barbara, Ventura, Orange, Los Angeles, Riverside, Inyo, Imperial, and San Diego).	Federal Records Center, 24000 Avila Rd., P.O. Box 6719, Laguna Niguel, CA 92607–6719.
Washington, Oregon, Idaho, Alaska, Hawaii, and Pacific Ocean area (except American Samoa).	Federal Records Center, 6125 Sand Point Way NE., Seattle, WA 98115–7999.

[45 FR 5705, Jan. 24, 1980. Redesignated and amended at 50 FR 15723, 15725, Apr. 19, 1985. Redesignated at 55 FR 27433, July 2, 1990; 57 FR 21742, May 22, 1992; 61 FR 19554, May 2, 1996]

§ 1228.152 Procedures for transfers to Federal records centers.

This section prescribes general procedures for the transfer of records to Federal records centers. For greater detail consult the NARA Records Management Handbook, Federal Archives and Records Centers (NSN 7610–00–298–6904).

(a) Federal records centers will accept for transfer any records of Federal agencies, subject to the following conditions:

(1) The records are properly scheduled. If the records are not scheduled, or if the records are scheduled for final disposition after the occurrence of an event at some unspecified future time (contingent), an exception to this regulation must be obtained by submitting a request, in writing, to the National Archives (NC), Washington, DC 20408.

(i) Requests for exceptions for unscheduled records will be considered only if an SF 115 has been submitted and accepted in accordance with the provisions of subpart C. The request must include information on the volume of the records and the anticipated reference activity.

(ii) Requests for exceptions for contingent records must include the series title, records disposition schedule and item numbers, approximate volume accumulated annually, periodic review interval for disposal and justification for retirement to a Federal records center.

(2) The records are not authorized for immediate disposal and transportation costs are not in excess of the resulting savings.

(3) Facilities for storing and providing reference on the records are available.

(b) Priority will be given to the removal of records from office space, from space convertible to office use, from leased space, and from filing equipment that can be reused.

(c) Inquiries concerning the appropriateness of transfers may be sent to the Director of the Federal records center serving the area in which the records are located. Inquiries shall specify the nature and quantity of the records proposed for transfer.

(d) Tranfers of records on an agency-wide basis may be initiated by submitting a request to National Archives (NC), Washington, DC 20408. Requests shall specify the nature and quantity of the records proposed for transfer.

(e) Transfers to Federal records centers shall be preceded by the submission of Standard Form 135, Records Transmittal and Receipt.

(1) A separate accession number is required for each series of records listed on the Standard Form 135. An accession consists of records in one series that have the same disposition authority and disposition date.

(2) Standard Forms 135 proposing the transfer of the following categories of records must contain, either in block 6F of the form or on attached plain paper, a folder title list of the box contents or equivalent detailed records description, and each accession must be listed on a separate SF 135:

(i) Records scheduled for permanent retention;

(ii) Unscheduled records (if authorized for transfer by NARA in accordance with paragraph (a)(1)(i) of this section) which have been proposed for permanent retention on the pending SF 135;

(iii) Records which are scheduled for sampling or selecting files for permanent retention by the National Archives; and

(iv) Records for which the agency has implemented the sampling or selection technique specified in the agency records control schedule to separate permanent and disposable records.

(3) Permanent microforms from offices in the Washington, DC, area are stored at the Washington National Records Center. Permenent microforms from all other offices are stored at the National Personnel Records Center—Civilian Personnel Records. Submit Standard Forms 135 proposing the transfer of permanent microforms to the appropriate center. (See 36 CFR 1230.22 for inspection requirements for microforms transferred to a Federal records center.)

(4) Agencies shall prepare an original and two copies of the Standard Form 135, retain one copy for filing purposes, and send the original and one copy to the Federal records center to arrive at least 10 workdays before the desired date of the records shipment. The records center will review the Standard Form 135 for completeness to determine the appropriateness of the transfer. If the transfer is approved, the records center may annotate block 6J of the Standard Form 135 with the Federal records center shelf location where each accession will be stored. The Federal records center returns a copy of the Standard Form 135 to the agency indicating that the records may be transferred. This copy shall be placed in the first carton of the shipment when the records are shipped to the center.

(f) The physical transfer of records to a records center should be accomplished as soon as possible after the agency has received the annotated copy of the Standard Form 135. If NARA has not received the shipment within 90 days after transmittal of the annotated SF 135 to the agency (120 days for agencies located outside the continental United States), it will return the SF 135 to the agency. The agency will then have to resubmit the accessioning paperwork.

(g) Upon receipt of the records shipment at the center, the cartons are matched against the copy of the Standard Form 135 submitted with the transfer. That copy is signed by center officials and returned to the agency for its files. Any changes in location designation will be noted on this receipt copy before it is returned to the agency. This is the only receipt the center will

provide for transferred material, including records having security classifications up to and including ''Secret.''

[45 FR 5705, Jan. 24, 1980, as amended at 48 FR 2776, Jan. 21, 1983; 49 FR 33253, Aug. 22, 1984. Redesignated and amended at 50 FR 15723, 15725, Apr. 19, 1985; 50 FR 26934, June 28, 1985; 54 FR 3778, Jan. 26, 1989. Redesignated and amended at 55 FR 27434, July 2, 1990; 56 FR 14026, Apr. 5, 1991; 56 FR 15134, Apr. 15, 1991; 56 FR 23648, May 23, 1991]

§ 1228.154 Transfers to the National Personnel Records Center (NPRC).

General Records Schedules 1 and 2 specify that certain Federal civilian personnel, medical, and pay records must be centrally stored at the National Personnel Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118.

(a) The following four types of records are so specified:

(1) Official personnel folders of separated Federal civilian employees;

(2) Service record cards of employees who separated or transferred on or before December 31, 1947;

(3) Audited individual earnings and pay cards and comprehensive payrolls; and

(4) Employee medical folders of separated Federal civilian employees.

(b) The official personnel folder (OPF) and the employee medical folder (EMF) must be forwarded to the National Personnel Records Center at the same time. Only x rays that will easily fit inside the EMF without folding will be accepted by the Center. X rays over 11¾″×10″ in size that are required for long-term retention must be retained by the agency. The agency must place a notice in the EMF indicating how a subsequent Federal employer may obtain the oversized x rays. The OPF and the EMF must be labeled in the upper right corner to identify the employee by name (last name first), date of birth, and social security number only. Temporary records must be removed from the folders before transmittal. Agencies must make every effort to locate all long-term documents required to be part of the folders and to file them before the folders are transferred. Small quantities of folders (OPF's and EMF's) must be mailed in a sealed envelope. Larger quantities must be mailed in a carton. No advance notification of transmittal or SF 135, Records Transmittal and Receipt, is required from the transferring agency, and no receipt will be furnished by the Center.

(c) A cover letter must accompany loose personnel or medical documents forwarded for interfiling in an OPF or EMF previously sent to the Center. Only those documents required for long-term retention may be forwarded for interfiling. Each document must contain the former employee's current name and name under which formerly employed, if different; date of birth; social security number; and date of separation. Letters accompanying loose personnel documents must clearly identify the agency personnel office and address. Letters accompanying loose medical documents must include the name and address of the agency's designated medical records manager (i.e., medical, health, safety, or personnel officer or other designee). Medical documents required to be part of the EMF may not be sent for interfiling in agency accessions retired prior to September 1, 1984. Such documents must be placed in an EMF and sent to the National Personnel Records Center in accordance with the instructions in paragraph (b) of this section if the employee has left Federal service.

(d) Transfer of fiscal records must be in accordance with the procedures outlined in § 1228.152.

(e) Standard Form 127, Request for Official Personnel Folder (Separated Employee), must be used by agencies when requesting transmission of personnel folders of separated employees. Standard Form 184, Request for Employee Medical Folder (Separated Employee), must be used when requesting medical folders. The name and address of the agency's designated medical records manager must be shown on the request form. Use of the appropriate request form will help ensure prompt transmission of the desired folder. Each request must be submitted in duplicate.

(f) Occupational medical records of separated Federal civilian employees who were not in positions subject to civil service rules and regulations may be retired if the records are properly

scheduled and if access procedures are furnished for use by the Center.

(1) It is recommended that a folder similar to the SF 66–D, Employee Medical Folder, but different in color, be used for medical records of non-civil-service employees.

(2) If the records are not scheduled, an exception may be obtained by submitting a request to the Assistant Archivist for Federal Records Centers, National Archives and Records Administration (NC), Washington, DC 20408. The request must identify the location(s) of records and the volume proposed for transfer. The request will be considered only if an SF 115, Request for Records Disposition Authority, has been received by NARA's Records Appraisal and Disposition Division (NIR).

(g) Medical records of non-Federal employees (e.g., contractor employees and student volunteers) must be disposed of in accordance with the approved agency disposition schedule.

[53 FR 13408, Apr. 25, 1988. Redesignated at 55 FR 27433, July 2, 1990]

§1228.156 Transferring vital records to Federal records centers.

NARA provides for the storage and protection of rights and interests vital records under the dispersed concept as described in part 1236. The facilities of all NARA Federal records centers (FRC) without regard to geographical location are now available for agencies desiring to store these records. Each NARA Federal records center has areas with suitable temperature and humidity controls allowing the safe storage of paper records, magnetic tape, and photographic film. Agencies may make arrangements through the National Archives (NC), Washington, DC 20408, for the transfer of indispensable vital records to these depositories and for their use.

[45 FR 5705, Jan. 24, 1980. Redesignated at 50 FR 15723, Apr. 19, 1985, and 55 FR 27433, July 2, 1990]

§1228.160 Release of equipment.

File equipment received with the transfer of records to a Federal records center will normally be disposed of in accordance with applicable excess personal property regulations. An agency desiring return of the equipment should make this request before transfer of the records to the records center.

[45 FR 5705, Jan. 24, 1980. Redesignated at 50 FR 15723, Apr. 19, 1985, and 55 FR 27433, July 2, 1990]

§1228.162 Use of records in Federal records centers.

Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with 44 U.S.C. 3103 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record. The Archivist of the United States will not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with existing laws.

(a) Standard Form 180, Request Pertaining to Military Records, must be used by Federal agencies to obtain information from military service records in the National Personnel Records Center (Military Personnel Records). Agencies may furnish copies of that form to the public to aid in inquiries. Members of the public and nongovernmental organizations also may obtain copies of Standard Form 180 by submitting a written request to the National Personnel Records Center (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132.

(b) Requests for Federal civilian personnel files and medical files from the National Personnel Records Center must be made in accordance with §1228.154. Requests for medical records retired to other Federal Records Centers prior to September 1, 1984, must be made on Optional Form 11, Reference Request—Federal Records Centers. The request must include the name and address of the agency's designated medical records manager.

(c) For any other requests, agencies should use Optional Form 11, Reference Request—Federal Records Centers, or a form jointly designated by that agency and NARA.

[45 FR 5707, Jan. 24, 1980. Redesignated at 50 FR 15723, Apr. 19, 1985, and amended at 53 FR 13409, Apr. 25, 1988. Redesignated at 55 FR 27433, July 2, 1990]

§ 1228.164 Disposal clearances for records in Federal records centers.

(a) Records at the National Personnel Records Center covered by General Records Schedules 1 and 2 will be destroyed in accordance with those schedules without further agency clearance.

(b) Contingent records (records of Federal agencies scheduled for destruction after occurrence of an event at some unspecified time in the future) held by Federal records centers will be destroyed upon receipt of agency concurrence in response to NA Form 13000, Agency Review for Contingent Disposal, or other written concurrence. If the agency does not respond to the review notice within 90 calendar days, the records center may return the records to the agency and reject future transfers of that records series.

(c) Other records of Federal agencies held by Federal records centers will be destroyed with the concurrence of the agency concerned by use of NA Form 13001, Notice of Intent to Destroy Records, or other written concurrence for each disposal action. If an agency is notified of the eligibility of its records for disposal and the agency fails to respond to this notification within 90 calendar days, the records will be destroyed in accordance with the appropriate disposition authority. If an agency does not concur in the scheduled destruction of an accession, the agency may request extended retention of the records for up to an additional 6 months by submitting written justification, including a new disposal date, within 90 days to the records center director. Further extensions must be requested in accordance with § 1228.54 of this part.

[45 FR 5705, Jan. 24, 1980, as amended at 49 FR 6371, Feb. 21, 1984; 49 FR 36502, Sept. 18, 1984. Redesignated and amended at 50 FR 15723, 15725, Apr. 19, 1985. Redesignated and amended at 55 FR 27434, July 2, 1990; 61 FR 19555, May 2, 1996]

Subpart J—Transfer of Records to the National Archives

§ 1228.180 Authority.

(a) *Transfer of records.* The Archivist of the United States is authorized by 44 U.S.C. 2107 to:

(1) Accept for deposit with the National Archives of the United States the records of a Federal agency or of the Congress determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the U.S. Government; and

(2) Direct and effect the transfer to the National Archives of the United States of Federal agency records that have been in existence for more than 30 years and that have been determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the U.S. Government.

(b) *Custody of records transferred.* Under 44 U.S.C. 2108, the Archivist of the United States is responsible for the custody, use, and withdrawal of records transferred to him.

(c) *Transferred records subject to statutory or other restrictions.* When records, the use of which is subject to statutory limitations and restrictions, are so transferred, permissive and restrictive statutory provisions concerning the examination and use of records applicable to the head of the transferring agency are applicable to the Archivist of the United States and the employees of the National Archives and Records Administration.

[54 FR 2111, Jan. 19, 1989. Redesignated at 55 FR 27433, July 2, 1990, as amended at 57 FR 22432, May 28, 1992]

§ 1228.182 Types of records to be transferred.

(a) *General.* Records that have been determined by the Archivist of the United States to have sufficient historical or other value to warrant preservation; i.e., appraised by NARA and identified as permanent records, are normally transferred to the National Archives of the United States when:

(1) They are 30 years old; or

(2) At any age when:

(i) The originating agency no longer needs to use the records for the purpose for which they were created or in its regular current business; or

(ii) Agency needs will be satisfied by use of the records in NARA research rooms or by copies of the records; and restrictions on the use of records are acceptable to NARA and do not violate

the Freedom of Information Act (5 U.S.C. 552). Records appraised as permanent that are not yet eligible for transfer because of agency needs or restrictions may be stored in a Federal records center pending transfer. (See subpart I of this part.)

(b) *Archival depositories.* NARA reserves the right to determine and change the archival depository in which records transferred to the National Archives of the United States are stored. Such determinations are normally made as follows:

(1) *Presidential libraries.* Records appropriate for preservation in a Presidential library because they can most effectively be used in conjunction with materials already in that library.

(2) *Regional Archives.* (i) Records of field offices of Federal agencies, except for records of agency field offices located in the Washington, DC area;

(ii) Records including both headquarters and field office records of regional agencies such as the Tennessee Valley Authority; and

(iii) Other records determined by NARA to be of primarily regional or local interest.

(3) *National Archives Building and other Washington, DC area depositories.* (i) Records of Washington, DC area field offices of Federal agencies and other records relating to the District of Columbia and the Washington, DC area, such as records of the National Capital Planning Commission;

(ii) All other records not deposited in a Presidential library or Regional Archives.

[42 FR 57315, Nov. 2, 1977, as amended at 46 FR 60206, Dec. 9, 1981. Redesignated and amended at 50 FR 15723, 15725, Apr. 19, 1985. Redesignated at 55 FR 27433, July 2, 1990, as amended at 57 FR 22432, May 28, 1992]

§1228.183 Certification for retention of records in agency custody.

(a) Permanent records shall be transferred to the National Archives of the United States when the records have been in existence for more than 30 years unless the head of the agency which has custody of the records certifies in writing to the Archivist that the records must be retained in agency custody for use in the conduct of the regular current business of the agency. Records that are scheduled in a NARA-approved records schedule to be transferred to the National Archives of the United States after a specified period of time are subject to the certification requirement only if the records are not transferred as scheduled.

(b) In order to certify that records must be retained for the conduct of regular current business, an agency should consider the following factors:

(1) Character of use (to be retained by an agency, records should be used for the normal routine business of the agency at the time of certification);

(2) Frequency of use (to be retained by an agency, records should be used more than one time per month per file unit); and,

(3) Preservation of the records (to be retained by an agency, permanently valuable records should be preserved in accordance with NARA guidelines).

(c) The written certification of need of a series of 30-year-old records for current agency business must:

(1) Include a comprehensive description and location of records to be retained;

(2) Cite the NARA approved authority for the disposition of the records if scheduled (SF 115 item number);

(3) Describe the current business for which the records are required;

(4) Estimate the length of time the records will be needed by the agency for current business (if no date is provided by the agency, approved certification requests will be effective for a maximum of five years);

(5) Explain why the current needs of the agency cannot be met by the services NARA provides for records deposited with the National Archives of the United States; and,

(6) If the records are being retained to enable the agency to provide routine public reference, cite the statute authorizing this agency activity.

(d) NARA will not accept an agency certification that a specific body of records over 30 years old, regardless of physical form or characteristics, is being used for the ''conduct of the regular current business,'' if that agency is retaining such records primarily to:

(1) Provide to persons outside the agency access which can be provided by NARA; or

(2) Function as an agency archives, unless specifically authorized by statute or NARA.

[57 FR 22433, May 28, 1992]

§ 1228.184 Audiovisual records.

The following types of audiovisual records appraised as permanent shall be transferred to the National Archives as soon as they become inactive or whenever the agency cannot provide proper care and handling of the records, including adequate storage conditions, to facilitate their preservation by the National Archives (see part 1232 of this chapter). In general the physical types described below constitute the minimum record elements for archival purposes that are required to provide for future preservation, duplication, and reference needs.

(a) *Motion pictures.* (1) Agency-sponsored or produced motion picture films (e.g., public information films) whether for public or internal use:

(i) Original negative or color original plus separate optical sound track;

(ii) Intermediate master positive or duplicate negative plus optical track sound track; and,

(iii) Sound projection print and video recording, if both exist.

(2) Agency-acquired motion picture films: Two projection prints in good condition or one projection print and one videotape.

(3) Unedited footage, outtakes and trims (the discards of film productions) that are properly arranged, labeled, and described and show unstaged, unrehearsed events of historical interest or historically significant phenomena:

(i) Original negative or color original; and

(ii) Matching print or videotape.

(b) *Still pictures.* (1) For black-and-white photographs, an original negative and a captioned print although the captioning information can be maintained in another file such as a data base if the file number correlation is clear. If the original negative is nitrate, unstable acetate, or glass based, a duplicate negative on a polyester base is also needed.

(2) For color photographs, the original color negative, color transparency, or color slide; a captioned print of the original color negative; and/or captioning information as described above if for an original color transparency or original color slide; and a duplicate negative, or slide, or transparency, if they exist.

(3) For slide sets, the original and a reference set, and the related audio recording and script.

(4) For other pictorial records such as posters, original art work, and filmstrips, the original and a reference copy.

(c) *Sound recordings.* (1) Disc recordings:

(i) For conventional disc recordings, the master tape and two disc pressings of each recording, typically a vinyl copy for playback at 33⅓ revolutions per minute (rpm).

(ii) For compact discs, the origination recording regardless of form and two compact discs.

(2) For analog audio recordings on magnetic tape (open reel, cassette, or cartridge), the original tape, or the earliest available generation of the recording, and a subsequent generation copy for reference. Section 1232.30(d) of this subchapter requires the use of open-reel analog magnetic tape for original audio recordings.

(d) *Video recordings.* (1) For videotape, the original or earliest generation videotape and a copy for reference. Section 1232.30(c) of this subchapter requires the use of industrial-quality or professional videotapes for use as originals, although VHS copies can be transferred as reference copies.

(2) For video discs, the premaster videotape used to manufacture the video disc and two copies of the disc. Video discs that depend on interactive software and nonstandard equipment may not be acceptable for transfer.

(e) *Finding aids and production documentation.* The following records shall be transferred to the National Archives with the audiovisual records to which they pertain.

(1) Existing finding aids such as data sheets, shot lists, continuities, review sheets, catalogs, indexes, list of captions, and other documentation that are helpful or necessary for the proper identification, or retrieval of audiovisual records. Agencies should contact the Nontextual Archives Division, or

its appropriate audiovisual branch, to determine the type of hardware and software that is currently acceptable for transfer to the National Archives as an agency electronic finding aid that will accompany its audiovisual records. In general, however, agencies must transfer two copies of the electronic finding aid, one in its native format with its field structure documented, and a second copy in a contemporary format available at the time of transfer that NARA will be able to support and import to its database.

(2) Production case files or similar files that include copies of production contracts, scripts, transcripts, and appropriate documentation bearing on the origin, acquisition, release, and ownership of the production.

[61 FR 32336, June 24, 1996]

§1228.186 Cartographic and architectural records.

The following classes of cartographic and architectural records appraised as permanent should be transferred to the National Archives as soon as they become inactive or whenever the agency cannot provide the proper care and handling of the materials to guarantee their preservation.

(a) *Maps and charts.* (1) Manuscript maps; printed and processed maps on which manuscript changes, additions, or annotations have been made for record purposes or which bear manuscript signatures to indicate official approval; and single printed or processed maps that have been attached to or interfiled with other documents of a record character or in any way made an integral part of a record.

(2) Master sets of printed or processed maps in the custody of the agency by which they were issued. Such master sets should be kept segregated from the stock of maps held for distribution and from maps received from other agencies. A master set should include one copy of each edition of a printed or processed map issued.

(3) Computer-related and computer-plotted maps that cannot be reproduced by the National Archives because of destruction of the magnetic tapes or other stored data or because of the unavailability of ADP equipment.

(4) Index maps, card indexes, lists, catalogs, or other finding aids that may be helpful in using the maps transferred.

(5) Records related to preparing, compiling, editing, or printing maps, such as manuscript field notebooks of surveys, triangulation and other geodetic computations, and project folders containing specifications to be followed and appraisals of source materials to be used.

(b) *Aerial photography and remote sensing imagery.* (1) Vertical and oblique negative aerial film, conventional aircraft.

(2) Annotated copy negatives, internegatives, rectified negatives, and glass plate negatives from vertical and oblique aerial film, conventional aircraft.

(3) Annotated prints from aerial film, conventional aircraft.

(4) Infrared, ultraviolet, multispectral (multiband), video, imagery radar, and related tapes, converted to a film base.

(5) Indexes and other finding aids in the form of photo mosaics, flight line indexes, coded grids, and coordinate grids.

(c) *Architectural and related engineering drawings.* (1) Design drawings, preliminary and presentation drawings, and models which document the evolution of the design of a building or structure.

(2) Master sets of drawings which document the condition of a building or structure in terms of its initial construction and subsequent alterations. This category includes final working drawings, ''as-built'' drawings, shop drawings, and repair and alteration drawings.

(3) Drawings of repetitive or standard details of one or more buildings or structures.

(4) ''Measured'' drawings of existing buildings and original or photocopies of drawings reviewed for approval.

(5) Related finding aids and specifications to be followed.

[42 FR 57315, Nov. 2, 1977. Redesignated at 50 FR 15723, Apr. 19, 1985, and 55 FR 27433, July 2, 1990, as amended at 57 FR 22433, May 28, 1992]

§ 1228.188 Electronic records.

(a) *Magnetic tape.* (1) Computer magnetic tape is a fragile medium, highly susceptible to the generation of error by improper care and handling. To ensure that permanently valuable information stored on magnetic tape is preserved, Federal agencies should schedule files for disposition as soon as possible after the tapes are written. When NARA has determined that a file is worthy of preservation, the agency should transfer the file to the National Archives as soon as it becomes inactive or whenever the agency cannot provide proper care and handling of the tapes (see part 1234 of this chapter) to guarantee the preservation of the information they contain.

(2) Agencies shall transfer electronic records to the National Archives either on open reel magnetic tape or on tape cartridges. Open reel magnetic tape shall be on one-half inch 7 or 9 track tape reels recorded at 800, 1600, or 6250 bpi. Tape cartridges shall be 18 track 3480-class cartridges recorded at 37,871 bpi. The data shall be written in ASCII or EBCDIC with all extraneous control characters removed from the data (except record length indicators for variable length records, or marks designating a datum, word, field, block or file), blocked at not higher than 32,760 bytes per block. The open reel magnetic tapes or the tape cartridges on which the data are recorded shall be new or recertified tapes (see part 1234 of this chapter) which have been passed over a tape cleaner before writing and shall be rewound under controlled tension.

(b) *Other magnetic media.* When an electronic file that has been designated for preservation by NARA is maintained on a direct access storage device, the file shall be written on an open reel magnetic tape or on a magnetic tape cartridge that meets the specifications in paragraph (a)(2) of this section. This tape copy shall be transferred to the National Archives.

(c) *Documentation.* Documentation adequate for servicing and interpreting electronic records that have been designated for preservation by NARA shall be transferred with them. This documentation shall include, but not necessarily be limited to completed NARA Form 14097, Technical Description for Transfer of Electronic Records, or its equivalent. Where it has been necessary to strip data of its extraneous control characters (see paragraph (a)(2) of this section), the codebook specifications defining the data elements and their values must match the new format of the data. Guidelines for determining adequate documentation may be obtained from the Office of Records Administration (NI), National Archives and Records Administration, Washington, DC 20408.

[57 FR 22433, May 28, 1992]

§ 1228.190 Transfer of records.

(a) *Policy.* Federal records will be transferred to the National Archives of the United States only if they are listed as permanent on an SF 115, Request for Records Disposition Authority approved by NARA since May 14, 1973, or if they are accretions (continuations of series already accessioned) to holdings of the National Archives. Transfers are initiated by submission of an SF 258, Request to Transfer, Approval and Receipt of Records to the National Archives of the United States.

(b) *Initiation of request to transfer.* (1) NARA will provide the SF 258 for records scheduled for immediate transfer on an SF 115 approved after September 30, 1987. NARA will send the SF 258 to the agency with the approved SF 115. The agency will sign and return the SF 258 to the address indicated on the form.

(2) *Future transfers of series in agency space.* Sixty days before the scheduled date of transfer to the National Archives of the United States, the transferring agency shall submit an SF 258 to the Office of the National Archives (NN) or to the appropriate Regional Archives if so provided on the SF 115. NARA will determine whether specified restrictions are acceptable and whether adequate space and equipment are available.

(3) *Future transfers of series in Federal Records Centers.* NARA will initiate the SF 258 and send it to the agency 90 days before the scheduled transfer date. The agency shall approve or disapprove the SF 258 and send it to the address indicated on the form 60 days before the scheduled transfer date.

(c) *Physical and legal transfer.* The Office of the National Archives will provide shipping or delivery instructions to the agency or Federal Records Center. Legal custody of the records passes to NARA when the NARA official signs the SF 258 acknowledging receipt of the records.

[52 FR 34134, Sept. 9, 1987. Redesignated at 55 FR 27433, July 2, 1990, as amended at 57 FR 22432, 22434, May 28, 1992]

§1228.192 Restrictions on transferred records.

(a) *General.* Before records are transferred to the National Archives, the head of an agency may state in writing restrictions that appear to him or her to be necessary or desirable in the public interest on the use or examination of records. The head of an agency must, however, justify and cite the statute or Freedom of Information Act exemption (5 U.S.C. 552(b)) that authorizes placing restrictions on the use or examination of records being considered for transfer. If the Archivist agrees, restrictions will be placed on the records.

(b) *Records less than 30 years old.* Unless required by law, the Archivist will not remove or relax restrictions placed upon records less than 30 years old without the concurrence in writing of the head of the agency from which the material was transferred or of his or her successor, if any. If the transferring agency has been terminated and there is no successor in function, the Achivist is authorized to relax, remove or impose restrictions in the public interest.

(c) *Records 30 or more years old.* After the records have been in existence for 30 years or more, statutory or other restrictions referred to in this section shall expire unless the Archivist determines, after consulting with the head of the transferring agency, that the restrictions shall remain in force for a longer period. Such restrictions may be extended by the Archivist beyond 30 years only for reasons consistent with standards established in relevant statutory law, including the Freedom of Information Act (5 U.S.C. 552). Restrictions are systematically extended beyond 30 years where agencies advise NARA on the SF 258 that a particular category of records requires such protection. NARA has identified specific categories of records, including classified information and information that would invade the privacy of an individual, which may require extended protection beyond 30 years. See 36 CFR part 1256.

[57 FR 22434, May 28, 1992]

§1228.194 Records subject to the Privacy Act of 1974.

For records constituting systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), the agency shall attach to the SF 258 the most recent agency Privacy Act system notice covering the records.

[57 FR 22434, May 28, 1992]

§1228.196 Release of equipment.

Equipment received with the transfer of records to the National Archives will, when emptied, normally be retained by NARA or disposed of in accordance with applicable excess property regulations, unless the transferring agency requests its return.

[42 FR 57316, Nov. 2, 1977. Redesignated at 50 FR 15723, Apr. 19, 1985, and 55 FR 27433, July 2, 1990]

§1228.198 Use of records transferred to the National Archives.

(a) In accordance with 44 U.S.C. 2108, restrictions lawfully imposed on the use of transferred records will be observed and enforced by NARA to the extent to which they do not violate 5 U.S.C. 552. The regulations in subchapters B and C of this title, insofar as they relate to the use of records in the National Archives of the United States apply to official use of the records by Federal agencies as well as to the public.

(b) In instances of demonstrated need, and subject to any restrictions on their use, records deposited in the National Archives may be borrowed for official use outside the building in which they are housed by Federal agencies and the Congress, subject to the following conditions:

(1) Documents of high intrinsic value shall not be removed from the building in which they are housed except with the written approval of the Archivist;

(2) Records will not be loaned to enable agencies to answer routine reference inquiries from other agencies or the public;

(3) Records in fragile condition, or otherwise deteriorated to an extent that further handling will endanger them, will not be loaned;

(4) Each official who borrows records shall provide a receipt for them at the time they are delivered and shall be responsible for their prompt return upon the expiration of the loan period specified by NARA; and

(5) Each official who borrows computer magnetic tapes shall assume responsibility for proper care and handling of the tapes.

[42 FR 57316, Nov. 2, 1977. Redesignated at 50 FR 15723, Apr. 19, 1985, and amended at 50 FR 26935, June 28, 1985. Redesignated at 55 FR 27433, July 2, 1990, as amended at 57 FR 22434, May 28, 1992]

§ 1228.200 Disposal clearances.

No records of a Federal agency still in existence will be disposed of by NARA except with the concurrence of the agency concerned or as authorized on Standard Form 258, Request to Transfer—Approval and Receipt of Records to National Archives of the United States.

[42 FR 57316, Nov. 2, 1977. Redesignated at 50 FR 15723, Apr. 19, 1985, and 55 FR 27433, July 2, 1990]

Subpart K—Agency Records Centers

§ 1228.220 Authority.

Federal agencies are authorized to maintain and operate records centers for the storage, servicing, and disposal of their own noncurrent records when these centers are approved by the Archivist (44 U.S.C. 3103). Centers operated by Federal agencies are referred to in this subchapter B as ''agency records centers.''

[47 FR 34787, Aug. 11, 1982. Redesignated at 50 FR 15723, Apr. 19, 1985, and 55 FR 27433, July 2, 1990]

§ 1228.222 Facility standards for agency records centers.

Inspection of agency records centers by NARA shall include an evaluation of the agency's compliance with the facility standards for records centers specified below:

(a) *General.* (1) The facility should be a single-story building, at or above grade level, constructed with noncombustible materials.

(2) A floor load limit shall be established for the records storage area by a structural engineer. The allowable load limit shall be posted in a conspicuous place and shall not be exceeded.

(3) Steel shelving or other open-shelf records storage equipment shall be braced to prevent collapse under full load in accordance with Federal Specifications AS–S–271 or AA–S–1047. The records storage height shall not exceed 15 feet. Agencies operating records centers which have storage heights in excess of 15 feet may apply in writing to the National Archives (NC), Washington, DC 20408, for an exemption to this requirement. If a request for exemption is denied, agencies will be required to remodel existing centers to meet the 15-foot requirement.

(4) The area occupied by the center shall be equipped with an anti-intrusion alarm system, or equivalent, to protect against unlawful entry after hours.

(b) *Fire safety*. (1) All walls separating records areas from each other and from other storage areas in the building shall be 4-hour fire resistant. The records areas shall not exceed 40,000 square feet each. Two-hour-rated firewalls shall be provided between the records storage areas and other auxiliary spaces. Penetrations in the walls shall not reduce the specified fire resistance ratings.

(2) Openings in firewalls separating records storage areas shall be avoided as far as possible but if openings are necessary they shall be protected by self-closing or automatic Class A firedoors, or equivalent, on each side of the wall openings.

(3) Roof support structures that cross or penetrate firewalls shall be cut and supported independently on each side of the firewall.

(4) If firewalls are erected with expansion joints, the joints shall be protected to their full height with No. 10 iron astragals lapping the opening on each side of the firewall.

(5) Building columns in the records storage areas shall be 2-hour fire resistant from the floor to the point where they meet the ceiling or roof framing system.

(6) Automatic roof vents shall not be designed into new or existing buildings.

(7) Where lightweight steel roof or floor supporting members (e.g., bar joists having top chords with angles 2 by 1½ inches or smaller, ¼-inch thick or smaller, and 13/16-inch or smaller web diameters) are present, they shall be protected either by applying a 10 minute fire resistive coating to the top chords of the joists, or by retrofitting the sprinkler system with large drop sprinkler heads. Retrofitting may require modifications to the piping system to ensure that adequate water capacity and pressure are provided in the areas to be protected with these large drop sprinkler heads.

(8) Furnace or boiler rooms shall be separated from records storage areas by 4-hour-rated firewalls, with no openings directly from these rooms to the records storage areas. No open flame (oil or gas) equipment or unit heaters shall be installed or used in any records storage area.

(9) The arrangement of the records storage equipment shall be such that there shall be no dead-end aisles. Equipment rows running perpendicular to the wall shall terminate at least 18 inches from the wall.

(10) No oil-type electrical transformers, regardless of size, except thermally protected devices included in fluorescent light ballasts, shall be installed in the records storage areas. All electrical wiring shall be in metal conduit, except that armored cable may be used where flexible connections to light fixtures are required.

(11) All records storage and adjoining areas shall be protected by automatic wetpipe sprinklers. Automatic sprinklers are specified herein because they provide the most effective fire protection for high-piled storage of paper records on open-type shelving.

NOTE: Other automatic extinguishing systems or protective measures may provide an acceptable level of fire-loss risk depending upon specific conditions, such as type or importance of the records, the type and stacking height of the storage equipment used; or how the space is designed, controlled, and operated (as well as its value). Agencies may elect to use alternate standards, as appropriate to their needs, such as those issued by the National Fire Protection Association (see NFPA 13, NFPA 231, NFPA 231C, NFPA 232, and NFPA 232AM). Also, agencies may consult the Chief of the Accident and Fire Prevention Branch in the GSA regional office about these or other systems and protective measures.

(12) The sprinkler system shall be rated at 286 degrees Fahrenheit and designed to provide 0.30 gpm per square foot for the most remote 1,500 square feet of floor area with a minimum flowing pressure of 7.0 psi at the most remote sprinkler head. Installation shall be in accordance with Standard Number 13 of the National Fire Protection Association.

(13) Maximum spacing of the sprinkler heads shall be on a 10-foot grid and the positioning of the heads shall provide complete, unobstructed coverage, with a clearance of not less than 18 inches from the top of the highest stored materials.

(14) The sprinkler system shall be equipped with a water-flow alarm connected to a continuously staffed fire department or central station, with responsibility for immediate response.

(15) A manual fire alarm system shall be provided with central station service or other automatic means of notifying the municipal fire department. A manual alarm pull station shall be located adjacent to each exit. Supplemental manual alarm stations are permitted within the records storage areas.

(16) All water cutoff valves in the sprinkler system shall be equipped with automatic closure alarm connected to a continously staffed station, with responsibility for immediate response.

(17) A dependable water supply free of interruption shall be provided. This normally requires a backup supply system having sufficient pressure and capacity to meet both firehose and sprinkler requirements for 2 hours.

(18) Interior firehose stations equipped with a 1½-inch diameter hose shall be provided in the records storage areas, enabling any point in the records storage area to be reached by a 50-foot hose stream from a 100-foot

hose lay. The fire hoses shall not be provided, however, unless training in the handling and use of small hoses, protective gear, and breathing equipment has been given, and these protective items are available for brigade members.

(19) In addition to the designed sprinkler flow demand, 500 gpm shall be provided for hose stream demand. The hose stream demand shall be calculated into the system at the base of the main sprinkler riser.

(20) Fire hydrants should be located within 250 feet of each exterior entrance or other access to the records center that could be used by firefighters. All hydrants should be at least 50 feet away from the building walls and adjacent to a roadway usable by fire apparatus.

(21) Portable water-type fire extinguishers (2½-gallon stored pressure-type) shall be provided at each fire alarm striking station.

(22) Catwalks may be provided in the aisles between the metal stacks in high-activity records storage areas without provision of sprinklers under the walkway. Where provided, the walking surface of the catwalks shall be of expanded metal at least 0.09-inch thickness with a 2-inch mesh length. The surface opening ratio shall be equal to or greater than that outlined in Military Specification (MIL–M–17194C) of March 8, 1955. The sprinkler water demand for protection over bays with catwalks where records are not oriented perpendicular to the aisles shall be calculated hydraulically to give 0.3 gpm per square foot for the most remote 2,000 square feet.

(23) Storage of hazardous cellulose nitrate film requires special facilities not covered by the above standards. (See NFPA 40 and NFPA 232.)

(c) *Archives.* (1) Archival materials, whether on paper, plastic, or other media, generally require a much higher level of protection than temporary records, such as environmentally controlled and filtered storage space, and other safety measures not included in this section on agency records centers.

(2) Firesafety criteria for archives shall be the same as that for records centers, except that fire detection shall be incorporated into the archival storage areas in accordance with NFPA Standard 72E, and fire divisions in the archival storage areas may be reduced in size to reflect a management decision on the maximum amount of archives subject to damage or loss from fire.

[45 FR 5705, Jan. 24, 1980, as amended at 47 FR 34787, Aug. 11, 1982. Redesignated at 50 FR 15723, Apr. 19, 1985, and 55 FR 27433, July 2, 1990]

§ 1228.224 Requests for authority to establish or relocate records centers.

No agency records center shall be established or relocated from one city to another without the prior written approval of NARA.

(a) *Exclusions.* For purposes of this section, the term ''agency records center'' excludes:

(1) Records staging areas containing either less than 5,000 square feet of storage space or less than 25,000 cubic feet of records each used by agencies for the temporary storage of materials before their transfer to a records center or other disposition, provided no records are held in these staging areas more than 5 years. The facility standards in § 1228.222 apply to these staging areas.

(2) Records holding areas of either less than 5,000 square feet of floor space or less than 25,000 cubic feet of holdings each used solely for the storage of noncurrent records that are not suitable for transfer to a records center or archives for economic, high security, technical servicing, or other reasons. The facility standards is § 1228.222 apply to these records areas.

(b) *Content of requests.* Requests for authority to establish or relocate an agency records center shall be submitted in writing to the Archivist of the United States. These requests shall specify:

(1) Proposed location of the agency records center,

(2) Space to be occupied in gross square feet,

(3) Nature and quantity of records to be stored,

(4) Total personnel to be employed, and

(5) Justification for the proposed center which shall include a comparison between the annual cost per cubic foot

to store the records in the agency records centers and the cost to store the same records in a NARA Federal records center. An analysis of NARA's Federal records center space and equipment cost may be obtained from the Office of Federal Records Centers (NC), National Archives, Washington, DC 20408. The justification also should indicate whether the records to be stored in the agency center have high security classification, require specialized processing or high-cost indexing, or are to be used by technical agency personnel stationed at the records center.

(c) *Approval of requests.* Requests for the establishment or relocation of an agency records center will be approved by the Archivist of the United States when greater economy or efficiency can be achieved through its operation than by the use of a Federal records center operated by NARA.

[45 FR 5705, Jan. 24, 1980, as amended at 47 FR 34788, Aug. 11, 1982; 50 FR 82, Jan. 2, 1985. Redesignated at 50 FR 15723, Apr. 19, 1985, and 55 FR 27433, July 2, 1990]

PART 1230—MICROGRAPHIC RECORDS MANAGEMENT

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AUTHORITY: 44 U.S.C. 2907, 3302 and 3312.

Subpart A—General

SOURCE: 55 FR 27435, July 2, 1990, unless otherwise noted.

§1230.1 Scope of part.

This part provides standards for using micrographic technology in the creation, use, storage, inspection, retrieval, preservation, and disposition of Federal records.

[58 FR 49194, Sept. 22, 1993]

§1230.2 Authority.

As provided in 44 U.S.C. chapters 29 and 33, the Archivist of the United States is authorized to establish standards for the reproduction of records by photographic and microphotographic processes with a view to the disposal of original records; to establish uniform standards within the Government for the creation, storage, use, and disposition of processed microform records; and to establish, maintain, and operate centralized microfilming services for Federal agencies.

§1230.3 Publications incorporated by reference.

(a) *General.* The following publications cited in this section are hereby incorporated by reference into Part 1230. They are available from the issuing organizations at the addresses listed in this section. They are also available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. These materials are incorporated as they exist on the date of approval, and a notice of any change in these materials will be published in the FEDERAL REGISTER.

(b) *American National Standards Institute (ANSI and International (ISO) standards.* ANSI and ISO standards cited in

this part are available from the American National Standards Institute, 11 West 42nd St., New York, NY 10036.

ANSI/NAPM IT9.1–1992, American National Standard for Imaging Media (Film)—Silver-Gelatin Type—Specifications for Stability.

ANSI IT9.2–1991, American National Standard for Imaging Media—Photographic Processed Films, Plates, and Papers—Filing Enclosures and Storage Containers.

ANSI IT9.11–1991, American National Standard for Imaging Media—Processed Safety Photographic Film—Storage.

ANSI IT2.19–1990, American National Standard for Photography—Density Measurements—Geometric Conditions for Transmission Density.

ANSI/ISO 5/3–1984, ANSI PH2.18–1985, Photography (Sensitometry)—Density Measurements—Spectral Conditions.

(c) *Association of Information and Image Management (AIIM) Standards.* The following AIIM standards are available from the Association of Information and Image Management, 1100 Wayne Avenue, suite 1100, Silver Spring, MD 20910. AIIM standards that are identified as Federal Information Processing Standards (FIPS) are also available from the address shown in paragraph (d).

ANSI/AIIM MS1–1988, Recommended Practice for Alphanumeric Computer-Output Microforms—Operational Practices for Inspection and Quality Control. (FIPS 82).

ANSI/AIIM MS5–1991, Microfiche. (FIPS 54–1).

ANSI/AIIM MS14–1988, Specifications for 16mm and 35mm Roll Microfilm. (FIPS 54–1).

ANSI/AIIM MS19–1987, Recommended Practice for Identification of Microforms.

ANSI/AIIM MS23–1991, Practice for Operational Procedures/Inspection and Quality Control of First-generation, Silver Microfilm of Documents.

ANSI/AIIM MS32–1987, Microrecording of Engineering Source Documents on 35mm Microfilm.

ANSI/AIIM MS41–1988, Unitized Microfilm Carriers (Aperture, Camera, Copy, and Image Cards).

ANSI/AIIM MS43–1988, Recommended Practice for Operational Procedures/Inspection and Quality Control for Duplicate Microforms of Documents and From COM.

ANSI/AIIM MS45–1990, Recommended Practice for Inspection of Stored Silver-Gelatin Microforms for Evidence of Deterioration.

ANSI/ISO 3334–1991, ANSI/AIIM MS51–1991, Micrographics—ISO Resolution Test Chart No. 2—Description and Use.

(d) *National Institute of Standards and Technology (NIST) publications.* The following publication is available from the National Institute of Standards and Technology, Office of Standard Reference Materials, Rm. B311 Chemistry, Gaithersburg, MD 20899.

NIST–SRM 1010a, Microcopy Resolution Test Chart (ISO Test Chart No. 2), certified June 1, 1990.

[58 FR 49194, Sept. 22, 1993]

§ 1230.4 Definitions.

For the purpose of this part the following definitions shall apply:

Archival microfilm. A photographic film that meets the standards described in § 1230.14 and that is suitable for the preservation of permanent records when stored in accordance with § 1230.20(a). Such film must conform to film designated as LE 500 in ANSI/NAPM IT9.1–1992.

Background density. The opacity of the area of the microform not containing information.

Computer-assisted retrieval (CAR) system. A records storage and retrieval system, normally microfilm-based, that uses a computer for indexing, automatic markings such as blips or bar codes for identification, and automatic devices for reading those markings and, in some applications, for transporting the film for viewing.

Computer Output Microfilm (COM). Microfilm containing data produced by a recorder from computer generated signals.

Facility. An area set aside for equipment and operations required in the production or reproduction of microforms either for internal use or for the use of other organizational elements of the Federal Government.

Microfilm. (a) Raw (unexposed and unprocessed) fine-grain, high resolution photographic film with characteristics that make it suitable for use in micrographics;

(b) The process of recording microimages on film; or

(c) A fine-grain, high resolution photographic film containing an image greatly reduced in size from the original.

Microform. A term used for any form containing microimages.

Microimage. A unit of information such as a page of text or a drawing,

that has been made too small to be read without magnification.

Permanent record. Any record (see definition in 44 U.S.C. 3301) that has been determined by the Archivist of the United States to have sufficient historical or other value to warrant its continued preservation by the Government.

Temporary record. Any record approved by the Archivist of the United States for disposal, either immediately or after a specified retention period. Temporary records may warrant microfilming for economies of storage and distribution.

Unscheduled record. Any record that has not been appraised by NARA, i.e., a record that has neither been approved for disposal nor designated as permanent by the Archivist of the United States in accordance with part 1228 of this chapter.

Use or work copies. Duplicates of original film which are prepared for use as reference copies or as duplication masters for recurring or large-scale duplication. These copies are not to be confused with the preservation master copies which are stored under the conditions in § 1230.20 and which are not to be used for reference purposes.

[55 FR 27435, July 2, 1990, as amended at 58 FR 49195, Sept. 22, 1993]

Subpart B—Program Requirements

SOURCE: 58 FR 49195, Sept. 22, 1993, unless otherwise noted.

§ 1230.7 Agency responsibilities.

The head of each Federal agency must ensure that the management of microform records incorporates the following elements:

(a) Assigning responsibility to develop and implement an agencywide program for managing all records on microform media and notifying the National Archives and Records Administration (NI), Washington, DC 20408 of the name and title of the person assigned the responsibility.

(b) Integrating the management of microform records with other records and information resources management programs of the agency.

(c) Incorporating microform records management objectives, responsibilities, and authorities in pertinent agency directives and disseminating them throughout the agency as appropriate.

(d) Establishing procedures for addressing records management concerns, including recordkeeping and disposition requirements, before approving new microform records systems or enhancements to existing systems.

(e) Ensuring that adequate training is provided for the managers and users of microform records.

(f) Developing and securing NARA approval of records schedules covering microform records, and ensuring proper implementation of the schedule provisions.

(g) Ensuring that computerized indexes associated with microform records, such as in a computer-assisted retrieval (CAR) system, are scheduled in accordance with part 1234 of this chapter.

(h) Reviewing the agency's program periodically to ensure compliance with NARA standards in this part for the creation, storage, use, inspection, and disposition of microform records.

Subpart C—Standards for Microfilming Records

SOURCE: 55 FR 27436, July 2, 1990, unless otherwise noted.

§ 1230.10 Disposition authorization.

(a) *Permanent or unscheduled records.* Agencies must schedule the disposition of both source documents (originals) and microforms by submitting Standard Form (SF) 115, Request for Records Disposition Authority, to NARA in accordance with part 1228 of this chapter. Source documents may not be disposed of before NARA authorization is received. The original records shall not be destroyed after microfilming when NARA determines that the original records have intrinsic value or when NARA concludes that the microforms present reference problems because of the access restrictions, including security classification, or other characteristics of the original records.

(1) Agencies using microfilming methods and procedures meeting the standards in § 1230.14 shall include on the SF 115 the following certification:

''This certifies that the records described on this form were (or will be) microfilmed in accordance with the standards set forth in 36 CFR part 1230.''

(2) Agencies using microfilming methods, materials and procedures that do not meet the standards in § 1230.14(a) shall include on the SF 115 a description of the system and standards used.

(3) Agencies proposing to retain and store the silver original microforms of permanent records after disposal of the original records shall include on the SF 115 a statement that the agency's storage conditions shall comply with the standards of § 1230.20 and that the inspections required by § 1230.22 will be performed.

(b) *Temporary records.* Agencies do not need to obtain further NARA approval before disposing of scheduled temporary records that have been microfilmed. The approved retention period for temporary records shall be applied to microform copies of such records; the original records shall be destroyed upon verification of the microfilm, unless legal requirements preclude early destruction of the originals.

§ 1230.12 Preparatory steps prior to filming.

(a) The integrity of the original records authorized for disposal shall be maintained by ensuring that the microforms are adequate substitutes for the original records and serve the purpose for which such records were created or maintained. Copies shall be complete and contain all information shown on the originals.

(b) The records shall be arranged, identified, and indexed so that any particular document or component of the records can be located. Each microform roll or fiche shall include accurate titling information on a titling target or header. At a minimum, titling information shall include the name of the agency and organization; the title of the records; the number or identifier for each unit of film; the security classification, if any; and the inclusive dates, names, or other data identifying the records to be included on a unit of film. For fiche, complete titling information may be placed as a microimage in frame 1 if the information will not fit on the header.

(c) Each microform shall contain an identification target showing the date of filming. When necessary to give the film copy better legal standing, the target shall also identify the person authorizing the microfilming. See ANSI/AIIM MS19–1987 for standards for identification targets.

(d) The following formats are mandatory standards for microforms.

(1) *Roll film*—(i) *Source documents.* The formats described in ANSI/AIIM MS14–1988 must be used for microfilming source documents on 16mm and 35mm roll film. A reduction ratio no greater than 1:24 is recommended for typewritten or correspondence types of documents. See ANSI/AIIM MS23–1991 for determining the appropriate reduction ratio and format for meeting the image quality requirements. When microfilming on 35mm film for aperture card applications, the format dimensions in ANSI/AIIM MS32–1987, Table 1 are mandatory, the aperture card format ''D Aperture'' shown in ANSI/AIIM MS41–1988, Figure 1, must be used. The components of the aperture card, including the paper and adhesive, must conform to the requirements of ANSI IT9.2–1991. The 35mm film used in the aperture card application must conform to film designated as LE500 in ANSI/NAPM IT9.1–1992.

(ii) *COM.* Computer output microfilm (COM) generated images shall be the simplex mode described in ANSI/AIIM MS14–1988 at an effective ratio of 1:24 or 1:48 depending upon the application.

(2) *Microfiche.* For microfilming source documents or computer generated information (COM) on microfiche, the appropriate formats and reduction ratios prescribed in ANSI/AIIM MS5–1990 must be used as specified for the size and quality of the documents being filmed. See ANSI/AIIM MS23–1991 for determining the appropriate reduction ratio and format for meeting the image quality requirements.

(e) *Index placement*—(1) *Source documents.* When filming original (source) documents, all indexes, registers, or other finding aids, if microfilmed, shall be placed either in the first frames of the first roll of film or in the last

frames of the last roll of film of a series or in the last frames of the last microfiche or microfilm jacket of a series.

(2) *COM.* Computer-generated microforms shall have the indexes following the data on a roll of film or in the last frames of a single microfiche, or the last frames of the last fiche in a series. Other index locations may be used only if dictated by special system constraints.

[55 FR 27436, July 2, 1990, as amended at 58 FR 49195, Sept. 22, 1993; 60 FR 13908, Mar. 15, 1995]

§ 1230.14 Film and image requirements for permanent records or unscheduled records.

(a) *Application.* The following standards apply to the microfilming of permanent records where the original paper record will be destroyed or otherwise disposed of. Systems that produce original permanent records on microfilm with no paper originals, such as computer output microfilm (COM), must be designed so that they produce microfilm which meets the standards of this section. Unscheduled records from systems such as COM must also meet the standards of this section. Prior NARA approval of a SF 115 is required before unscheduled paper records are disposed of after microfilming.

(b) *Film stock standards.* Only polyester-based silver gelatin type film that conforms to ANSI/NAPM IT9.1–1992 for LE 500 film must be used in all applications.

(c) *Processing standards.* Microforms shall be processed so that the residual thiosulfate ion concentration will not exceed 0.014 grams per square meter in accordance with ANSI/NAPM IT9.1–1992. Processing shall be in accordance with processing procedures in ANSI/AIIM MS1–1988 and MS23–1991.

(d) *Quality standards*—(1) *Resolution*—(i) *Source documents.* The method for determining minimum resolution on microforms of source documents shall conform to the Quality Index Method for determining resolution and anticipated losses when duplicating as described in ANSI/AIIM MS23–1991 and MS43–1988. Resolution tests shall be performed using a NIST–SRM 1010a, Microcopy Resolution Test Chart (a calibrated and certified photographic reproduction) as specified in ISO 3334–1991 (the standard practice for using the test chart), and the patterns will be read following the instructions of ISO 3334–1991. The character used to determine the height used in the Quality Index formula shall be the smallest character used to display information. A Quality Index of five is required at the third generation level.

(ii) *COM.* Computer output microforms (COM) shall meet the requirements of ANSI/AIIM MS1–1988.

(2) *Background density of images.* The background ISO standard visual diffuse transmission density on microforms shall be appropriate to the type of documents being filmed. The procedure for density measurement is described in ANSI/AIIM MS23–1991 and the densitometer shall be in accordance with ANSI/ISO 5/3–1984, for spectral conditions and ANSI IT2.19–1990, for geometric conditions for transmission density. Recommended visual diffuse transmission background densities for images of documents are as follows:

Classification	Description of document	Background density
Group 1.	High-quality, high-contrast printed books, periodicals, and black typing.	1.3–1.5
Group 2.	Fine-line originals, black opaque pencil writing, and documents with small high-contrast printing.	1.15–1.4
Group 3.	Pencil and ink drawings, faded printing, and very small printing, such as footnotes at the bottom of a printed page.	1.0–1.2
Group 4.	Low-contrast manuscripts and drawings, graph paper with pale, fine-colored lines; letters typed with a worn ribbon; and poorly printed, faint documents.	0.8–1.0
Group 5.	Poor-contrast documents (special exception).	0.7–0.85

Recommended visual diffuse transmission densities for computer generated images are as follows:

Film type	Process	Density measurement method	Min. Dmax*	Max. Dmin*	Minimum density difference
Silver gelatin	Conventional	Printing or diffuse	0.75	0.15	0.60
Silver gelatin	Full reversal	Printing	1.50	0.20	1.30

*Character or line density, measured with a microdensitometer or by comparing the film under a microscope with an image of a known density.

(3) *Base plus fog density of films.* The base plus fog density of unexposed, processed films should not exceed 0.10. When a tinted base film is used, the density will be increased. The difference must be added to the values given in the tables in paragraph (d)(2) of this section.

(4) *Line or Stroke Width.* Due to optical limitations in most photographic systems, film images of thin lines appearing in the original document will tend to fill in as a function of their width and density. Therefore, as the reduction ratio of a given system is increased, the background density shall be reduced as needed to ensure that the copies produced will contain legible characters.

[55 FR 27436, July 2, 1990, as amended at 58 FR 49195, Sept. 22, 1993]

§ 1230.16 Film and image requirements for temporary records, duplicates, and user copies.

(a) *Temporary records with a retention period over 99 years.* Agencies must follow the film and image requirements in § 1230.14.

(b) *Other temporary records.* Agencies must select an appropriate film stock that meets agency needs for temporary microforms to be kept for less than 100 years and ensures the preservation of the microforms for their full retention period. NARA does not require use of particular standards for processing microfilm of such temporary records; agencies may consult appropriate ANSI standards or manufacturer's instructions.

[58 FR 49196, Sept. 22, 1993]

Subpart D—Standards for the Storage, Use and Disposition of Microform Records

SOURCE: 55 FR 27438, July 2, 1990, unless otherwise noted.

§ 1230.20 Storage.

(a) *Permanent and unscheduled records.* The extended term storage conditions specified in ANSI IT9.11–1991 and ANSI IT9.2–1991 are required for storing permanent and unscheduled microform records, except that the relative humidity of the storage area must be a constant 35% RH, plus or minus 5%. Non-silver copies of permanent or unscheduled microforms must not be stored in the same storage area as silver gelatin originals or duplicate copies.

(b) *Temporary records.* Temporary microform records must be stored under conditions that will ensure their preservation for their full retention period. Agencies may consult ANSI IT9.11–1991 and ANSI IT9.2–1991 to determine appropriate storage conditions; however, NARA does not require adherence to this standard for temporary records.

[58 FR 49196, Sept. 22, 1993]

§ 1230.22 Inspection.

(a) *Permanent and unscheduled records.*

(1) Master films of permanent records microfilmed in order to dispose of the original records, master films of permanent records originally created on microfilm, and other master films scheduled for transfer to the National Archives, must be inspected by the agency creating the film when the films are 2 years old and, until they are transferred to a Federal records center or to the National Archives, every 2 years thereafter. The inspection must be made in accordance with ANSI/AIIM MS45–1990.

(2) Microforms cannot be accepted for deposit with the National Archives of the United States until the first inspection (occurring after the microforms are 2 years old) has been

performed. Permanent microforms may be transferred to a Federal records center only after the agency has performed the first inspection or has certified that the microforms will be inspected by the agency, an agency contractor, or the Federal records center (on a reimbursable basis) when they become 2 years old.

(3) To facilitate inspection, an inventory of microfilm must be maintained, listing each microform series/publication by production date, producer, processor, format, and results of previous inspections.

(4) The elements of the inspection shall consist of:

(i) An inspection for aging blemishes following ANSI/AIIM MS45–1990;

(ii) A rereading of resolution targets;

(iii) A remeasurement of density; and

(iv) A certification of the environmental conditions under which the microforms are stored, as specified in § 1230.20(a).

(5) An inspection report must be prepared, and a copy must be furnished to NARA in accordance with § 1230.26(b). The inspection report must contain:

(i) A summary of the inspection findings, including:

(A) A list of batches by year that includes the identification numbers of microfilm rolls and microfiche in each batch;

(B) The quantity of microforms inspected;

(C) An assessment of the overall condition of the microforms;

(D) A summary of any defects discovered, e.g., redox blemishes or base deformation; and

(E) A summary of corrective action taken.

(ii) A detailed inspection log created during the inspection that contains the following information:

(A) A complete description of all records inspected (title; roll or fiche number or other unique identifier for each unit of film inspected; security classification, if any; and inclusive dates, names, or other data identifying the records on the unit of film);

(B) The date of inspection;

(C) The elements of inspection (see subparagraph (a)(4) of this section);

(D) Any defects uncovered; and

(E) The corrective action taken.

(6) An agency having in its custody a master microform that is deteriorating, as shown by the inspection, shall prepare a silver duplicate in accordance with § 1230.14 to replace the deteriorating master. The duplicate film will be subject to the 2-year inspection requirement before transfer to a Federal Record Center or to the National Archives.

(7) Inspection must be performed in an environmentally controlled area in accordance with ANSI/AIIM MS45–1990.

(b) *Temporary records.* Inspection by sampling procedures described in § 1230.22(a) is recommended but not required.

[55 FR 27438, July 2, 1990, as amended at 58 FR 49196, Sept. 22, 1993]

§ 1230.24 Use of microform records.

(a) The silver gelatin original microform or duplicate silver gelatin microform created in accordance with § 1230.14 of this part (archival microform) must not be used for reference purposes. Duplicates must be used for reference and for further duplication on a recurring basis or for large-scale duplication, as well as for distribution of records on microform. Agency procedures must ensure that the archival microform remains clean and undamaged during the process of making a duplicating master.

(b) Agencies retaining the original record in accordance with an approved records disposition schedule may apply agency standards for the use of microform records.

[55 FR 27438, July 2, 1990, as amended at 58 FR 49196, Sept. 22, 1993]

§ 1230.26 Disposition of microform records.

The disposition of microform records shall be carried out in the same manner prescribed for other types of records in part 1228 of this chapter with the following additional requirements:

(a) The silver gelatin original (or duplicate silver gelatin microform created in accordance with § 1230.14) plus one microform copy of each permanent record microfilmed by an agency, must be transferred to an approved agency records center, the National Archives of the United States, or to a Federal

records center, at the time that the records are to be transferred in accordance with the approved records disposition schedule, SF 258, or other authorization for transfer. Non-silver copies must be packaged separately from the silver gelatin original or silver duplicate microform copy and labeled clearly as non-silver copies.

(b) The microforms shall be accompanied by:

(1) Information identifying the agency and organization; the title of the records; the number or identifier for each unit of film; the security classification, if any; the inclusive dates, names, or other data identifying the records to be included on a unit of film;

(2) Any finding aids relevant to the microform that are not contained in the microform; and

(3) The inspection log forms and inspection reports required by § 1230.22(a)(5) and (6).

(c) The information required in this paragraph (b) shall be attached to the SF 135 when records are being transferred to a Federal records center and to the SF 258 when records are being transferred to the legal custody of the National Archives.

[55 FR 27438, July 2, 1990, as amended at 58 FR 49196, Sept. 22, 1993]

Subpart E—Centralized Micrographic Services

§ 1230.50 Services available.

NARA provides reimbursable microfilming services at many of its Federal records centers, including the preparation, indexing, and filming of records, inspection of film, and labeling of film containers. Agencies desiring microfilming services should contact the Office of Federal Records Centers, National Archives (NC), Washington, DC 20408, or the director of the Federal records center serving the agency's records (see § 1228.150 of this chapter).

[50 FR 26935, June 28, 1985. Redesignated at 55 FR 27435, July 2, 1990]

§ 1230.52 Fees for services.

The fees for microfilming services will be announced in NARA bulletins. For microfilming services not listed, contact the office shown in § 1230.50.

[50 FR 26935, June 28, 1985. Redesignated at 55 FR 27435, July 2, 1990]

PART 1232—AUDIOVISUAL RECORDS MANAGEMENT

Subpart A—General

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1232.32 Disposition.

AUTHORITY: 44 U.S.C. 2904 and 3101; and OMB Circular A–130.

SOURCE: 61 FR 32337, June 24, 1996, unless otherwise noted.

Subpart A—General

§ 1232.1 Applicability and scope.

This part prescribes policies and procedures for managing audiovisual records to ensure adequate and proper documentation and authorized, timely, and appropriate disposition.

§ 1232.2 Objectives.

The objectives of audiovisual records management are to achieve the effective creation, maintenance, use, and disposition of audiovisual and related records by establishing standards for maintenance and disposition, physical security, and preservation and by reviewing recordkeeping practices on a continuing basis to improve procedures.

§ 1232.10 Definitions.

For the purposes of this part, the following definitions shall apply (see also § 1220.14 of this chapter for other definitions).

Audiovisual. Any pictorial or aural means of communicating information.

Audiovisual equipment. Equipment used for recording, producing, duplicating, processing, broadcasting, distributing, storing or exhibiting audiovisual materials or for providing any audiovisual services.

Audiovisual production. An organized and unified presentation, developed according to a plan or script, containing visual imagery, sound, or both, and used to convey information. An audiovisual production generally is a self-contained presentation. Audiovisual productions may include motion media with synchronous sound such as motion picture film, videotape or other video formats, audio recordings, and other media such as synchronized audio and visual presentations such as multimedia productions.

Audiovisual records. Records in pictorial or aural form that include still and motion media, sound recordings, graphic works, mixed media, and related finding aids and production files.

Subpart B—Audiovisual Records Management

§ 1232.20 Agency program responsibilities.

Each Federal agency, in providing for effective controls over the creation of records, shall establish an appropriate program for the management of audiovisual records. This program shall be governed by the following requirements:

(a) Prescribe the types of records to be created and maintained so that audiovisual activities and their products are properly documented. (Regulations on the appropriate types of permanent audiovisual records are located in § 1228.184 of this chapter.)

(b) Ensure that adequate training is provided to:

(1) Agency personnel responsible for the disposition of audiovisual records;

(2) Contractor personnel who have temporary custody of audiovisual records; and,

(3) All users who create, handle, or maintain audiovisual records or operate equipment for their use.

(c) Ensure that contract provisions protect the Government's legal title and control over audiovisual records and related documentation produced or maintained by contract. Ensure that contract provisions identify as deliverables any working papers/files that are needed for adequate and proper documentation. Include a provision that permits the Government to inspect contractor facilities used for the storage and handling of permanent or unscheduled audiovisual records. Agencies shall inspect such facilities at least once each year.

(d) Keep inventories indicating the location of all generations of audiovisual records, whether in agency storage or in another facility such as a laboratory or library distribution center.

(e) Schedule disposition of all audiovisual records as soon as practicable after creation. General Records Schedule 21 provides mandatory disposal authorization for temporary audiovisual records common to most Federal offices. Agencies must submit an SF 115, Request for Records Disposition Authority, to NARA to obtain authorization for the disposition of all other audiovisual records. The schedules covering permanent records must specify the different record elements identified in § 1228.184, and must always include related finding aids.

(f) Periodically review agency audiovisual recordkeeping practices for conformance with requirements and take necessary corrective action.

§ 1232.22 Nitrocellulose film.

Nitrocellulose-base film once used in the manufacture of sheet film and motion pictures may be occasionally found in records storage areas. The nitrocellulose base, a substance akin to gun cotton, is chemically unstable and highly inflammable.

(a) Agencies must remove nitrocellulose film materials from records storage areas.

(b) Agencies must immediately notify NARA about the existence of nitrocellulose film materials because of their age and instability. NARA will determine if they may be destroyed or destroyed after a copy is made for transfer, as appropriate.

(c) If NARA appraises nitrate film materials as disposable, but the agency wishes to retain them, agencies must follow the guidance in NFPA 40–1994, Standard for the Storage and Handling

of Cellulose Nitrate Motion Picture Film, which is incorporated by reference. NFPA 40–1994 is available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. This standard is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, D.C. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the FEDERAL REGISTER.

(d) The packing and shipping of nitrate film are governed by the following Department of Transportation regulations: 49 CFR 172.101, Hazardous materials table; 172.504, Transportation; 173.24, Standard requirements for all packages; and 173.177, Motion picture film and X- ray film—nitrocellulose base.

§ 1232.24 Unstable cellulose-acetate film.

Cellulose-acetate film, also known as safety film, is nonflammable and does not represent the same degree of hazard as nitrate film materials. Nonetheless, cellulose-acetate film also deteriorates over time. Temperature, humidity, harmful storage enclosures, and gaseous products influence the rate of deterioration. Agencies shall inspect cellulose-acetate film periodically for an acetic odor, wrinkling, or the presence of crystalline deposits on the edge or surface of the film that indicate deterioration. Agencies shall notify NARA within 30 days after inspection about deteriorating permanent or unscheduled audiovisual records composed of cellulose acetate so that they can be copied.

§ 1232.26 Storage conditions.

Agencies must:

(a) Provide audiovisual records storage facilities that are secure from unauthorized access and make them safe from fire, water, flood, chemical or gas damage and from other harmful conditions. See NFPA 232A–1995, Guide for Fire Protection for Archives and Records Centers issued by the National Fire Protection Association, which is incorporated by reference. The standard is available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. This standard is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, D.C. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1CFR part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the FEDERAL REGISTER.

(b) Maintain good ambient storage conditions for permanent or unscheduled audiovisual records. Generally, the temperature should not exceed 70 degrees Fahrenheit and relative humidity should be maintained between 30–40% and not exceed 50%. Avoid fluctuating temperatures and humidity. Cooler temperatures and lower relative humidity are recommended for the storage of all film, to prolong the useful life of the film base and image. Cold temperatures combined with 30–35% relative humidity are especially recommended to retard the fading of color film. Optimal environmental conditions are stated in ANSI/NAPM IT9.11–1993, Imaging Media— Processed Safety Photographic Films—Storage. If possible store all permanently scheduled records in these conditions, and schedule them to be transferred to the National Archives as soon as possible.

(c) For the storage of permanent or unscheduled records, use audiovisual storage containers or enclosures made of noncorroding metal, inert plastics, paper products and other safe materials recommended and specified in ANSI standards: ANSI/NAPM IT9.11–1993, Imaging Media—Processed Safety Photographic Films—Storage; and ANSI IT9.2–1991, Imaging Media—Photographic Processed Films, Plates, and Papers—Filing Enclosures and Storage Containers. These standards, which are incorporated by reference, are available from the American National Standards Institute (ANSI), Inc., 11 West 42nd Street, New York, NY 10036. These standards are also available for

inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, D.C. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the FEDERAL REGISTER.

(d) Store originals and use copies (e.g., negatives and prints) separately, whenever practicable.

(e) Store series of permanent and unscheduled x-ray films in accordance with this section, and store series of temporary x-ray films under conditions that will ensure their preservation for their full retention period, in accordance with ANSI/NAPM IT9.11–1993, Imaging Media—Processed Safety Photographic Films—Storage. This requirement does not apply to x-rays that are interspersed among paper records, as in case files.

§ 1232.28 Maintenance and operations.

Agencies must:

(a) Handle audiovisual records in accordance with commonly accepted industry practices because of their extreme vulnerability to damage. For further information, consult the American National Standards Institute (ANSI), Inc., 11 West 42nd Street, New York, NY 10036; and the Society of Motion Picture and Television Engineers, 595 West Hartsdale Avenue, White Plains, NY 10607.

(b) Use only personnel trained to perform their audiovisual duties and responsibilities and ensure that equipment intended for projection or playback is in good working order.

(c) Loan permanent or unscheduled audiovisual records to non-Federal recipients only in conformance with the provisions of part 1228 subpart E of this chapter. Such records may be loaned to other Federal agencies only if a record copy is maintained in the agency's custody.

(d) Take all steps necessary to prevent accidental or deliberate alteration or erasure of audiovisual records.

(e) Ensure that no information recorded on permanent or unscheduled magnetic sound or video media is erased.

(f) If different versions of audiovisual productions (e.g., short and long versions or foreign-language versions) are prepared, keep an unaltered copy of each version for record purposes.

(g) Maintain the association between audiovisual records and the finding aids for them, such as captions and published and unpublished catalogs, and production files and similar documentation created in the course of audiovisual production.

(h) Maintain disposable audiovisual records separate from permanent ones in accordance with General Records Schedule 21 and a records schedule approved by NARA for the agency's other audiovisual records.

§ 1232.30 Choosing formats.

Agencies must:

(a) When ordering photographic materials for permanent or unscheduled records, ensure that still picture negatives and motion picture preprints (negatives, masters, etc.) are composed of polyester bases and are processed in accordance with industry standards as specified in ANSI/ISO 543–1990 (ANSI IT9.6–1991) Photography—Photographic Films—Specifications for Safety Film; and, ANSI/NAPM IT9.1–1992 Imaging Media (Film)—Silver-Gelatin Type—Specifications for Stability, which are incorporated by reference. (Currently, not all motion picture stocks are available on a polyester base.) It is particularly important to ensure that residual sodium thiosulfate (hypo) on newly processed black-and-white photographic film does not exceed .014 grams per square meter. Require laboratories to process film in accordance with this standard. Excessive hypo will shorten the longevity of film and accelerate color fading. Process color film in accordance with the manufacturer's recommendations. If using reversal type processing, request full photographic reversal; i.e., develop, bleach, expose, develop, fix, and wash. The standards cited in this paragraph are available from the American National Standards Institute (ANSI), Inc., 11 West 42nd Street, New York, NY 10036. These

standards are also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, D.C. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials be published in the FEDERAL REGISTER.

(b) Refrain from using motion pictures in a final ''A & B'' format (two precisely matched reels designed to be printed together) for the reproduction of excerpts or stock footage.

(c) Use only industrial or professional recording equipment and videotape, previously unrecorded, for original copies of permanent or unscheduled recordings. Limit the use of consumer formats to distribution or reference copies or to subjects scheduled for disposal. Video cassettes in the VHS format are unsuitable for use as originals of permanent or unscheduled records due to their inability to be copied without significant loss in image quality.

(d) Record permanent or unscheduled audio recordings on ¼-inch open-reel tapes at 3 ¾ or 7 ½ inches per second, full track, using professional unrecorded polyester splice-free tape stock. Audio cassettes, including mini-cassettes, are not sufficiently durable for use as originals in permanent records or unscheduled records although they may be used as reference copies.

§ 1232.32 Disposition.

The disposition of audiovisual records shall be carried out in the same manner as that prescribed for other types of records in part 1228 of this chapter. For further instructions on the transfer of permanent audiovisual records to the National Archives see § 1228.184 of this chapter, Audiovisual Records.

PART 1234—ELECTRONIC RECORDS MANAGEMENT

Subpart A—General

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Subpart B—Program Requirements

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Subpart C—Standards for the Creation, Use, Preservation, and Disposition of Electronic Records

1234.20 Creation and use of data files.
1234.22 Creation and use of text documents.
1234.24 Standards for managing electronic mail records.
1234.26 Judicial use of electronic records.
1234.28 Security of electronic records.
1234.30 Selection and maintenance of electronic records storage media.
1234.32 Retention and disposition of electronic records.
1234.34 Destruction of electronic records.

AUTHORITY: 44 U.S.C. 2904, 3101, 3102, and 3105.

SOURCE: 55 FR 19218, May 8, 1990, unless otherwise noted.

Subpart A—General

§ 1234.1 Scope of part.

This part establishes the basic requirements related to the creation, maintenance, use, and disposition of electronic records. Electronic records include numeric, graphic, and text information, which may be recorded on any medium capable of being read by a computer and which satisfies the definition of a record. This includes, but is not limited to, magnetic media, such as tapes and disks, and optical disks. Unless otherwise noted, these requirements apply to all electronic information systems, whether on microcomputers, minicomputers, or mainframe computers, regardless of storage media, in network or stand-alone configurations. This part also covers creation, maintenance and use, and disposition of Federal records created by individuals using electronic mail applications.

[60 FR 44640, Aug. 28, 1995]

§ 1234.2 Definitions.

Basic records management terms are defined in 36 CFR 1220.14. As used in part 1234—

Data base means a set of data, consisting of at least one data file, that is sufficient for a given purpose.

Data base management system means a software system used to access and retrieve data stored in a data base.

Data file means related numeric, textual, or graphic information that is organized in a strictly prescribed form and format.

Electronic information system. A system that contains and provides access to computerized Federal records and other information.

Electronic mail message. A document created or received on an electronic mail system including brief notes, more formal or substantive narrative documents, and any attachments, such as word processing and other electronic documents, which may be transmitted with the message.

Electronic mail system. A computer application used to create, receive, and transmit messages and other documents. Excluded from this definition are file transfer utilities (software that transmits files between users but does not retain any transmission data), data systems used to collect and process data that have been organized into data files or data bases on either personal computers or mainframe computers, and word processing documents not transmitted on an e-mail system.

Electronic record means any information that is recorded in a form that only a computer can process and that satisfies the definition of a Federal record in 44 U.S.C. 3301.

Electronic recordkeeping system. An electronic system in which records are collected, organized, and categorized to facilitate their preservation, retrieval, use, and disposition.

Text documents means narrative or tabular documents, such as letters, memorandums, and reports, in loosely prescribed form and format.

Transmission and receipt data.

(1) *Transmission data.* Information in electronic mail systems regarding the identities of sender and addressee(s), and the date and time messages were sent.

(2) *Receipt data.* Information in electronic mail systems regarding date and time of receipt of a message, and/or acknowledgment of receipt or access by addressee(s).

[55 FR 19218, May 8, 1990, as amended at 60 FR 44641, Aug. 28, 1995]

Subpart B—Program Requirements

§ 1234.10 Agency responsibilities.

The head of each Federal agency shall ensure that the management of electronic records incorporates the following elements:

(a) Assigning responsibility to develop and implement an agencywide program for the management of all records created, received, maintained, used, or stored on electronic media; and notifying the National Archives and Records Administration, Office of Records Administration (NI), Washington, DC 20408 and the General Services Administration, Regulations Branch (KMPR), Washington, DC 20405, of the name and title of the person assigned the responsibility.

(b) Integrating the management of electronic records with other records and information resources management programs of the agency.

(c) Incorporating electronic records management objectives, responsibilities, and authorities in pertinent agency directives and disseminating them throughout the agency as appropriate.

(d) Establishing procedures for addressing records management requirements, including recordkeeping requirements and disposition, before approving new electronic information system or enhancements to existing systems.

(e) Ensuring that adequate training is provided for users of electronic mail systems on recordkeeping requirements, the distinction between Federal records and nonrecord materials, procedures for designating Federal records, and moving or copying records for inclusion in an agency recordkeeping system;

(f) Ensuring that adequate training is provided for users of electronic information system in the operation, care, and handling of the equipment, software, and media used in the system.

(g) Developing and maintaining up-to-date documentation about all electronic information system that is adequate to: Specify all technical characteristics necessary for reading or processing the records; identify all defined inputs and outputs of the system; define the contents of the files and

records; determine restrictions on access and use; understand the purpose(s) and function(s) of the system; describe update cycles or conditions and rules for adding information to the system, changing information in it, or deleting information; and ensure the timely, authorized disposition of the records.

(h) Specifying the location, manner, and media in which electronic records will be maintained to meet operational and archival requirements, and maintaining inventories of electronic information system to facilitate disposition.

(i) Developing and securing NARA approval of records disposition schedules, and ensuring implementation of their provisions.

(j) Specifying the methods of implementing controls over national security-classified, sensitive, proprietary, and Privacy Act records stored and used electronically.

(k) Establishing procedures to ensure that the requirements of this part are applied to those electronic records that are created or maintained by contractors.

(l) Ensuring compliance with applicable Governmentwide policies, procedures, and standards such as those issued by the Office of Management and Budget, the General Accounting Office, the General Services Administration, the National Archives and Records Administration, and the National Institute of Standards and Technology.

(m) Reviewing electronic information system periodically for conformance to established agency procedures, standards, and policies as part of the periodic reviews required by 44 U.S.C. 3506. The review should determine if the records have been properly identified and described, and whether the schedule descriptions and retention periods reflect the current informational content and use. If not, or if substantive changes have been made in the structure, design, codes, purposes, or uses of the system, submit an SF 115, Request for Records Disposition Authority, to NARA.

[55 FR 19218, May 8, 1990, as amended at 60 FR 44641, Aug. 28, 1995]

Subpart C—Standards for the Creation, Use, Preservation, and Disposition of Electronic Records

§ 1234.20 Creation and use of data files.

(a) For electronic information systems that produce, use, or store data files, disposition instructions for the data shall be incorporated into the system's design.

(b) Agencies shall maintain adequate and up-to-date technical documentation for each electronic information system that produces, uses, or stores data files. Minimum documentation required is a narrative description of the system; physical and technical characteristics of the records, including a record layout that describes each field including its name, size, starting or relative position, and a description of the form of the data (such as alphabetic, zoned decimal, packed decimal, or numeric), or a data dictionary or the equivalent information associated with a data base management system including a description of the relationship between data elements in data bases; and any other technical information needed to read or process the records.

[55 FR 19218, May 8, 1990, as amended at 60 FR 44641, Aug. 28, 1995]

§ 1234.22 Creation and use of text documents.

(a) Electronic recordkeeping systems that maintain the official file copy of text documents on elecronic media shall meet the following minimum requirements:

(1) Provide a method for all authorized users of the system to retrieve desired documents, such as an indexing or text search system;

(2) Provide an appropriate level of security to ensure integrity of the documents;

(3) Provide a standard interchange format when necessary to permit the exchange of documents on electronic media between agency computers using different software/operating systems and the conversion or migration of documents on electronic media from one system to another; and

(4) Provide for the disposition of the documents including, when necessary, the requirements for transferring permanent records to NARA (see § 1228.188 of this chapter).

(b) Before a document is created electronically on electronic recordkeeping systems that will maintain the official file copy on electronic media, each document shall be identified sufficiently to enable authorized personnel to retrieve, protect, and carry out the disposition of documents in the system. Appropriate identifying information for each document maintained on the electronic media may include: office of origin, file code, key words for retrieval, addressee (if any), signator, author, date, authorized disposition (coded or otherwise), and security classification (if applicable). Agencies shall ensure that records maintained in such systems can be correlated with related records on paper, microform, or other media.

[55 FR 19218, May 8, 1990, as amended at 60 FR 44641, Aug. 28, 1995]

§ 1234.24 Standards for managing electronic mail records.

Agencies shall manage records created or received on electronic mail systems in accordance with the provisions of this chapter pertaining to adequacy of documentation, recordkeeping requirements, agency records management responsibilities, and records disposition (36 CFR parts 1220, 1222, and 1228).

(a) Agency instructions on identifying and preserving electronic mail messages will address the following unique aspects of electronic mail:

(1) Some transmission data (names of sender and addressee(s) and date the message was sent) must be preserved for each electronic mail record in order for the context of the message to be understood. Agencies shall determine if any other transmission data is needed for purposes of context.

(2) Agencies that use an electronic mail system that identifies users by codes or nicknames or identifies addressees only by the name of a distribution list shall instruct staff on how to retain names on directories or distributions lists to ensure identification of the sender and addressee(s) of messages that are records.

(3) Agencies that use an electronic mail system that allows users to request acknowledgments or receipts showing that a message reached the mailbox or inbox of each addressee, or that an addressee opened the message, shall issue instructions to e-mail users specifying when to request such receipts or acknowledgments for recordkeeping purposes and how to preserve them.

(4) Agencies with access to external electronic mail systems shall ensure that Federal records sent or received on these systems are preserved in the appropriate recordkeeping system and that reasonable steps are taken to capture available transmission and receipt data needed by the agency for recordkeeping purposes.

(5) Some e-mail systems provide calendars and task lists for users. These may meet the definition of Federal record. Calendars that meet the definition of Federal records are to be managed in accordance with the provisions of General Records Schedule 23, Item 5.

(6) Draft documents that are circulated on electronic mail systems may be records if they meet the criteria specified in 36 CFR 1222.34.

(b) Agencies shall consider the following criteria when developing procedures for the maintenance of electronic mail records in appropriate recordkeeping systems, regardless of format.

(1) Recordkeeping systems that include electronic mail messages must:

(i) Provide for the grouping of related records into classifications according to the nature of the business purposes the records serve;

(ii) Permit easy and timely retrieval of both individual records and files or other groupings of related records;

(iii) Retain the records in a usable format for their required retention period as specified by a NARA-approved records schedule;

(iv) Be accessible by individuals who have a business need for information in the system;

(v) Preserve the transmission and receipt data specified in agency instructions; and

(vi) Permit transfer of permanent records to the National Archives and

Records Administration (see 36 CFR 1228.188 and 36 CFR 1234.32(a)).

(2) Agencies shall not store the recordkeeping copy of electronic mail messages that are Federal records only on the electronic mail system, unless the system has all of the features specified in paragraph (b)(1) of this section. If the electronic mail system is not designed to be a recordkeeping system, agencies shall instruct staff on how to copy Federal records from the electronic mail system to a recordkeeping system.

(c) Agencies that maintain their electronic mail records electronically shall move or copy them to a separate electronic recordkeeping system unless their system has the features specified in paragraph (b)(1) of this section. Because they do not have the features specified in paragraph (b)(1) of this section, backup tapes should not be used for recordkeeping purposes. Agencies may retain records from electronic mail systems in an off-line electronic storage format (such as optical disk or magnetic tape) that meets the requirements described at 36 CFR 1234.30(a). Agencies that retain permanent electronic mail records scheduled for transfer to the National Archives shall either store them in a format and on a medium that conforms to the requirements concerning transfer at 36 CFR 1228.188 or shall maintain the ability to convert the records to the required format and medium at the time transfer is scheduled.

(d) Agencies that maintain paper files as their recordkeeping systems shall print their electronic mail records and the related transmission and receipt data specified by the agency.

[60 FR 44641, Aug. 28, 1995]

§ 1234.26 Judicial use of electronic records.

Electronic records may be admitted in evidence to Federal courts for use in court proceedings (Federal Rules of Evidence 803(8)) if trustworthiness is established by thoroughly documenting the recordkeeping system's operation and the controls imposed upon it. Agencies should implement the following procedures to enhance the legal admissibility of electronic records.

(a) Document that similar kinds of records generated and stored electronically are created by the same processes each time and have a standardized retrieval approach.

(b) Substantiate that security procedures prevent unauthorized addition, modification or deletion of a record and ensure system protection against such problems as power interruptions.

(c) Identify the electronic media on which records are stored throughout their life cycle, the maximum time span that records remain on each storage medium, and the NARA-approved disposition of all records.

(d) Coordinate all of the above with legal counsel and senior IRM and records management staff.

[55 FR 19218, May 8, 1990. Redesignated at 60 FR 44641, Aug. 28, 1995]

§ 1234.28 Security of electronic records.

Agencies shall implement and maintain an effective records security program that incorporates the following:

(a) Ensures that only authorized personnel have access to electronic records.

(b) Provides for backup and recovery of records to protect against information loss.

(c) Ensures that appropriate agency personnel are trained to safeguard sensitive or classified electronic records.

(d) Minimizes the risk of unauthorized alteration or erasure of electronic records.

(e) Ensures that electronic records security is included in computer systems security plans prepared pursuant to the Computer Security Act of 1987 (40 U.S.C. 759 *note*).

[55 FR 19218, May 8, 1990. Redesignated at 60 FR 44641, Aug. 28, 1995]

§ 1234.30 Selection and maintenance of electronic records storage media.

(a) Agencies shall select appropriate media and systems for storing agency records throughout their life, which meet the following requirements:

(1) Permit easy retrieval in a timely fashion;

(2) Facilitate distinction between record and nonrecord material;

(3) Retain the records in a usable format until their authorized disposition date; and

(4) When appropriate, meet requirements for transferring permanent records to NARA (see § 1228.188 of this chapter).

(b) The following factors shall be considered before selecting a storage medium or converting from one medium to another:

(1) The authorized life of the records, as determined during the scheduling process;

(2) The maintenance necessary to retain the records;

(3) The cost of storing and retrieving the records;

(4) The records density;

(5) The access time to retrieve stored records;

(6) The portability of the medium (that is, selecting a medium that will run on equipment offered by multiple manufacturers) and the ability to transfer the information from one medium to another (such as from optical disk to magnetic tape); and

(7) Whether the medium meets current applicable Federal Information Processing Standards.

(c) Agencies should avoid the use of floppy disks for the exclusive long-term storage of permanent or unscheduled electronic records.

(d) Agencies shall ensure that all authorized users can identify and retrieve information stored on diskettes, removable disks, or tapes by establishing or adopting procedures for external labeling.

(e) Agencies shall ensure that information is not lost because of changing technology or deterioration by converting storage media to provide compatibility with the agency's current hardware and software. Before conversion to a different medium, agencies must determine that the authorized disposition of the electronic records can be implemented after conversion.

(f) Agencies shall back up electronic records on a regular basis to safeguard against the loss of information due to equipment malfunctions or human error. Duplicate copies of permanent or unscheduled records shall be maintained in storage areas separate from the location of the records that have been copied.

(g) *Maintenance of magnetic computer tape.* (1) Agencies shall test magnetic computer tapes no more than 6 months prior to using them to store electronic records that are unscheduled or scheduled for permanent retention. This test should verify that the tape is free of permanent errors and in compliance with National Institute of Standards and Technology or industry standards.

(2) Agencies shall maintain the storage and test areas for computer magnetic tapes containing permanent and unscheduled records at the following temperatures and relative humidities:

Constant temperature—62 to 68°F.
Constant relative humidity—35% to 45%

(3) Agencies shall rewind under controlled tension all tapes containing unscheduled and permanent records every 3½ years.

(4) Agencies shall annually read a statistical sample of all reels of magnetic computer tape containing permanent and unscheduled records to identify any loss of data and to discover and correct the causes of data loss. In tape libraries with 1800 or fewer reels, a 20% sample or a sample size of 50 reels, whichever is larger, should be read. In tape libraries with more than 1800 reels, a sample of 384 reels should be read. Tapes with 10 or more errors should be replaced and, when possible, lost data shall be restored. All other tapes which might have been affected by the same cause (i.e., poor quality tape, high usage, poor environment, improper handling) shall be read and corrected as appropriate.

(5) Agencies shall copy permanent or unscheduled data on magnetic tapes before the tapes are 10 years old onto tested and verified new tapes.

(6) External labels (or the equivalent automated tape management system) for magnetic tapes used to store permanent or unscheduled electronic records shall provide unique identification for each reel, including the name of the organizational unit responsible for the data, system title, and security classification, if applicable. Additionally, the following information shall be

maintained for (but not necessarily attached to) each reel used to store permanent or unscheduled electronic records: file title(s); dates of creation; dates of coverage; the recording density; type of internal labels; volume serial number, if applicable; number of tracks; character code/software dependency; information about block size; and reel sequence number, if the file is part of a multi-reel set. For numeric data files, include record format and logical record length, if applicable; data set name(s) and sequence, if applicable; and number of records for each data set.

(7) Agencies shall prohibit smoking and eating in magnetic computer tape storage libraries and test or evaluation areas that contain permanent or unscheduled records.

(h) *Maintenance of direct access storage media.* (1) Agencies shall issue written procedures for the care and handling of direct access storage media which draw upon the recommendations of the manufacturers.

(2) External labels for diskettes or removable disks used when processing or temporarily storing permanent or unscheduled records shall include the following information: name of the organizational unit responsible for the records, descriptive title of the contents, dates of creation, security classification, if applicable, and identification of the software and hardware used.

[55 FR 19218, May 8, 1990. Redesignated at 60 FR 44641, Aug. 28, 1995]

§ 1234.32 Retention and disposition of electronic records.

Agencies shall establish policies and procedures to ensure that electronic records and their documentation are retained as long as needed by the Government. These retention procedures shall include provisions for:

(a) Scheduling the disposition of all electronic records, as well as related documentation and indexes, by applying General Records Schedules (particularly GRS 20 or GRS 23) as appropriate or submitting an SF 115, Request for Records Disposition Authority, to NARA (see part 1228 of this chapter). The information in electronic information systems, including those operated for the Government by a contractor, shall be scheduled as soon as possible but no later than one year after implementation of the system.

(b) Transferring a copy of the electronic records and any related documentation and indexes to the National Archives at the time specified in the records disposition schedule in accordance with instructions found in § 1228.188 of this chapter. Transfer may take place at an earlier date if convenient for both the agency and the National Archives and Records Administration.

(c) Establishing procedures for regular recopying, reformatting, and other necessary maintenance to ensure the retention and usability of electronic records throughout their authorized life cycle (see § 1234.28).

(d) Electronic mail records may not be deleted or otherwise disposed of without prior disposition authority from NARA (44 U.S.C. 3303a). This applies to the original version of the record that is sent or received on the electronic mail system and any copies that have been transferred to a recordkeeping system. See 36 CFR part 1228 for records disposition requirements.

(1) *Disposition of records on the electronic mail system.* When an agency has taken the necessary steps to retain the record in a recordkeeping system, the identical version that remains on the user's screen or in the user's mailbox has no continuing value. Therefore, NARA has authorized deletion of the version of the record on the electronic mail system under General Records Schedule 20, Item 14, after the record has been preserved in a recordkeeping system along with all appropriate transmission data.

(2) *Records in recordkeeping systems.* The disposition of electronic mail records that have been transferred to an appropriate recordkeeping system is governed by the records schedule or schedules that control the records in that system. If the records in the system are not scheduled, the agency shall follow the procedures at 36 CFR part 1228.

[55 FR 19218, May 8, 1990. Redesignated and amended at 60 FR 44641, 44642, Aug. 28, 1995]

§ 1234.34 Destruction of electronic records.

Electronic records may be destroyed only in accordance with a records disposition schedule approved by the Archivist of the United States, including General Records Schedules. At a minimum each agency shall ensure that:

(a) Electronic records scheduled for destruction are disposed of in a manner that ensures protection of any sensitive, proprietary, or national security information.

(b) Magnetic recording media previously used for electronic records containing sensitive, proprietary, or national security information are not reused if the previously recorded information can be compromised by reuse in any way.

(c) Agencies shall establish and implement procedures that specifically address the destruction of electronic records generated by individuals employing electronic mail.

[55 FR 19218, May 8, 1990. Redesignated and amended at 60 FR 44641, 44642, Aug. 28, 1995]

PART 1236—MANAGEMENT OF VITAL RECORDS

Subpart A—General

Sec.
1236.10 Purpose.
1236.12 Authority.
1236.14 Definitions.

Subpart B—Vital Records

1236.20 Vital records program objectives.
1236.22 Identification of vital records.
1236.24 Use of vital records and copies of vital records.
1236.26 Protection of vital records.
1236.28 Disposition of original vital records.

AUTHORITY: 44 U.S.C. 2104(a), 2904(a), 3101; E. O. 12656, 53 FR 47491, 3 CFR, 1988 Comp., p. 585.

SOURCE: 60 FR 29990, June 7, 1995, unless otherwise noted.

Subpart A—General

§ 1236.10 Purpose.

This part prescribes policies and procedures for establishing a program for the identification and protection of vital records, those records needed by agencies for continuity of operations before, during, and after emergencies, and those records needed to protect the legal and financial rights of the Government and persons affected by Government activities. The records may be maintained on a variety of media including paper, magnetic tape or disk, photographic film, and microfilm. The management of vital records is part of an agency's continuity of operations plan designed to meet emergency management responsibilities.

§ 1236.12 Authority.

Heads of agencies are responsible for the vital records program under the following authorities:

(a) To make and preserve records containing adequate and proper documentation of the agency's organization, functions, policies, procedures, decisions, and essential transactions, and to furnish information to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities (44 U.S.C. 3101).

(b) To perform national security emergency preparedness functions and activities (Executive Order 12656).

§ 1236.14 Definitions.

Basic records management terms are defined in 36 CFR 1220.14. As used in part 1236:

Contingency planning means instituting policies and procedures to mitigate the effects of potential emergencies or disasters on an agency's operations and records. Contingency planning is part of the continuity of operations planning required under Federal Preparedness Circulars and other guidance issued by the Federal Emergency Management Agency (FEMA) and Executive Order 12656.

Cycle means the periodic removal of obsolete copies of vital records and their replacement with copies of current vital records. This may occur daily, weekly, quarterly, annually or at other designated intervals.

Disaster means an unexpected occurrence inflicting widespread destruction and distress and having long-term adverse effects on agency operations. Each agency defines what a long-term adverse effect is in relation to its most critical program activities.

Emergency means a situation or an occurrence of a serious nature, developing suddenly and unexpectedly, and demanding immediate action. This is generally of short duration, for example, an interruption of normal agency operations for a week or less. It may involve electrical failure or minor flooding caused by broken pipes.

Emergency operating records are that type of vital records essential to the continued functioning or reconstitution of an organization during and after an emergency. Included are emergency plans and directive(s), orders of succession, delegations of authority, staffing assignments, selected program records needed to continue the most critical agency operations, as well as related policy or procedural records that assist agency staff in conducting operations under emergency conditions and for resuming normal operations after an emergency.

Legal and financial rights records are that type of vital records essential to protect the legal and financial rights of the Government and of the individuals directly affected by its activities. Examples include accounts receivable records, social security records, payroll records, retirement records, and insurance records. These records were formerly defined as ''rights-and-interests'' records.

National security emergency means any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or threatens the national security of the United States, as defined in Executive Order 12656.

Off-site storage means a facility other than an agency's normal place of business where vital records are stored for protection. This is to ensure that the vital records are not subject to damage or destruction from an emergency or disaster affecting an agency's normal place of business.

Vital records mean essential agency records that are needed to meet operational responsibilities under national security emergencies or other emergency or disaster conditions (emergency operating records) or to protect the legal and financial rights of the Government and those affected by Government activities (legal and financial rights records).

Vital records program means the policies, plans, and procedures developed and implemented and the resources needed to identify, use, and protect the essential records needed to meet operational responsibilities under national security emergencies or other emergency or disaster conditions or to protect the Government's rights or those of its citizens. This is a program element of an agency's emergency management function.

Subpart B—Vital Records

§ 1236.20 Vital records program objectives.

The vital records program is conducted to identify and protect those records that specify how an agency will operate in case of emergency or disaster, those records vital to the continued operations of the agency during and after an emergency or disaster, and records needed to protect the legal and financial rights of the Government and of the persons affected by its actions. An agency identifies vital records in the course of contingency planning activities carried out in the context of the emergency management function. In carrying out the vital records program agencies shall:

(a) Specify agency staff responsibilities;

(b) Ensure that all concerned staff are appropriately informed about vital records;

(c) Ensure that the designation of vital records is current and complete; and

(d) Ensure that vital records and copies of vital records are adequately protected, accessible, and immediately usable.

§ 1236.22 Identification of vital records.

Vital records include emergency plans and related records that specify how an agency is to respond to an emergency as well as those records that would be needed to continue operations and protect legal and financial rights. Agencies should consider the informational content of records series and electronic records systems when

identifying vital records. Only the most recent and complete source of the vital information needs to be treated as vital records.

§ 1236.24 Use of vital records and copies of vital records.

Agencies shall ensure that retrieval procedures for vital records require only routine effort to locate needed information, especially since individuals unfamiliar with the records may need to use them during an emergency or disaster. Agencies also shall ensure that all equipment needed to read vital records or copies of vital records will be available in case of emergency or disaster. For electronic records systems, agencies also shall ensure that system documentation adequate to operate the system and access the records will be available in case of emergency or disaster.

§ 1236.26 Protection of vital records.

Agencies shall take appropriate measures to ensure the survival of the vital records or copies of vital records in case of emergency or disaster. In the case of electronic records, this requirement is met if the information needed in the event of emergency or disaster is available in a copy made for general security purposes, even when the copy contains other information.

(a) *Duplication.* Computer backup tapes created in the normal course of system maintenance or other electronic copies that may be routinely created in the normal course of business may be used as the vital record copy. For hard copy records, agencies may choose to make microform copies. Standards for the creation, preservation and use of microforms are found in 36 CFR part 1230, Micrographic Records Management. The Computer Security Act of 1987 (40 U.S.C. 759, Pub. L. 100–235), OMB Circular A–130, and 36 CFR part 1234, Electronic Records Management, and 41 CFR part 201, subchapter B, Management and Use of Information and Records, specify protective measures and standards for electronic records.

(b) *Storage.* When agencies choose duplication as a protection method, the copy of the vital record stored off-site is normally a duplicate of the original record. Designating and using duplicate copies of original records as vital records facilitates destruction or deletion of obsolete duplicates when replaced by updated copies, whereas original vital records must be retained for the period specified in the agency records disposition schedule. The agency may store the original records off-site if protection of original signatures is necessary, or if it does not need to keep the original record at its normal place of business.

(c) *Storage considerations.* Agencies need to consider several factors when deciding where to store copies of vital records. Copies of emergency operating vital records need to be accessible in a very short period of time for use in the event of an emergency or disaster. Copies of legal and financial rights records may not be needed as quickly. In deciding where to store vital records copies, agencies shall treat records that have the properties of both categories, that is, emergency operating and legal and financial rights records, as emergency operating records.

(1) Under certain circumstances, Federal records centers (FRC's) may store copies of emergency operating vital records. FRC's will store small volumes of such records, but may not be able to provide storage for large collections or ones requiring constant recycling of the vital records, except under reimbursable agreement. Prior to preparing the records for shipment, the agency must contact the FRC to determine if the center can accommodate the storage requirements and return copies in an acceptable period of time.

(2) The off-site copy of legal and financial rights vital records may be stored at an off-site agency location or, in accordance with § 1228.156 of this chapter, at an FRC.

(3) When using an FRC for storing vital records that are duplicate copies of original records, the agency must specify on the SF 135, Records Transmittal and Receipt, that they are vital records (duplicate copies) and the medium on which they are maintained. The agency shall also periodically cycle (update) them by removing obsolete items and replacing them with the most recent version, when necessary.

(4) Agencies that transfer permanent, original vital records maintained on electronic or microform media to the custody of the National Archives may designate such records as their off-site copy. That designation may remain in effect until the information in such transferred records is superseded or becomes obsolete.

§ 1236.28 Disposition of original vital records.

The disposition of original vital records is governed by records schedules approved by NARA (see part 1228, Disposition of Federal Records). Original records that are not scheduled may not be destroyed or deleted.

PART 1238—PROGRAM ASSISTANCE

Sec.

1238.1 Scope of part.
1238.2 Requests for assistance.

AUTHORITY: 44 U.S.C. 2904 and 3101.

§ 1238.1 Scope of part.

The National Archives and Records Administration publishes handbooks, conducts workshops and other training sessions, and furnishes information and guidance to Federal agencies about the creation of records, their maintenance and use, and their disposition.

[50 FR 26940, June 28, 1985]

§ 1238.2 Requests for assistance.

Agencies desiring information or assistance related to any of the areas covered by subchapter B should contact the Agency Services Division, Office of Records Administration, National Archives (NIA), Washington, DC 20408. Agency field organizations may contact the director of the appropriate Federal records center regarding records in or scheduled for transfer to the records center, or the director of the appropriate regional archives regarding records in or scheduled for transfer to the regional archives.

[57 FR 19807, May 8, 1992]

SUBCHAPTER C—PUBLIC AVAILABILITY AND USE

PART 1250—PUBLIC AVAILABILITY OF NARA ADMINISTRATIVE RECORDS AND INFORMATIONAL MATERIALS

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1250.1 Scope of part.

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1250.10 Purpose.
1250.12 Availability of records.
1250.14 Applying exemptions.
1250.16 Records of other agencies.

Subpart B—Publication of General Agency Information and Rules in the Federal Register

1250.20 Published information and rules.

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1250.70 Categories of records exempt from disclosure under FOIA.

Subpart G—Predisclosure Notification Procedures for Commercial Information

1250.75 Predisclosure notification procedures for commercial information.

Subpart H—Subpoenas and Other Legal Demands for NARA Administrative Records

1250.80 Service of subpoena and other legal demands for NARA administrative records.

AUTHORITY: 44 U.S.C. 2104(a); 5 U.S.C. 552; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

SOURCE: 50 FR 27202, July 1, 1985, unless otherwise noted.

§ 1250.1 Scope of part.

This part sets forth policies and procedures concerning the availability to the public of all records and informational materials generated, developed, or held by NARA with respect to:

(a) NARA organization and functions and regulations of general applicability;

(b) NARA final orders and staff manuals; and

(c) Operational and other appropriate agency records.

This part also covers exemptions from disclosure of these records; procedures for the guidance of the public in inspecting and obtaining copies of NARA records; and the service of a subpoena or other legal demand with respect to NARA administrative records.

Subpart A—General Provisions

§ 1250.10 Purpose.

This part implements the provisions of the Freedom of Information Act (''FOIA''), 5 U.S.C. 552, as amended. This part prescribes procedures by which the public may inspect and obtain copies of NARA records under FOIA.

§ 1250.12 Availability of records.

NARA administrative records are available to the greatest extent possible in keeping with the spirit and intent of the FOIA. Requesters should

address their requests to the office designated in § 1250.54. The person making the request need not have a particular interest in the subject matter, nor provide justification for the request except to the extent necessary to determine the requester's category for fee assessment purposes as explained in § 1250.42. The FOIA requirement that records be available to the public refers only to records in existence when the request is submitted. The Act does not require an agency to compile or create information or records in response to a FOIA request.

[52 FR 29519, Aug. 10, 1987]

§ 1250.14 Applying exemptions.

NARA may deny a request for a NARA record if the record falls within an exemption of FOIA as outlined in subpart E of this part. Except when a record is classified or when disclosure would violate any Federal law, the authority to withhold a record is permissive rather than mandatory. NARA will not withhold a record unless there is a compelling reason to do so. In the absence of a compelling reason, NARA will disclose a record although it otherwise is subject to exemption.

§ 1250.16 Records of other agencies.

(a) *Other agencies' records managed by NARA.* The availability of records of other agencies in the physical custody of NARA and records which have been accessioned into the National Archives of the United States and Federal Records Centers is governed by part 1254 of this chapter. (Availability of Records and Donated Historical Materials.)

(b) *Current records of other agencies.* If NARA receives a request to make available current records that are the primary responsibility of another agency, NARA shall refer the request to the agency concerned for appropriate action. NARA shall inform the requestor that NARA has forwarded the request to the responsible agency.

Subpart B—Publication of General Agency Information and Rules in the Federal Register

§ 1250.20 Published information and rules.

In accordance with 5 U.S.C. 552(a)(1), NARA publishes in the FEDERAL REGISTER, for the guidance of the public, the following general information concerning NARA:

(a) A description of its central and field organization and the established places at which, the employees from whom, and the methods whereby the public may obtain information, make submittals or requests, or obtain decisions;

(b) Statements of the general courses and methods by which functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places where forms may be obtained, and instructions on the scope and content of all papers, reports, and examinations;

(d) Substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by NARA;

(e) Each amendment, revision, or repeal of the materials described in this section.

Subpart C—Availability of Orders, Regulations, and Manuals

§ 1250.30 General.

NARA makes available for public inspection and copying the materials described in paragraph (a)(2) of the FOIA (5 U.S.C. 552(a)(2)), which are listed in § 1250.32, and an Index of those materials as described in § 1250.34, at the National Archives Building located at 7th and Pennsylvania Avenue, NW., Washington, DC. Copying services are available at fees specified in § 1250.40.

[52 FR 29519, Aug. 10, 1987]

§1250.32 Available materials.

NARA materials available under this subpart C are as follows:

(a) NARA orders;

(b) Written statements of NARA policy that are not published in the FEDERAL REGISTER;

(c) Administrative staff manuals and instructions to staff affecting a member of the public unless these materials are promptly published and copies offered for sale.

§1250.34 Index.

NARA will maintain and make available for public inspection and copying current indexes regarding any matter issued, adopted, or promulgated after July 4, 1967, and described in §1250.32. NARA will publish quarterly and make available copies of each index or supplement thereto. The index will be maintained for public inspection by the Office of Management and Administration, National Archives (NA), Washington, DC 20408. The public may write to the Policy and Program Analysis Division, National Archives (NAA), Washington, DC 20408, to request a copy of the index.

[51 FR 23416, June 27, 1986, as amended at 57 FR 22430, May 28, 1992]

§1250.36 Public inspection and copying.

NARA will make records not subject to exemption available at the NARA facility where the records are located during normal working hours (see part 1253 of this chapter), or at an alternative NARA facility as mutually agreed upon by NARA and the requester. NARA will agree to show the originals or a copy of the originals if the originals are located at another NARA facility, make one copy available at a fee, or a combination of these alternatives.

Subpart D—Fees

SOURCE: 52 FR 29519, Aug. 10, 1987, unless otherwise noted.

§1250.37 Definitions.

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.

Educational-institution request means a request from 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 which operates a program or programs of scholarly research. The request must serve the scholarly research goals of the institution or school rather than the individual goals of the requester. A request from a student in furtherance of the completion of a course of instruction does not qualify as an educational institution request.

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 past publication history may also be considered in demonstrating this solid basis.

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 by the general public.

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 the results of which are not intended to promote any particular product or industry.

Other requesters means any individual who is not a commercial-use requester, a representative of the news media, a

freelance-journalist, or one associated with an educational or non-commercial scientific institution whose research activities conform to the definition above. This term does not include requests from records subjects for records about themselves filed in NARA's systems of records; such requests are handled in accordance with 36 CFR part 1202.

§ 1250.38 Search fees.

(a) The search fee is $10 per hour or fraction thereof when clerical/administrative staff manually search for records responsive to a request, and $18 per hour or fraction thereof when NARA must use professional staff to manually search for the requested records because clerical/administrative staff would be unable to locate them. The search fee for computerized searches is the wage (plus 16 percent fringe benefits) of the computer operator per hour or fraction thereof plus the actual computer operating costs.

(b) NARA may charge for search time spent in trying to locate NARA records which are responsive to the request regardless of whether or not any responsive records are identified. NARA will not engage in line-by-line search when merely duplicating an entire document is feasible and would prove to be a less expensive and quicker method of complying with the request.

(c) When the search includes non-personnel expenditures to locate and identify requested information (e.g., transport or travel costs, etc.), the applicable fee is the direct cost to NARA.

(d) NARA will charge for the aggregate of all time spent in searching for documents responsive to a series of requests when NARA reasonably believes a requester or group of requesters is dividing a request into a series of requests to evade assessment of applicable fees.

§ 1250.39 Review fees.

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

(b) The review fee is $24 per hour or fraction thereof, for time spent in activities set forth in paragraphs (d)(1), (d)(2), and (d)(3) of this section.

(c) NARA will charge only commercial-use requesters review fees.

(d) NARA may charge for the time spent engaged in the following activities to determine ''review time'' subject to review fees:

(1) Time spent examining all documents that are responsive to a request to determine whether any portion of any document is exempt from mandatory disclosure regardless of whether any information is ultimately withheld.

(2) Time spent excising information and otherwise preparing records for release (except preparing the copies that will be made available to the requester).

(3) The aggregate of all time spent in reviewing documents to determine whether any portion of any document is permitted to be withheld when NARA reasonably believes that a requester or group of requesters is dividing a request into a series of requests to evade the assessment of applicable fees.

(e) A fee of $.20 per page will be charged for making working copies of pages from which information must be excised.

§ 1250.40 Reproduction fees.

(a) *Electrostatic reproductions*—(1) *Prepared by NARA staff.* Paper reproductions of NARA paper records made by NARA staff will be furnished for $.20 a page.

(2) *Self-service.* At NARA facilities with self-service electrostatic copiers, requesters may make reproductions of released documents for $.10 a page.

(b) *Reproductions from electromagnetic media.* Direct costs to NARA for staff time for programming, computer operations, and printouts or magnetic tape to reproduce the requested data will be charged requesters.

(c) *Other media.* The cost for reproduction of records from or to other media will be provided upon request. NARA will charge the direct costs to NARA of providing the reproduction.

§ 1250.41 Other fees.

(a) *Mailing costs.* Actual postage and shipping costs will be charged when the requester asks for special methods such as express mail.

(b) *Certification*. A fee of $2.00 will be charged for each certification.

(c) *Interest*. Interest charges on unpaid fees will be charged beginning on the 31st day after billing at the rate prescribed in 31 U.S.C. 3717, and will accrue from the date of the billing.

§1250.42 Fees applicable to categories of requesters.

(a) *NARA policy*. (1) NARA will assess fees on the basis of the category of the requester as defined in §1250.37. The initial request should include sufficient information for NARA to determine the category of the requester. If sufficient information is not provided for NARA to make a determination, NARA will seek clarification from the requester before assigning a requester to a specific category and before beginning to process the request. If a requester disagrees with a NARA category-of-requester determination, this determination may be appealed, following the procedures set forth in §1250.58.

(2) NARA will not assess fees otherwise chargeable if the aggregate of all applicable fees is less than $10.

(3) If NARA estimates that total applicable search and reproduction charges are likely to exceed $25, NARA will notify the requester of the estimated amount of fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. The requester will be offered the opportunity to confer with a NARA official with the object of reformulating the request to meet the requester's need at a lower cost.

(4) For those requests eligible for 2 hours free search time, NARA may begin charging for computerized search time once the cost of the search (including the operator time and the cost of operating the computer to process the request) equals the equivalent dollar amount of two hours of a manual search by a clerical/administrative employee.

(b) *Commercial-use requesters*. Commercial-use requesters, as defined in §1250.37, who make requests for reasonably described records will be assessed the following fees:

(1) Search fees as set forth in §1250.38;

(2) Review fees as set forth in §1250.39

(3) Reproduction fees as set forth in §1250.40; and

(4) Other fees as set forth in §1250.41, as applicable.

(c) *Educational and non-commercial scientific institution requesters*. When NARA receives a request from a qualified educational institution or a non-commercial scientific institution requester, as defined in §1250.37, for reasonably described records, NARA will assess:

(1) Reproduction costs as set forth in §1250.40, except the first 100 pages or their equivalent will be provided free; and

(2) Other costs as set forth in §1250.41, if applicable. NARA will not charge search or review fees.

(d) *Requesters who are qualified representatives of the news media or qualified freelance-journalists*. When NARA receives a request from a qualified representative of the news media or freelance-journalist, as defined in §1250.37, for reasonably described records, NARA will assess reproduction fees as set forth in §1250.40, except the first 100 pages or their equivalent will be provided free. NARA will not charge search or review fees.

(e) *Requests from other requesters*. When NARA receives a request from an individual defined as ''other requesters'' in §1250.37 for reasonably described records, NARA will assess:

(1) Search fees as set forth in §1250.38 for any search time in excess of two hours of manual search or its computerized search equivalent;

(2) Reproduction fees as set forth in §1250.40, as applicable, except the first 100 pages or their equivalent will be provided free; and

(3) Other fees as set forth in §1250.41, if applicable.

§1250.43 Prepayment of fees.

(a) NARA may require prepayment of all fees when:

(1) Applicable fees are likely to exceed $250, and

(i) The requester has no history of payment;

(ii) After notifying a requester who has a history of prompt payment of FOIA fees of the estimated fees, NARA does not receive satisfactory assurances of full payment: Or

(2) A requester has previously failed to pay a fee and interest charges within 30 days of the date of billing.

(b) The amount of the prepayment will be the anticipated fees for the current request, and if applicable, any previously assessed fees and any interest which have not been received by NARA.

§ 1250.44 Waiver or reduction of fees.

(a) Any request for waiver or reduction of a fee shall be included in the initial letter requesting access to NARA records under § 1250.54. The waiver or reduction request should explain how release of the requested information is likely to benefit the public by contributing significantly to the public understanding of the operations or activities of the government, and why the information is not primarily in the commercial interest of the requester.

(b) Documents shall be furnished without a fee or at a reduced fee if NARA determines that the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(c) If NARA denies a request for a waiver or reduction of a fee, the requester may appeal this denial, following the procedures set forth in § 1250.58.

§ 1250.45 Form of payment.

Requesters shall pay fees by check or money order payable to: ''National Archives and Records Administration'' and addressed to the official named by NARA in its correspondence.

§ 1250.46 Payment collection.

As provided for in the Debt Collection Act of 1982 (Pub. L. 97–365), NARA may employ collection agencies and may disclose information concerning nonpayment of fees to consumer reporting agencies when fees have not been paid within 31 days of billing.

Subpart E—Described Records

§ 1250.50 General.

(a) Except for records made available in accordance with subparts B and C of this part, NARA promptly will make records available to a requester when the request describes the records so as to enable a professional NARA employee to identify and locate the record(s) unless NARA invokes an exemption in accordance with subpart F of this part. NARA will consult with the requester, when necessary, to more specifically identify the requested record(s).

(b) Upon receipt of a request that does not reasonably describe the records requested, NARA may contact the requester to seek a more specific description. The 10-workday time limit set forth in § 1250.56 will not start until NARA receives a request reasonably describing the records.

[50 FR 27202, July 1, 1985, as amended at 52 FR 29521, Aug. 10, 1987]

§ 1250.52 Procedures for making records available.

This section sets forth initial procedures for making requested records available. These procedures do not apply to records of other agencies that have been transferred to NARA in accordance with 44 U.S.C. 2107 and 3103; in those cases, the procedures in part 1254 of this chapter govern.

§ 1250.54 Submission of requests for described records.

For records located in NARA, the requester shall submit a request in writing to the NARA FOIA Officer, National Archives (NAA), Washington, DC 20408. Requests shall include the words ''Freedom of Information Request'' prominently marked on both the face of the request letter and the envelope. The 10-workday time limit for agency decisions set forth in § 1250.56 begins with receipt of the request by the NARA office which maintains the requested records. A requester who has questions concerning a FOIA request may consult the NARA FOIA Officer.

§ 1250.56 Response to initial request.

NARA shall mail a response to an initial FOIA request within 10 workdays (that is, excluding Saturdays, Sundays, and legal Federal holidays) after receipt of a request by the NARA office that maintains the records. In unusual circumstances, NARA will inform the requester of the agency's need

to extend the time to respond to the request.

§1250.58 Appeal with NARA.

(a) A requester who receives a denial of access in whole or in part of a request or who receives a response that no responsive records were found, and who considers the latter response as adverse in nature, may appeal that decision or finding within NARA to the appropriate NARA FOIA Appeal Official. If the denial was signed by the Assistant Archivist for Management and Administration, the appeal shall be addressed to the Deputy Archivist of the United States, National Archives (ND), Washington, DC 20408. If the denial was signed by the Inspector General, the appeal shall be addressed to the Archivist of the United States, National Archives (N), Washington, DC 20408.

(b) The NARA FOIA Appeal Official must receive an appeal no later than 35 calendar days after the date of the NARA letter of denial.

(c) (1) The requester shall appeal in writing. The appeal letter shall include a brief statement of the reason(s):

(i) If an appeal of denial of access, why NARA should release the records, or

(ii) If an appeal of a requester category determination, why the requester should be considered to be a member of a different category, or

(iii) If an appeal of a denial of a fee reduction or waiver request that the requester is not otherwise entitled to, how disclosure of the information is likely to contribute significantly to public understanding of the operations or activities of government and why it is not a request primarily intended to benefit the commercial, trade, or profit interests of the requester, or

(iv) If no responsive records were found and the requester considers this to be an adverse determination, why the requester thinks that the search does not meet the requirements of the FOIA.

(2) The appeal letter shall include the words ''Freedom of Information Appeal'' on both the face of the appeal letter and the envelope, and the requester shall enclose with the appeal letter a copy of the initial request and denial.

(3) NARA has 20 workdays after receipt of an appeal to make a determination with respect to the appeal. The 20-workday time limit begins when the NARA FOIA Appeal Official receives the appeal.

(d) A requester who has received a denial of an appeal may seek judicial review of NARA's decision in the United States district court in the district in which the requester resides or has a principal place of business, or where the records are situated, or in the District of Columbia.

[50 FR 27202, July 1, 1985, as amended at 51 FR 23416, June 27, 1986; 52 FR 29521, Aug. 10, 1987; 54 FR 32068, Aug. 4, 1989; 57 FR 22430, May 28, 1992]

§1250.60 Extension of time limits.

In unusual circumstances the NARA FOIA Appeal Official may extend the time limits prescribed in §1250.58. If necessary, more than one extension of time may be taken. However, the total extension of time shall not exceed 10 workdays with respect to a particular request. The extension may be divided between the initial and appeal stages or within a single stage. NARA shall provide a written notice to the requester of any extension of time limits.

[50 FR 27197, July 1, 1985, as amended at 54 FR 32068, Aug. 4, 1989]

Subpart F—Exemptions

§1250.70 Categories of records exempt from disclosure under the FOIA.

(a) 5 U.S.C. 552(b) provides that the requirements of the FOIA do not apply to matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defence or foreign policy and that are, in fact, properly classified under the Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute, other than the Privacy Act, provided that the statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person that are privileged or confidential;

(5) Interagency 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;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings:

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) 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;

(v) 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

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(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; and

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) NARA will provide any reasonably segregable portion of a record to a requester after deletion of the portions that are exempt under this section.

(c) NARA will invoke no exemption under this section if the requested records would be available under the Privacy Act of 1974 and NARA implementing regulations in part 1202 of this chapter, or if disclosure would cause no demonstrable harm to any public or private interest.

[50 FR 27202, July 1, 1985, as amended at 52 FR 29521, Aug. 10, 1987]

Subpart G—Predisclosure Notification Procedures for Commercial Information

§ 1250.75 Predisclosure notification procedures for commercial information.

(a) *General.* Commercial information provided to NARA shall not be disclosed to the public except in accordance with this subpart.

(b) *Definitions.*

Potentially confidential commercial information means records provided to NARA by a submitter that may contain material exempt from release under 5 U.S.C. 552(b)(4) because disclosure could reasonably be expected to cause the submitter substantial competitive harm.

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.

(c) *Designation of potentially confidential commercial information.* Submitters of commercial information may designate the information as commercially confidential. The designation must:

(1) Be made by the submitter when the information is submitted to NARA or within 30 workdays thereafter;

(2) Specify precisely which information is claimed as commercially confidential;

(3) Be made in good faith;

(4) Be supported by a certification by the submitter that the information has not been published or previously officially disclosed to the public.

(d) *Notice of receipt of a request to release information.* (1) NARA shall give the submitter prompt written notice of receipt of a FOIA request for the submitter's potentially confidential commercial information when:

(i) The submitter, in good faith, has designated the material as commercially confidential in accordance with paragraph (c) of this section; and

(ii) The FOIA request is received within 10 years of the date of submission.

(2) The written notice of receipt of an FOIA request shall either describe the potentially confidential commercial information requested, or provide copies of the records containing the information. The notice shall be mailed to the last known address of the submitter.

(3) When notice is given to a submitter pursuant to this section, NARA shall inform the requester that:

(i) The notice has been sent to the submitter;

(ii) That NARA's response to the request may be delayed beyond the limitations specified in 5 U.S.C. 552(a)(6)(A) and (B) to allow for time to notify the submitter, and to consider any response; and

(iii) That the delay may be considered a denial of access to records and the requester may seek judicial review. However, the requester shall be invited to agree to a voluntary extension of time so that NARA may consider any claims of confidentiality by the submitter.

(e) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (d) of this section, NARA shall afford a submitter a reasonable amount of time to provide NARA:

(i) A detailed statement of any objections to disclosure. The statement shall specify which information is claimed to be of a confidential commercial nature, and shall specify all grounds for withholding any of the information under the exemptions of the FOIA. If exemption (b)(4) of the FOIA is cited, the statement shall explain how the release of the information can be reasonably expected to cause substantial competitive harm to the submitter; and

(ii) Certification that the information has not been published or previously disclosed to the public.

(2) The statement provided pursuant to this subsection may itself be subject to disclosure under the FOIA

(f) *Notice of intent to disclose.* (1) NARA shall consider any good faith designations of commercial confidentiality made when the information was initially submitted to NARA, and the submitter's timely objections and specific grounds for nondisclosure received in response to the notice of receipt of a request prior to determining whether to disclose the information in question.

(2) When NARA decides to disclose commercial information over the objections of a submitter, whether in response to a request to release or as the result of an appeal of a denial of access, NARA shall provide the submitter a written notice which:

(i) States the reasons why the submitter's objections were not sustained;

(ii) Describes or contains a copy of the information to be disclosed; and

(iii) Specifies a disclosure date. NARA shall inform the submitter that disclosure will be made on the specified disclosure date, unless barred by court order.

(3) NARA shall inform the requester that such notice has been given to the submitter and of the proposed disclosure date.

(4) When NARA and the submitter are in agreement concerning disclosure, disclosure shall take place as soon as possible.

(5) The notice of receipt of a request shall serve as the notice of intent to disclose when the submitter fails to respond to the initial notice within a reasonable period of time.

(g) *Notice of lawsuit.* NARA will promptly inform the requester and the submitter of any law suit filed by the other concerning possible disclosure.

(h) *Exceptions to notice requirement.* The notice requirements of this section do not apply when:

(1) NARA determines that the information should not be disclosed in accordance with one or more FOIA exemptions;

(2) The information has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) NARA has no substantial reason to believe that disclosure would result in competitive harm.

[54 FR 32068, Aug. 4, 1989]

Subpart H—Subpoenas or Other Legal Demands for NARA Administrative Records

§ 1250.80 Service of subpoena or other legal demand for NARA administrative records.

(a) A subpoena duces tecum or other legal demand for the production of NARA administrative records should be addressed to the Director of the Legal Services Staff, National Archives (NXL), Washington, DC 20408, with respect to NARA records.

(b) The Archivist of the United States and the Director of the Legal Services Staff are the only NARA employees authorized to accept, on behalf of NARA, service of a subpoena duces tecum or other legal demands for NARA administrative records.

(c) Regulations concerning service of a subpoena or other legal demand for records accessioned into the National Archives of the United States, records of other agencies in the custody of the Federal records centers, and donated historical materials are located at part 1254 of this chapter.

[50 FR 27202, July 1, 1985. Redesignated at 54 FR 32068, Aug. 4, 1989]

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 RECORDS 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 Federal Records Centers.
1253.7 Regional Archives System.

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

§1253.1 National Archives Building.

The National Archives Building is located at Seventh Street and Pennsylvania Avenue, NW., Washington, DC 20408. Hours: For the Central Research Room and Microfilm Research Room, 8:45 a.m. to 5 p.m., Monday and Wednesday; 8:45 a.m. to 9 p.m., Tuesday, Thursday, and Friday; 8:45 a.m. to 4:45 p.m. on Saturday. For other research rooms, 8:45 a.m. to 5 p.m., Monday through Friday.

[59 FR 6901, Feb. 14, 1994]

§1253.2 National Archives at College Park.

The National Archives at College Park is located at 8601 Adelphi Road, College Park, MD 20740–6001. Research complex hours are 8:45 a.m. to 5 p.m., Monday and Wednesday; 8:45 a.m. to 9 p.m., Tuesday, Thursday, and Friday; and 8:45 a.m. to 4:45 p.m. Saturday.

[59 FR 6900, Feb. 14, 1994]

§1253.3 Presidential libraries.

Some of the Presidential Libraries may offer extended research room hours on selected evenings and Saturdays; museums within the Libraries offer Saturday and Sunday hours. More specific information on extended hours is available from each Presidential Library. The hours listed in this section are the minimum hours that each Presidential Library is normally open.

(a) Herbert Hoover Library, 210 Parkside Dr., West Branch, IA. Mailing address: PO Box 488, West Branch, IA 52358–0488. Hours: 9 a.m. to 5 p.m., Monday through Friday.

(b) Franklin D. Roosevelt Library, 511 Albany Post Rd., Hyde Park, NY 12538–1999. Hours: 8:45 a.m. to 5 p.m., Monday through Friday.

(c) Harry S. Truman Library, 500 W. US Hwy 24, Independence, MO 64050–1798. Hours: 8:45 a.m. to 4:45 p.m., Monday through Friday.

(d) Dwight D. Eisenhower Library, 200 SE Fourth Street, Abilene, KS 67410–2900. Hours: 9 a.m. to 4:45 p.m., Monday through Friday.

(e) John Fitzgerald Kennedy Library, Columbia Point, Boston, MA 02125. Hours: 8 a.m. to 4:30 p.m., Monday through Friday.

(f) Lyndon Baines Johnson Library, 2313 Red River St., Austin, TX 78705–5702. Hours: 9 a.m. to 5 p.m., Monday through Friday.

(g) Gerald R. Ford Library, 1000 Beal Avenue, Ann Arbor, MI 48109–2114. Hours: 8:45 a.m. to 4:45 p.m., Monday through Friday.

(h) Gerald R. Ford Museum, 303 Pearl St. NW, Grand Rapids MI 49504–5353.

Hours: 9 a.m. to 4:45 p.m., Sunday through Saturday.

(i) Jimmy Carter Library, 1 Copenhill Ave NE, Atlanta, GA 30307–1406. Hours: 9 a.m. to 4:45 p.m., Monday through Friday.

(j) Ronald Reagan Library, 40 Presidential Dr, Simi Valley, CA 93065–0666. Hours: 9 a.m. to 4:30 p.m., Monday through Friday.

[46 FR 37652, July 22, 1981. Redesignated at 50 FR 15723, Apr. 19, 1985, and amended at 52 FR 23821, June 25, 1987; 57 FR 21742, May 22, 1992; 60 FR 40416, Aug. 8, 1995; 61 FR 390, Jan. 5, 1996]

§ 1253.4 Washington National Records Center.

Washington National Records Center, 4205 Suitland Road, Suitland, MD. Mailing address: Washington National Records Center, 4205 Suitland Road, Washington, DC 20409–0002. Hours: 8:30 a.m. to 4 p.m., Monday through Friday. From May 6, 1996, through August 30, 1996, appointments may be made to use archival records at the Center by calling the Suitland Reference Branch at (301) 457–7190.

[61 FR 14972, Apr. 4, 1996]

§ 1253.5 National Personnel Records Center.

(a) Military Personnel Records, National Personnel Records Center, 9700 Page Ave., St. Louis, MO 63132–5100. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

(b) Civilian Personnel Records, National Personnel Records Center, 111 Winnebago St., St. Louis, MO 63118–4199. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

[60 FR 40417, Aug. 8, 1995]

§ 1253.6 Federal Records Centers.

(a) 380 Trapelo Rd., Waltham, MA 02154–6399. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(b) 100 Dan Fox Dr., Pittsfield, MA 01201–8230. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

(c) Military Ocean Terminal Bldg. 22, Bayonne, NJ 07002–5388. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

(d) 14700 Townsend Rd., Philadelphia, PA 19154. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

(e) 1557 St. Joseph Ave., East Point, GA 30344–2593. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(f) 3150 Springboro Rd., Dayton, OH 45439–1883. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

(g) 7358 S. Pulaski Rd., Chicago, IL 60629–5898. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(h) 2312 E. Bannister Rd., Kansas City, MO 64131–3060. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(i) 501 W. Felix St., Bldg. 1, Dock 1, Fort Worth, TX. Mailing Address: PO Box 6216, Fort Worth, TX 76115–6216. Hours: 8 a.m. to 4 p.m., Monday through Friday.

(j) Denver Federal Center Bldg. 48, Denver, CO. Mailing Address: PO Box 25307, Denver, CO 80225–0307. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

(k) 1000 Commodore Dr., San Bruno, CA 94066–2350. Hours: 7:30 a.m. to 3:30 p.m., Monday through Friday.

(l) 2400 Avila Rd., 1st Floor East, Laguna Niguel, CA. Mailing Address: PO Box 6719, Laguna Niguel, CA 92607–6719. Hours: 8 a.m. to 4:30 p.m., Monday through Friday.

(m) 6125 Sand Point Way NE, Seattle, WA 98115–7999. Hours: 8 a.m. to 4 p.m., Monday through Friday.

[60 FR 40417, Aug. 8, 1995, as amended at 61 FR 390, Jan. 5, 1996]

§ 1253.7 Regional Archives System.

Some of the Regional Archives may offer extended research room hours on selected evenings and Saturdays. More specific information on extended hours is available from each Regional Archives. The hours listed in this section are the minimum hours that each Regional Archives is normally open.

(a) National Archives—New England Region, 380 Trapelo Rd., Waltham, MA 02154–6399. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (617) 647–8100.

(b) National Archives—Pittsfield Region, 100 Dan Fox Dr., Pittsfield, MA 01201–8230. Hours: 9 a.m. to 3:30 p.m., Monday through Friday. Telephone: (413) 445–8458.

(c) National Archives—Northeast Region, 201 Varick St., New York, NY 10014–4811. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (212) 337–1300.

(d) National Archives—Mid-Atlantic Region, 900 Market St. Room 1350, Philadelphia, PA 19107–4292. Hours: 8

a.m. to 4 p.m., Monday through Friday. Telephone: (215) 597–3000.

(e) National Archives—Southeast Region, 1557 St. Joseph Ave., East Point, GA 30344–2593. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (404) 763–7477.

(f) National Archives—Great Lakes Region, 7358 S. Pulaski Rd., Chicago, IL 60629–5898. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (312) 353–0162.

(g) National Archives—Central Plains Region, 2312 E. Bannister Rd., Kansas City, MO 64131–3060. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (816) 926–6934.

(h) National Archives—Southwest Region, 501 West Felix St., Bldg. 1, Dock 1, Fort Worth, TX. Mailing address: PO Box 6216, Fort Worth, TX 76115–0216. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (817) 334–5525.

(i) National Archives—Rocky Mountain Region, Denver Federal Center, Bldg. 48, Denver, CO. Mailing address: PO Box 25307, Denver, CO 80225–0307. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (303) 236–0817.

(j) National Archives—Pacific Southwest Region, 2400 Avila Rd., 1st Floor East, Laguna Niguel, CA. Mailing address: PO Box 6719, Laguna Niguel, CA 92607–6719. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (714) 643–4241.

(k) National Archives—Pacific Sierra Region, 1000 Commodore Dr., San Bruno, CA 94066–2350. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (415) 876–9009.

(l) National Archives—Pacific Northwest Region, 6125 Sand Point Way NE, Seattle, WA 98115–7999. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (206) 526–6507.

(m) National Archives—Alaska Region, 654 W. 3rd Ave. Rm. 012, Anchorage, AK 99501–2145. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (907) 271–2441.

[60 FR 40417, Aug. 8, 1995, as amended at 61 FR 390, Jan. 5, 1996]

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

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AUTHORITY: 44 U.S.C. 2101–2118; 5 U.S.C. 552; and E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

EDITORIAL NOTE: Nomenclature changes to part 1254 appear at 59 FR 29192, June 6, 1994.

Subpart A—General

§ 1254.1 General provisions.

(a) Researchers will normally use documents in designated research rooms only.

(b) Original documents will not normally be made available when microfilm copies or other alternative copies of the documents are available.

(c) Persons seeking information that is published and readily available will normally be referred to a public library.

(d) A director may require that researchers under the age of 16 years be accompanied by an adult researcher who agrees in writing to be present when the documents are used and to be responsible for compliance with the research room rules set forth in subpart B.

(e) Requests received in the normal course of reference service that do not specifically cite the Freedom of Information Act (5 U.S.C. 552) are not considered requests made under the act. Requests under the act must follow the procedure set forth in subpart C or subpart D of this part.

(f) Certain documents in the custody of NARA are available for exhibit, but are loaned only if the exhibitor meets exacting requirements regarding security, insurance coverage and humidity and temperature control of the exhibit area. These requirements may be obtained by writing to National Archives (NE), Washington, DC 20408.

[33 FR 4885, Mar. 22, 1968, as amended at 40 FR 7924, Feb. 24, 1975; 40 FR 28610, July 8, 1975; 42 FR 13022, Mar. 8, 1977. Redesignated and amended at 50 FR 15723, 15726, Apr. 19, 1985; 59 FR 29192, June 6, 1994]

§ 1254.2 Location of documents and hours of use.

(a) Researchers should identify the location of the documents needed. Inquiries may be addressed to the National Archives (NNRS), Washington, DC 20408.

(b) The locations and hours of operation (expressed in local time) of the depositories administered by the National Archives and Records Administration are shown in part 1253 of this chapter.

(c) Except for Federal holidays and other times specified by the Archivist or other authorized NARA officials, documents will be made available according to the schedule set forth in part 1253.

(d) In addition to the times specified in part 1253, documents may be made available at such other times as are authorized by a director.

[40 FR 7925, Feb. 24, 1975, as amended at 42 FR 13022, Mar. 8, 1977; 49 FR 33253, Aug. 22, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985, and amended at 56 FR 2135, Jan. 22, 1991; 59 FR 29192, June 6, 1994]

§ 1254.4 Research procedures.

(a) Before applying to use documents, the researcher should ask the depository holding them whether the documents are available, whether there are enough documents to warrant a visit, or whether copies would be more practical.

(b) Researchers must apply in person at the depository that has custody of the documents.

(c) Researchers who wish to use documents not on microfilm in a depository where the microfilm research room is separate from textual research rooms, must complete a researcher identification application form and provide the information needed to decide which

documents can be made available. Researchers who wish to use only microfilm documents in a depository where the microfilm research room is not separate from textual research rooms must also comply with this paragraph. Applicants must show identification containing a picture or physical description of the applicant, e.g., a driver's license or school identification card. Exceptions to this requirement must be approved by the director. If applying for access to large quantities of documents or to documents that are especially fragile or valuable, the researcher may be required to furnish additional information about personal or professional qualifications or to furnish additional reasons why access is required. The collection of information contained in this paragraph has been approved by the Office of Management and Budget with the control number 3095–0016.

(d) A researcher will not be issued a researcher identification card if the branch chief or director of the relevant repository determines that:

(1) The documents which the researcher wishes to use are not in the legal custody of NARA; or

(2) The researcher is not interested in documents maintained by NARA but in information contained in secondary sources available at other institutions.

(e) Researchers using only microfilm, where the microfilm research room is separate from textual research rooms, are not issued an identification card but must register as described in §1254.10.

(f) In addition to the procedures in this section, researchers desiring to use archives that contain national security classified information must follow procedures in subpart D.

(g) The legal custody and control over access to records that are in the physical custody of the records centers, but not yet accessioned into the National Archives of the United States, remains with the agency. NARA informs researchers of the procedures required to obtain access.

[49 FR 33253, Aug. 22, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985, and amended at 56 FR 2135, Jan. 22, 1991; 59 FR 29192, June 6, 1994]

§1254.6 Researcher identification card.

An identification card is issued to each person whose application is approved to use records other than microfilm. The card is valid at each depository (except the Presidential libraries which issue cards valid only at the issuing library) for 2 years, but it may be renewed upon application. Cards are not transferable and must be produced if requested by a guard or research room attendant.

[49 FR 33254, Aug. 22, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985]

§1254.8 Subpoenas and other legal demands for records transferred to the National Archives and Records Administration.

(a) Access to records transferred to a Federal records center is controlled by the instructions and restrictions imposed on NARA by the Federal agency that transferred the records to the Federal records center. NARA will honor a subpoena duces tecum or other legal demand for the production of these records, to the extent required by law, if the transferring agency has imposed no restrictions. When the transferring agency has imposed restrictions, NARA will notify the authority issuing the subpoena or other legal demand that NARA must abide by the agency-imposed restrictions and will request the authority to pursue the matter directly with the transferring agency.

(b) The Archivist of the United States, the Director of the Legal Services Staff (NXL) or his designee, and the Director of the Federal Records Center in which the records are stored are the only NARA officials authorized to accept a subpoena or other legal demand for records transferred to a Federal records center.

(c) A subpoena duces tecum or other legal demand for the production of documents designated as *archives* or *donated historical materials* administered by NARA may be served only on the Archivist of the United States, the Director of the Legal Services Staff (NXL) or his designee, the appropriate

Assistant Archivist, Director of a Regional Archives, or Director of a Presidential Library.

[50 FR 15727, Apr. 19, 1985, as amended at 59 FR 29192, June 6, 1994]

Subpart B—Research Room Rules

§ 1254.10 Registration.

Researchers must register each day they enter a research facility, furnishing the information asked on the registration sheet and may be asked to provide additional personal identification.

[59 FR 29192, June 6, 1994]

§ 1254.12 Researcher's responsibility for documents.

(a) The research room attendant may limit the quantity of documents delivered to a researcher at one time. The researcher must sign for the documents received and may be required to show his/her researcher identification card. The researcher is responsible for the proper handling of and prevention of damage to all documents delivered to him/her until he/she returns them. When the researcher is finished using the documents, the documents must be returned to the research room attendant. The reference service slip that accompanies the documents to the research room must not be removed. If asked to do so, the researcher must return documents as much as 15 minutes before closing time. Before leaving a research room, even for a short time, a researcher must notify the research room attendant and place all documents in their proper containers.

(b) When microfilm is available on a self-service basis, research room attendants will assist researchers 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. The researcher is responsible for retrieving and examining the roll(s). Unless a researcher requires assistance in learning how to operate microfilm reading equipment, the researcher is expected to install the microfilm on the reader. Unless otherwise permitted, a researcher is limited to one roll of microfilm at a time. After using each roll, the researcher is responsible for refiling the roll of microfilm in the location from which it was removed, unless instructed otherwise.

(c) Researchers are responsible for complying with provisions of the Copyright Act (Title 17, United States Code) which governs the making and use of electrostatic copies or other reproductions of copyrighted materials.

[59 FR 29192, June 6, 1994]

§ 1254.14 Restrictions on using microfilm readers.

(a) Use of the microfilm readers in the National Archives Building will be on a first-come, first-served basis. When other researchers are waiting to use a microfilm reader, a 3-hour limit may be placed on using a reader. After 3 hours of machine use, the researcher may sign the waiting list for an additional 3-hour period.

(b) The number of researchers in the microfilm research room in the National Archives Building will be limited, for fire safety reasons, to those researchers assigned a microfilm reader.

(c) Directors of regional archives may permit reservations for use of microfilm readers and set time limits on use to meet local circumstances. Rules for use will be posted in the research room.

[59 FR 29193, June 6, 1994]

§ 1254.16 Prevention of damage to documents.

(a) Researchers must exercise all possible care to prevent damage to documents.

(b) Documents may not be used at a desk where there is food or liquid or where an ink pen is being used. Only pencils may be used in research rooms where original documents are used.

(c) Documents must not be leaned on, written on, folded anew, traced, or handled in any way likely to cause damage.

(d) Documents must be identified for reproduction only with a paper tab provided by NARA. Documents may not be fastened with paper clips or rubber bands.

(e) Microfilm must be carefully removed from and returned to the proper microfilm boxes. Care must be taken loading and unloading microfilm from microfilm readers. Damaged microfilm must be reported to the research room attendant as soon as it is discovered.

(f) Exceptionally valuable or fragile documents may be used only under the conditions specified by the research room attendant.

[59 FR 29193, June 6, 1994]

§ 1254.17 Keeping documents in order.

A researcher must keep unbound documents in the order in which they are delivered to him/her. Documents that appear to be in disorder must not be rearranged by the researcher, but must be referred to the research room attendant. Researchers may use only one folder at a time. Researchers are not allowed to remove documents from more than one container at a time. Researchers should bring to the attention of the research room attendant microfilm put in the wrong box or file cabinet.

[Redesignated and revised at 59 FR 29193, June 6, 1994]

§ 1254.18 Removal or mutilation of documents.

Researchers may not remove documents from a research room. Removing or mutilating documents is forbidden by law and is punishable by fine or imprisonment or both (18 U.S.C. 2071). Researchers must check personal belongings, including briefcases, folders, coats, newspapers, or containers of any kind before entering a research room. Upon leaving, researchers must present for examination any article that could contain documents. To ensure that documents are not unlawfully removed or mutilated, the director may issue and post at the entrance to the research room instructions supplementing the rules in subpart B.

[49 FR 33254, Aug. 22, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1254.20 Conduct.

(a) *Regulations.* Researchers are subject to the provisions of part 1280 of this chapter and to all rules and regulations issued and posted or distributed by a facility director supplementing subpart B of this part, including rules on the use of NARA equipment. Eating, drinking, and chewing gum in a research room are prohibited. Smoking is prohibited except in designated smoking areas. Loud talking and other activities likely to disturb other researchers are also prohibited. Persons desiring to use typewriters, computers, sound recording devices, or similar equipment must work in areas designated by the research room attendant.

(b) *Revocation of a researcher identification card.* If researchers who receive researcher identification cards refuse to comply with the rules and regulations of a NARA facility, or by their actions demonstrate that they present a danger to the documents or a danger or annoyance to other researchers or employees, they may have their identification cards revoked by the director. A researcher whose card is revoked is denied research privileges at all NARA facilities and must receive a written notice of the reasons for the revocation within 3 workdays. A researcher whose identification card is revoked has 30 calendar days after the revocation to appeal in writing to the Archivist of the United States, National Archives (N), Washington, DC 20408, for reinstatement of research privileges. On receiving an appeal, the Archivist of the United States has 30 days to decide whether or not to reinstate the research privileges. If the revocation is upheld or if no appeal is made, the researcher may not apply for another identification card for 6 months from the date of the revocation, and all NARA facilities will be so notified. At the end of 6 months, a researcher whose identification card was revoked may reapply for a new card. Upon application, a new identification card is issued for a probationary period of 2 months. However, if the probationary reinstatement of a researcher poses a serious threat to the safety of persons or property, the director may deny probationary reinstatement and will so advise the applicant in writing within 3 workdays of receiving the application. At the end of the probationary period the researcher may apply for a new identification card valid for 2 years. If

the researcher's conduct in NARA facilities during the probationary period is proper, a regular 2-year identification card is issued. If the researcher's conduct during the probationary period is found unsatisfactory or if the director denies reinstatement, research privileges will again be denied for 6 months. A second and any later revocation of research privileges may be appealed to the Archivist of the United States under the procedures in this section.

(c) *Withdrawal of research privileges for researchers not required to have a researcher identification card.* If researchers who are not required to have researcher identification cards refuse to comply with the rules and regulations of a NARA facility or by their actions demonstrate that they present a danger to NARA property or a danger or nuisance to other researchers or employees, NARA may withdraw all research privileges. A researcher whose research privileges are withdrawn under this paragraph will lose research privileges at all NARA research rooms, including those for which no researcher identification card is required. A researcher whose research privileges have been withdrawn may not apply for a researcher identification card, or for readmittance to research rooms not requiring a research card, until research privileges have been restored (see below). A researcher whose research privileges are withdrawn under this paragraph will be sent a written notice of the reasons for the withdrawal within 3 workdays. The researcher has 30 calendar days after the withdrawal to appeal in writing to the Archivist of the United States (address: National Archives and Records Administration (N), Washington, DC 20408) for reinstatement of research privileges. The Archivist of the United States has 30 calendar days from receipt of the appeal to decide whether or not to reinstate the research privileges. If the withdrawal is upheld or if no appeal is made, the researcher may request reinstatement of privileges no earlier than 180 calendar days from the date the privileges were revoked. If readmission to a NARA facility poses a threat to the safety of persons or property, NARA may continue to extend the withdrawal period for 180-day periods. The researcher will be notified in writing of all such extensions within 3 workdays of NARA receiving a request for reinstatement of research privileges. The researcher may appeal any decision to extend the withdrawal of research privileges to the Archivist of the United States. All appeals must be made in writing to the Archivist of the United States within 30 calendar days of the decision being appealed.

[49 FR 33254, Aug. 22, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985, and amended at 51 FR 17187, May 9, 1986; 56 FR 2135, Jan. 22, 1991; 59 FR 29193, June 6, 1994]

§ 1254.24 Locker use policy.

(a) The National Archives and Records Administration (NARA) prohibits researchers from carrying boxes, briefcases, satchels, valises, purses, or other large containers into the research rooms or authorized stack areas. To accommodate researchers who have these items, lockers or other storage facilities are conveniently located near research rooms. These lockers or other storage facilities are available on a first-come-first-served basis.

(b) Researchers' personal belongings must be removed each night from the lockers or other storage facilities provided to hold them unless special permission is obtained in advance from designated research room staff. If personal belongings are not removed from the facilities by the researcher, they will be removed by NARA personnel. Directions for reclaiming confiscated items will be posted near the lockers or other storage facilities.

(c) The National Archives and Records Administration is not responsible for the loss or theft of articles stored in the lockers.

[45 FR 8603, Feb. 8, 1980. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1254.26 Additional rules for use of certain research rooms in NARA facilities in the Washington, DC, area.

(a) Admission to research rooms in the National Archives Building, the Washington National Records Center, and the National Archives at College Park facility at which original documents are made available is limited to individuals examining and/or copying

documents and other materials in the custody of the National Archives and Records Administration. Children under the age of 16 will not be admitted to these research rooms unless they have been granted research privileges or are granted an exception to this provision to view specific documents that a parent or other accompanying adult researcher is using. The exception will be granted by the Director of the User Services Division for a child who is able to read and who will be closely supervised by the adult researcher while in the research room. Normally, such a child will be admitted only for the short period required to view the documents. Unless otherwise permitted, children under the age of 16 who have been granted special permission to accompany an adult using records may not actively participate in research activities, e.g., removing, copying, or refiling documents. Students under the age of 16 who wish to perform research on original documents must apply in person to the Director of the User Services Division and present a letter of reference from a teacher. Such students may contact the National Archives by phone or letter in advance of their visit to discuss their eligibility for research privileges. Students under the age of 16 who have been granted research privileges will be required to be accompanied in the research room by an adult with similar privileges, unless the Director of the User Services Division specifically waives this requirement with respect to individual researchers.

(b) The procedures in paragraphs (c) through (g) of this section apply to all research rooms in the National Archives Building (except the Microfilm Research Room); the Suitland Research Room in the Washington National Records Center; and the research rooms in the National Archives at College Park. These procedures are in addition to the procedures specified elsewhere in this part.

(c) All researchers bringing personal typewriters, tape recorders, cameras, personal computers, and other equipment, into the National Archives Building shall complete the Equipment Log at the guard's desk in the lobby. The log will evidence personal ownership and will be checked by the guard when such equipment is removed from the building.

(d) Researchers must present a valid researcher identification card to the guard or research room attendant on entering the room. All researchers are required to sign each day the research room registration sheet at the entrance to the research room. Researchers will also record the time they leave the research room at the end of the visit for that day. Researchers are not required to sign in or out when leaving the area temporarily.

(e) Researchers may not bring into the research rooms overcoats, raincoats, hats, or similar apparel; personal copying equipment, including personal paper-to-paper copiers; briefcases, suitcases, daypacks, purses, or similar containers of personal property; notebooks, notepaper, notecards, folders or other containers for papers. These items may be stored at no cost in lockers available in the hallway adjacent to the various research rooms. The following exceptions may be granted:

(1) Hand-held wallets and coin purses for the carrying of currency, coins, credit cards, keys, drivers licenses and other identification cards may be brought into research rooms, but are subject to inspection when the researcher enters or leaves the room. The guard or research room attendant shall judge whether the wallet or purse may be considered small for purposes of this section;

(2) Notes, references, lists of documents to be consulted, and other materials may be admitted if the chief of the branch administering the research room or the senior archivist on duty in the research room determines they are essential to a researcher's work requirements. Materials will be presented to the research room attendant when the researcher enters the research room. Materials approved for admission will be stamped to indicate that they are the personal property of the researcher;

(3) Typewriters, personal computers, tape recorders, and hand-held cameras may be admitted by the research room attendant provided that they are inspected, approved, and tagged prior to

admittance. The chief of the branch administering the research room or the senior archivist on duty in the research room will review the determination made by the research room attendant if requested to do so by the researcher; and

(4) Notepaper and notecards provided by the National Archives and electrostatic copies made on copying machines in NARA research rooms which are marked with the statement ''Reproduced at the National Archives'' may be brought back into the research room on subsequent visits but must be presented on entry to the research room attendant for inspection.

(f) NARA will furnish to researchers, without charge, pencils and specially marked lined and unlined notepaper and notecards, for use in the research rooms. Pencils and unused notepaper and notecards should be returned to the research room attendant at the end of the day.

(g) The personal property of all researchers, including notes, electrostatic copies, typerwriter cases, tape recorders, cameras, personal computers, and other property, will be inspected before removal from the research room. Guards and research room attendants may request that a member of the research room staff examine such personal items prior to their removal from the research room.

(h) In addition to the procedures in paragraphs (c) through (g) of this section, the following procedures apply to the Motion Picture, Sound, and Video Research Room (hereinafter, ''the research room'') in the National Archives Building:

(1) Use of NARA viewing and listening equipment in the research room is provided on a first-come-first-served basis. When others are waiting to use the equipment, a three-hour limit may be imposed on the use of the equipment.

(2) The following procedures shall be followed when personal recording equipment and accessories are brought into the unrestricted viewing and copying area in the research room:

(i) Personal recording equipment brought into the unrestricted viewing and copying area in the research room must be inspected and tagged by the research room attendant prior to admittance. All equipment and accessory devices must be placed on the table adjacent to the viewing station, except that a tripod holding a video camera may be placed on the floor in front of a film viewing station.

(ii) Researchers shall remain in the research room while their personal equipment is in use at an audio or video viewing station. The film viewing stations must be attended at all times while in use. Researchers shall remove their personal equipment from the research room when they leave the room for the day or for extended breaks.

(iii) NARA will not be 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 made by researchers. NARA will provide the researcher information on the types of NARA equipment being used in the research room and on the cables necessary for hook up to the NARA viewing equipment.

(3) When a researcher brings audio or video recording tapes or cassettes into the unrestricted area of the research room, the research room attendant will mark the recording media ''NARA-approved personal property'' for identification purposes. Such media shall be inspected upon exit from the research room, as well as upon exit from the National Archives Building.

(4) A NARA-furnished video copying station and 120-minute blank video cassette may be reserved, for a fee, on a first-come, first-served basis for a 90-minute period of time. If no other individual is waiting to use the station, an additional time period may be reserved at the end of the current period. Personal recording devices may not be connected to NARA equipment at the video copying station. Only NARA-provided tapes may be used at the video copying station. Fees for use of the station and blank cassette are specified in § 1258.12 of this chapter.

(5) The NARA or personal recording device and media may be used to make a personal-use copy of unrestricted archival materials in the research room.

(6) Each researcher will be provided a copy of the Motion Picture, Sound, and

Video Research Room rules and a warning notice on potential copyright claims in unrestricted titles. The researcher must sign a statement acknowledging receipt of the rules and notice. The individual making and/or using the copy is responsible for obtaining any needed permission or release from a copyright owner for other use of the copy.

(7) No personal recording device or media is permitted in the restricted viewing area in the research room.

[51 FR 17187, May 9, 1986, as amended at 56 FR 2135, Jan. 22, 1991; 56 FR 58312, Nov. 19, 1991; 57 FR 46306, Oct. 8, 1992; 59 FR 29193, June 6, 1994]

§ 1254.27 Additional rules for use of certain research rooms in Federal records centers, regional archives, and Presidential libraries.

(a) When directed by the appropriate director, the following procedures shall be observed in Federal Records Center, regional archives and Presidential library archival research rooms where original documents are used. These procedures are in addition to the procedures specified elsewhere in this part.

(b) Researchers must present a valid researcher identification card to the guard or research room attendant on entering the room. All researchers are required to sign each day the research room registration sheet at the entrance to the research room. Where instructed to do so, researchers also sign out when leaving the research room for the day. Researchers are not required to sign in or out when leaving the area temporarily or at the end of the day.

(c) Researchers may not bring into the research room overcoats, raincoats, hats, and similar apparel, and briefcases, suitcases, daypacks, purses, or similar containers of personal property. In facilities where NARA provides notepaper and notecards, researchers also may not bring into the research room notebooks, notepaper, notecards, folders or other containers for papers. In facilities where NARA provides a self-service copier, researchers may not bring into the research room personal copying equipment including personal paper-to-paper copiers. These items may be stored at no cost in lockers or other storage facilities in the NARA facility. The following exceptions may be granted:

(1) Hand-held wallets and coin purses for carrying currency, coins, credit cards, keys, drivers licenses and other identification cards may be brought into research rooms, but are subject to inspection when the researcher enters or leaves the room. The guard or research room attendant shall judge whether the wallet or purse may be considered small for purposes of this section;

(2) Notes, references, lists of documents to be consulted, and other materials may be admitted if the director, or the senior attendant on duty in the research room determines they are essential to a researcher's work requirements. Materials will be presented to the attendant when the researcher enters the research room. If the materials are approved for admission, they may be stamped to indicate that they are the researcher's property;

(3) Typewriters, personal computers, tape recorders, and hand-held cameras may be admitted by the guard or research room attendant provided that they are inspected, approved, and tagged prior to admittance. The director, or the senior attendant on duty in the research room will review the determination made by the guard or research room attendant if requested to do so by the researcher. In facilities where personal paper-to-paper copiers are permitted, the researcher must obtain prior written approval from the facility director to bring in the copier. The request to bring a personal copier should state the space and power consumption requirements and the intended period of use; and

(4) Notepaper and notecards provided by the National Archives and electrostatic copies made on copying machines in NARA research rooms which are marked with the statement ''Reproduced at the National Archives'' may be brought back into the research room on subsequent visits but must be presented on entry to the guard or research room attendant for inspection.

(d) NARA may furnish specially marked lined and unlined notepaper and notecards, without charge, to researchers for use in the research rooms. Unused notepaper and

notecards should be returned to the research room attendant at the end of the day.

(e) The personal property of all researchers, including notes, electrostatic copies, typewriter cases, tape recorders, cameras, personal computers, and other personal property, will be inspected before removal from the research room. Guards and research room attendants may request that a member of the research room staff examine such personal items prior to their removal from the research room.

(f) Researchers may use NARA self-service copiers or authorized personal paper-to-paper copiers to copy documents in accordance with NARA document handling instructions and after review of the documents by the research room attendant to determine their suitability for copying. The director or the senior archivist on duty in the research room will review the determination of suitability if requested by the researcher. The following types of documents are not suitable for copying on a self-service or personal copier:

(1) Bound archival volumes;

(2) Documents fastened together by staples, clips, acco fasteners, rivets, or similar fasteners, where folding or bending the document may cause damage;

(3) Documents larger than the glass copy plate of the copier;

(4) Documents with uncancelled security classification markings;

(5) Documents with legal restrictions on copying; and

(6) Documents which, in the judgement of the research room attendant, are in poor physical condition or which may be subject to possible damage if copied.

[51 FR 31617, Sept. 4, 1986, as amended at 59 FR 29192, 29194, June 6, 1994]

Subpart C—Access to Unclassified Records and Donated Historical Materials

§ 1254.30 Archives.

The use of archives is subject to the restrictions prescribed by statute or Executive order or by the restrictions specified in writting in accordance with 44 U.S.C. 2108 by the agency from which the records were transferred. NARA will make available any reasonably segregable portion of a record after the restricted portion has been deleted. The restrictions are published in the ''Guide to the National Archives of the United States,'' and supplemented by restriction statements approved by the Archivist of the United States and set forth in part 1256 of this chapter. The Guide is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The Guide may also be consulted at the NARA research facilities listed in part 1253 of this chapter.

[54 FR 32069, Aug. 4, 1989]

§ 1254.32 FRC records.

Requests for access to records on deposit in Federal records centers shall be addressed directly to the appropriate agency or to the FRC director at the address shown in part 1253. The use of FRC records is subject to access rules prescribed by the agency from which the records were transferred. When the agency's rules permit, NARA makes FRC records available to requesters. When access is precluded by these rules and restrictions, the FRC director will refer to the responsible agency the requests and any appeals for access, including those made under the Freedom of Information Act.

[40 FR 7925, Feb. 24, 1975. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1254.34 Records of defunct agencies.

Access to archives and FRC records received from agencies which have ceased to exist without a successor in function are handled in accordance with §§ 1254.30 and 1254.50.

[44 FR 18496, Mar. 28, 1979. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1254.35 Presidential records and Nixon Presidential materials.

Access to Presidential records transferred to NARA is governed by 36 CFR part 1270. Access to the Nixon Presidential materials is governed by 36 CFR part 1275.

[59 FR 29194, June 6, 1994]

§ 1254.36 Donated historical materials.

The public use of donated historical materials is subject to restrictions on their use and availability as stated in writing by the donors or depositors of such materials and other restrictions imposed by statute. (Researchers are encouraged to confer with the appropriate director or reference staff member on any question of copyright.) In addition, use is subject to all conditions specified by the Archivist of the United States for purposes of archival preservation.

[59 FR 29194, June 6, 1994]

§ 1254.38 Freedom of Information Act requests.

(a) *Applicability*. This section applies to Freedom of Information Act requests for unclassified and classified archives. This section does not apply to requests for FRC records or donated historical materials.

(b) *Definitions.*

Potentially confidential commercial information means records submitted to any agency by a submitter that may contain material exempt from release under 5 U.S.C. 552(b)(4) because disclosure could reasonably be expected to cause a submitter substantial competitive harm.

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.

(c) *Requirements.* Requests for access to archives under the FOIA shall reasonably describe the records requested, shall be made in writing to the director of the appropriate NARA depository listed in part 1253 of this chapter or to the Assistant Archivist for the National Archives, and shall clearly indicate that the request is being made under the Act.

(d) *Processing time.* NARA shall inform requesters of the availability of records within 10 workdays after receiving a request, except when precluded from doing so by conditions as described in 5 U.S.C. 552a(6)(B), or by the need to consult with a submitter, as set forth in § 1254.39.

(e) *Denial of access.* Denials under the FOIA of access to archives are made by the appropriate director of a Presidential library or a regional archives or the Assistant Archivist for the National Archives, who, within 10 workdays, shall notify the requester of the reasons for the denial and of the procedures for appeal.

(f) *Appeals.* (1) A requester whose request for access is denied in whole or in part, or who receives a response that no responsive records were found and who considers the latter response as adverse in nature, may appeal that decision or finding within NARA. The appeal shall be in writing and addressed to the Deputy Archivist of the United States (ND), National Archives, Washington, DC 20408.

(2) The Deputy Archivist must receive an appeal no later than 35 calendar days after the date of the NARA letter of denial to be considered timely.

(3) The appeal letter shall include the words ''Freedom of Information Act Appeal'' on both the letter and the envelope, and the requester shall enclose with the appeal letter a copy of the initial request and the denial.

(4) In the appeal letter the requester shall briefly state the reasons why NARA should release the records, or, if no responsive records were found and the requester considers this to be an adverse determination, why the requester thinks that the search does not meet the requirements of the FOIA.

(5) The Deputy Archivist shall consult with the agency specifying the restriction, when appropriate, and make a determination within 20 workdays after the date of receipt by the Deputy Archivist of the appeal. If an extension is required, the Deputy Archivist shall notify the requester within 20 workdays from receipt of the request. Time extensions shall not exceed 10 workdays in the aggregate: either solely in the initial stage or solely in the appellate stage, or divided between them.

(6) If the determination is adverse in whole or in part, the Deputy Archivist shall notify the requester of the right to judicial review.

(7) Denials and appeals of denials of access to information under the FOIA exemption 552(b)(1), national security

information, are processed in accordance with the provisions of § 1254.40.

[54 FR 32069, Aug. 4, 1989, as amended at 56 FR 2136, Jan. 22, 1991; 57 FR 22431, May 28, 1992]

§ 1254.39 Requests for commercial information.

(a) *Notice of receipt of request.* (1) Submitters of potentially confidential commercial information shall be given written notice and an opportunity to object to release when a request is received for information the submitter designated in accordance with the recipient agency's regulations as commercial confidential, and the request is received less than 10 years after submission of the information.

(2) When the request is for information from a single or small number of submitters, the notice shall be sent to the submitter's last known address.

(3) When the request is for information from a large number of submitters, notice shall be provided by publication of a notice in the FEDERAL REGISTER.

(4) The notice shall either describe the potentially commercially confidential information requested (if the notice is published in the FEDERAL REGISTER), or provide copies of the records containing the information.

(5) NARA shall inform the requester that:

(i) Notice of receipt of a request has been provided to the submitter;

(ii) The response to the request may be delayed beyond the limitations specified in 5 U.S.C. 552(a)(6) (A) and (B) to allow for time to provide notice to the submitter, and to consider any response;

(iii) The delay may be considered as a denial of access to records and that the requester may seek judicial review. However, the requester shall be invited to agree to a voluntary extension of time so that NARA may consider any claims of commercial confidentiality provided by the submitter.

(b) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (a)(1) of this section, NARA shall afford a submitter a reasonable period of time within which to provide NARA with a detailed statement of any objections to disclosure. A reasonable extension of the time limit for response may be granted when appropriate.

(2) The statement shall specify which information is claimed to be of a confidential commercial nature, and shall specify all grounds for withholding any of the information under the exemptions of the FOIA. If exemption (b)(4) of the FOIA is cited, the statement shall explain how the release of the information can be reasonably expected to cause substantial competitive harm to the submitter.

(3) The statement shall contain a certification that the information has not been published or officially released to the public.

(4) The statement provided pursuant to this subsection may itself be subject to disclosure under the FOIA under § 1250.75.

(c) *Notice of intent to disclose.* NARA shall carefully consider any good faith designations of commercial confidentiality made when the information was initially submitted to an agency, and any timely objections submitted in response to the NARA notice of receipt of a request to release. Except as provided for in paragraph (e) of this section, when NARA determines to disclose, whether in response to a request to release or as the result of an appeal of a denial of access, notice shall be sent to the submitter that:

(1) States why the initial designation or the objections were not sustained;

(2) Describes or encloses a copy of the information proposed for disclosed; and

(3) Specifies a date on which it is proposed to release the information unless barred by court order. The requester shall be simultaneously informed of the disclosure date.

(d) *Notice of law suit.* NARA will promptly inform the requester and submitter of any law suit filed by the other concerning possible disclosure.

(e) *Exception to notice requirements.* The notice requirements of this section do not apply when:

(1) NARA determines that the information should not be disclosed in accordance with one or more FOIA exemptions;

(2) The information has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or,

(4) More than 10 years have passed since the date of submission, regardless of any designation as commercially confidential made by the submitter in accordance with the recipient agency's regulations, and NARA has no substantitial reason to believe that disclosure would result in competitive harm.

(5) The submitter failed to respond to a notice of receipt of request, in which case this initial notice shall serve as the notice of intent to disclose.

[54 FR 32070, Aug. 4, 1989]

Subpart D—Access to National Security Information

§1254.40 Access to national security information.

(a) Declassification of and public access to national security information and material, hereinafter referred to as ''classified information'' or collectively termed ''information'' is governed by Executive Order 12356 of April 2, 1982 (3 CFR, 1982 Comp., p. 166), the implementing Information Security Oversight Office Directive Number 1 of June 22, 1982 (47 FR 27836, June 25, 1982) and the Freedom of Information Act (5 U.S.C. 552).

(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; 36 CFR 1254.36 for donated historical materials; 44 U.S.C. 2201 *et seq.* and 36 CFR part 1270 for Presidential records; and 44 U.S.C. 2111 note and 36 CFR part 1275 for Nixon Presidential materials.

[59 FR 29194, June 6, 1994]

§1254.44 Freedom of Information Act requests.

(a) *Requests for access to national security information under the Freedom of Information Act.* Requests for access to national security information under the Freedom of Information Act are processed in accordance with the provisions of §1254.38. Time limits for responses to Freedom of Information Act requests for national security information are those provided in the act rather than the longer time limits provided for responses to mandatory review requests specified by Executive Order 12356.

(b) *Agency action.* Upon receipt of a request forwarded by NARA for a determination regarding declassification, the agency with declassification responsibility shall:

(1) Advise whether the information should be declassified in whole or in part or should continue to be exempt from declassification;

(2) Provide a brief statement of the reason any requested information should not be declassified; and

(3) Return all reproductions referred for determination, including a copy of each document which should be released only in part, marked to indicate the portions which remain classified.

(c) *Denials and Appeals.* Denials under the Freedom of Information Act of access to national security information accessioned into the National Archives are made by designated officials of the originating or responsible agency. NARA notifies the requestor of the agency's determination. Appeals of denials of access to national security information must be made in writing to the appropriate authority in the agency having declassification responsibility for the denied information as indicated in §1254.42. The agency appellate authority shall make a determination in accordance with 5 U.S.C. 552(b). The agency appellate authority shall notify NARA and the requestor in writing of the final denials. The agency will also furnish to NARA a copy of each document released only in part, marked to indicate the portions which remain classified.

[49 FR 1349, Jan. 11, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985; further redesignated and amended at 51 FR 22076, June 18, 1986; 54 FR 32070, Aug. 4, 1989]

§1254.46 Public requests for mandatory review of classified information under Executive Order 12356.

United States citizens or permanent resident aliens, Federal agencies, or State or local governments wishing to request mandatory review of classified information that has been accessioned

into the National Archives or donated to the Government may do so by describing the document or material containing the information with sufficient specificity to enable NARA to locate it with a reasonable amount of effort. When practicable, a request shall include the name of the originator and recipient of the information, as well as its date, subject, and file designation. If the information sought cannot be identified from the description provided or if the information sought is so voluminous that processing it would interfere with NARA's capacity to serve all requestors on an equitable basis, NARA shall notify the requestor that, unless additional information is provided or the scope of the request is narrowed, no further action will be taken. NARA shall review for declassification and release the requested information or those declassified portions of the request that constitute a coherent segment unless withholding is otherwise warranted under applicable law. Requests for mandatory review should be addressed to the appropriate NARA depository listed in part 1253.

[49 FR 1350, Jan. 11, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1254.48 Access by historical researchers and former Presidential appointees.

(a) Access to classified information may be granted to U.S. citizens who are engaged in historical research projects or who previously occupied policy-making positions to which they were appointed by the President. Persons desiring permission to examine material under this special historical researcher/Presidential appointees access program should contact NARA at least 4 months before they desire access to the materials to permit time for the responsible agencies to process the requests for access. NARA will inform requesters of the agencies to which they will 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) Requestors 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;

(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 12356; and

(3) Limits the access granted to former presidential appointees to items that the person originated, reviewed, signed, or received while serving as a presidential appointee.

(c) To protect against the possibility of unauthorized access to restricted documents, a director may issue instructions supplementing the research room rules provided in subpart B.

[49 FR 1352, Jan. 11, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985 and 51 FR 22076, June 18, 1986; 59 FR 29194, June 6, 1994]

§ 1254.50 Fees.

NARA will charge requesters for copies of declassified documents according to the fees listed in § 1258.12 of this chapter.

[59 FR 29194, June 6, 1994]

Subpart E—Information, Reproduction, and Authentication Services

§ 1254.70 NARA copying services.

(a) The copying of documents will be done by personnel of the National Archives and Records Administration with equipment belonging to NARA. NARA reserves the right to make a duplicate, at NARA expense, of any material copied. Such duplicates may be used by NARA to make additional copies for others.

(b) In order to preserve the original documents, documents which are available on microfilm or other alternate copy will not be copied by other means as long as a legible copy (electrostatic, photographic, or microfilm) can be made from the microfilm.

[52 FR 20080, May 29, 1987; 59 FR 29194, June 6, 1994]

§ 1254.71 Researcher use of the self-service card-operated copiers in the National Archives Building, the Washington National Records Center and the National Archives at College Park.

(a) *General.* Self-service card-operated copiers are located in research rooms in the National Archives Building, the Suitland Research Room in the Washington National Records Center, and the National Archives at College Park. Other copiers set aside for use by reservation are located in designated research areas. Procedures for use are outlined in paragraphs (b) through (g) of this section.

(b) *Hours of use.* (1) Copiers located in research rooms in the National Archives Building, the Suitland Research Room in the Washington National Records Center, and the National Archives at College Park may be used until 15 minutes prior to closing of the research room. There is a five-minute time limit on these copiers when others are waiting to use the copier. Researchers using microfilm reader-printers may be limited to three copies when others are waiting to use the machine. Researchers wishing to copy large quantities of documents should see a staff member in the research room to reserve a copier for an extended time period.

(2) Reserved self-service copiers located in the designated research area on the second floor of the National Archives Building may be used between 9 a.m. and 12 noon and between 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays. The reserved self-service copier located in the designated research area at the Washington National Records Center may be used between the hours of 8 a.m. and 12 noon and between 1 p.m. and 4 p.m., Monday through Friday, except Federal holidays.

(i) A copier may be reserved for one hour at a time in the textual research room in the National Archives Building and the National Archives at College Park and for one-half hour at a time in the Microfilm Research Room in the National Archives Building and in the Suitland Research Room in the Washington National Records Center. Another appointment may be reserved after completing the scheduled appointment. The appointment may be forfeited if the researcher does not arrive within 10 minutes after the scheduled time.

(ii) If an appointment must be canceled due to copier failure, NARA will make every effort to schedule a new mutually agreed-upon time. However, NARA will not displace researchers whose appointments are not affected by the copier failure.

(c) *Copying procedures.* (1) Individual documents to be copied shall be tabbed in accordance with the procedures governing the tabbing of documents and returned to their container. The research room attendant will examine the documents to determine whether they can be copied on the self-service copier. The chief of the branch administering the research room will review the determination of suitability if asked to do so by the researcher.

(2) Researchers using the reserved copiers must submit the containers of documents to the attendant for review at least one hour prior to the scheduled appointment. The research room staff will deliver the containers to the designated area where the reserved copiers are located. Researchers using self-service copiers located in the research room will transport their containers of documents to the copier themselves.

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

(d) *Documents not suitable for self-service copying.* The following types of documents may not be copied on the self-service copiers:

(1) Bound archival volumes;

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

(3) Documents larger than the glass copy plate of the copier;

(4) Documents with uncanceled security classification markings;

(5) Documents with legal restrictions on copying; and

(6) Documents which, in the judgement of the research room attendant, are in poor physical condition or which

may be subject to possible damage if copied.

(e) *Cancellation of security classification markings.*

(1) Security classification markings (RESTRICTED, CONFIDENTIAL, SECRET, TOP SECRET, and others) on declassified records must be properly canceled before documents are copied. Only a NARA staff member can cancel security markings. Properly declassified documents will bear the declassification authority.

(2) Researchers may not remove from the research room copies of documents bearing uncanceled classification markings. Copies of documents with uncanceled markings will be confiscated.

(3) When individual documents are being copied, the research room staff will cancel the classification markings on each page and will place the declassification authority on the first page of each document. If the researcher is copying only selected pages from a document, the researcher must make a copy of the first page bearing the declassification authority and attach that page to any subsequent page(s) copied from the document. This declassification authority must be presented to the guard when copies of documents are removed from the research room and/or the building.

(4) Researchers using the reserved copiers are provided with a declassification strip which is attached to the copier. The strip, which is reproduced on each page copied, cancels the security markings.

(f) *Purchasing debitcards for copiers.* Researchers may use cash to purchase a debitcard from a vending machine during the hours that self-service copiers are in operation. Additionally, debitcards may be purchased with cash, check, money order, credit card, or funds from an active deposit account from the Cashier's Office located in room G–1 of the National Archives Building between the hours of 8:45 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. During the evening and weekend hours, the research room supervisor can make change for $20 or less. The debitcard will, when inserted into the copier, enable the user to make copies, for the appropriate fee, up to the value on the debitcard. Researchers may add value to the debitcard by using the vending machine. The fee for self-service copies is found in § 1258.12 of this chapter.

(g) *Refunds of unused amounts on debitcards.*

(1) To obtain a refund of any unused amount on a debitcard, a researcher must bring the debitcard to the Cashier's Office in room G–1 of the National Archives Building. Cash refunds for debitcards are currently limited to $20.00 or less. Refunds due for more than $20.00 are currently paid by U.S. Treasury check in approximately 6–8 weeks. Refunds due on debitcards obtained using credit cards will be made by issuing a credit of the refund amount to the credit card. Refunds due on debitcards obtained using funds from a deposit account will be made by crediting the refund to the deposit account.

(2) An NATF Form 30A, Request for Debit Card Refund or Credit, must be submitted to the Cashier's Office. The form is available from the research room staff or the Cashier. During evening hours and on Saturdays, researchers should enclose the completed form and debitcard in a preaddressed envelope, also available in the research room. The envelope may be dropped through the mail slot in room G–1 or mailed to the Cashier.

[56 FR 2136, Jan. 22, 1991; 56 FR 5731, Feb. 12, 1991; 59 FR 29194, June 6, 1994]

§ 1254.72 Information about documents.

(a) Upon request, overall information pertaining to holdings or about specific documents will be furnished, provided that the time required to furnish the information is not excessive, and provided that the information is not restricted (see subpart C and subpart D).

(b) When so specified by a director, requests must be made on prescribed forms. Such forms will be approved by OMB as information collections and will bear the approved control number.

[59 FR 29195, June 6, 1994]

§ 1254.74 Information from documents.

Normally, information contained in the documents will be furnished in the

form of photocopies of the documents, subject to the provisions of §1254.70. NARA will certify facts and make administrative determinations on the basis of archives, or of FRC records when appropriate officials of other agencies have authorized NARA to do so. Such certifications and determinations will be authenticated by the seal of NARA, the National Archives of the United States, or the transferring agency, as appropriate.

[59 FR 29195, June 6, 1994]

§1254.76 Certification of copies.

The responsible director, or any of his or her superiors, the Director of the Federal Register, and their designees are authorized to certify copies of documents as true copies.

[59 FR 29195, June 6, 1994]

Subpart F—Microfilming Archival Records

SOURCE: 52 FR 20081, May 29, 1987, unless otherwise noted.

§1254.90 General.

(a) This subpart establishes rules and procedures governing the use of privately owned microfilm equipment to film archival records and donated historical materials in the National Archives Building, the Washington National Records Center, the regional archives, and the Presidential libraries.

(b) Persons or organizations wishing to microfilm Federal agency records in the custody of a Federal Records Center should contact the director of the Center about procedures for obtaining permission to film those records.

(c) Federal agencies needing to microfilm archival records in support of the agency's mission must contact the Assistant Archivist for the National Archives, as soon as possible after the need is identified, for information concerning standards and procedures for microfilming archival records.

[52 FR 20081, May 29, 1987, as amended at 59 FR 29195, June 6, 1994]

§1254.92 Requests to microfilm records and donated historical materials.

(a) Requests to microfilm archival records or donated historical materials (except donated historical materials under the control of the Office of Presidential Libraries) in the National Archives Building, the Washington National Records Center, or the regional archives must be made in writing to the Assistant Archivist for the National Archives (NN), NARA, Washington, DC 20408. Requests to microfilm records or donated historical materials in a Presidential library or donated historical materials in the National Archives Building under the control of the Office of Presidential Libraries must be made in writing to the Assistant Archivist for Presidential Libraries (NL), NARA, Washington, DC 20408. OMB control number 3095–0017 has been assigned to the information collection contained in this section.

(b) Request to use privately owned microfilm equipment should be submitted six months in advance of the proposed starting date of the microfilming project. Requests submitted with less advance notice will be considered and may be approved if space is available for the cameras in the area set aside for private microfilming and if the records require minimal preparation for filming. Only one microfilming project may be included in a request. NARA will not accept additional requests from an individual or organization to microfilm records in a NARA facility while NARA is evaluating an earlier request from that individual or organization to microfilm records at that facility. NARA will establish the number of camera spaces available to a single project based upon the total number of projects approved for filming at that time.

(c) The request must include:

(1) A description of the documents to be copied which includes the following elements:

(i) Agency of origin or, for donated historical materials, title of the collection,

(ii) Title of series or file segment;

(iii) Date span; and

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

(2) The estimated amount of time (work-days) that the microfilm copying project will take; the date that the requester would like to begin the project; and the number of persons who would require training (see § 1254.100(b)).

(3) The number and a description of the equipment that will be used for copying including:

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

(ii) 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.

(4) A statement of the procedures which will be followed to ensure that all pages are copied, 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.

(d) The requester must agree to credit the National Archives or the particular Presidential Library 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.

(1) If the original documents are Federal records, the requester 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. No copyright is claimed in these official U.S. Government records.''

(2) If the original documents are donated historical materials, the requester 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). The National Archives 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.''.

(e) If the person or organization producing the film plans to copyright the microfilm publication, the National Archives and Records Administration must be given a royalty-free worldwide license to sell the publication seven years after filming at the NARA facility is completed, or earlier if there is no commercial distributor.

[52 FR 20081, May 29, 1987; 52 FR 22415, June 11, 1987; 59 FR 29195, June 6, 1994]

§ 1254.94 Criteria for granting the requests.

(a) NARA will evaluate the requests on the basis of the extent to which completion of a proposed project would further NARA's efforts to preserve and to make available to the public the historically valuable records of the Government.

(b) NARA will approve only requests to microfilm a complete body of documents, such as an entire series or a major continous segment of a very large series which is reasonably divisible. Microfilming a complete body of documents means that all documents within the file unit(s) to be microfilmed will be consecutively copied, 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.

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

(d) NARA will approve only requests which 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) NARA 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.

(2) NARA may also sell copies of the microform seven years after filming at

the NARA facility is completed, or earlier if there is no commerical distributor. NARA may choose to add its own editorial material to the microform copies which NARA distributes or sells.

(e) NARA will not approve any request that does not include all of the information required by § 1254.92.

(f) NARA will normally not approve requests to microfilm documents:

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

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

(3) Which NARA plans to film as a NARA microfilm publication or which relate closely to other documents previously microfilmed or approved for microfilming by NARA. Exceptions to this provision may be granted at the discretion of NARA.

(g) NARA will normally not approve requests to microfilm the following categories of documents:

(1) Documents which include documents with general or specific restrictions on access that preclude their reproduction;

(2) Documents which include documents which are known to be protected by copyright;

(3) Documents of high intrinsic value which may be handled only by authorized NARA personnel;

(4) Documents in vulnerable physical condition;

(5) Documents having a high research demand and which would have to be denied to others for an extended period of time during the microfilming process. Where possible, NARA will assist requesters in developing filming schedules that avoid the need to close documents for a lengthy period of time; and

(6) Oversize documents, bound volumes, and other formats that would be subject to excessive stress and possible damage from special equipment planned to be used by the requester, 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.

(h) NARA will normally not approve requests from persons or organizations who have failed to produce usable microfilm or to honor commitments made in previous requests, or who have had a previous permission to microfilm documents rescinded because of their conduct.

(i) NARA will not approve requests to microfilm documents in NARA facilities in which there is insufficient space available for private microfilming. NARA will not move documents from a facility lacking space for private microfilming to another NARA facility for that purpose.

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

§ 1254.96 Microfilm preparation.

(a) As part of its evaluation of a request to microfilm documents, NARA will determine the amount of microfilm preparation that NARA must do before the documents can be microfilmed and the estimated cost of such preparation. The fees for microfilm preparation will be based on direct salary costs (including benefits) and supply costs when NARA staff performs the work. When the work is performed by a NARA contractor, the fees will be the cost to NARA. Microfilm preparation includes:

(1) Verifying or correcting the arrangement of documents after withdrawn items are reviewed and refiled when appropriate;

(2) Screening the documents for possible restrictions on use;

(3) Declassifying security classified documents;

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

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

(b) NARA will provide the requester detailed information on the fees for microfilm preparation in the letter of approval. Payment of fees will be made in accordance with § 1258.14 of this chapter. When a body of documents

will require extensive microfilm preparation, a different payment schedule may be established at the discretion of NARA.

[52 FR 20081, May 29, 1987; 52 FR 22415, June 11, 1987; 59 FR 29195, June 6, 1994]

§ 1254.98 Equipment standards.

(a) Equipment must be designed for the microfilming of documents in roll form or standard fiche form and be operable from a table top. Only planetary type camera equipment may be used. Automatic feed devices may not be used. Book cradles or other specialized equipment designed for use with bound volumes, oversized documents, or other formats will be approved by the Office of the National Archives 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. Requests for electricity exceeding that normally available must be made at least 90 days in advance.

(c) Equipment having clamps or other devices to exert pressure upon or to affix the document to any surface in a way that might damage the document may not be used.

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

[52 FR 20081, May 29, 1987; 52 FR 22415, June 11, 1987]

§ 1254.100 Microfilming procedures.

(a) Equipment used must conform to the equipment standards in § 1254.98.

(b) Documents must be handled in accordance with the training and instructions provided by NARA personnel 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. Training will be offered only in Washington, DC.

(c) Documents from only one file unit may be microfilmed at a time.

(d) Documents may not be left unattended on the copying equipment or elsewhere.

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

(f) Any lights used with the camera must be turned off when the camera is not in actual operation.

(g) Microfilm equipment may be operated only in the presence of the research room attendant or a designated NARA employee.

(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) will decide when equipment must be removed because of lack of regular use. The equipment must be promptly removed upon request of the facility director.

(i) NARA assumes no responsibility for loss or damage to microfilm equipment or supplies left unattended.

(j) NARA will 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 NARA to properly inspect the film, NARA must receive the film within 5 days after it has been processed. The person or organization producing the microfilm will provide NARA with a silver halide duplicate negative of the filmed records (see § 1254.94(d)) according to the schedule shown in (k). If the processed film does not meet the standards, NARA may require that the records be refilmed.

(k) When 10,000 or fewer images are filmed, the person or organization producing the microfilm will provide NARA with a silver halide duplicate negative upon completion of the project. When the project involves more than 10,000 images, a silver halide duplicate negative of the first completed roll or segment of the project reproducing this image count will be provided to NARA for evaluation; subsequent completed segments of the project, in quantities approximating 100,000 or fewer images, will be provided to NARA within 30 days after filming unless NARA approved other arrangements.

§1254.102 Rescinding permission.

NARA may, at any time, rescind permission to microfilm records:

(a) If the person or organization fails to comply with the microfilming procedures in §1254.100;

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

(c) If the person or organization fails to proceed with the microfilming or project as indicated in the request, or

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

PART 1256—RESTRICTIONS ON THE USE OF RECORDS

Sec.

1256.1 Scope of part.
1256.2 Restrictions on access.
1256.4 Access to records containing personal information.

Subpart A—General Restrictions

1256.10 National security information.
1256.12 Information exempted from disclosure by statute.
1256.14 Trade secrets and commercial or financial information.
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1256.40 Agency-imposed restrictions.

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1256.50 Scope of subpart.
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1256.60 Fees.

AUTHORITY: 44 U.S.C. 2101–2118; 22 U.S.C. 1461(b).

§1256.1 Scope of part.

This part contains material referred to in §1254.30.

[40 FR 56892, Dec. 5, 1975. Redesignated and amended at 50 FR 15723, 15727, Apr. 19, 1985]

§1256.2 Restrictions on access.

The use of some archives and donated historical materials transferred to the National Archives of the United States, especially those of recent date, is subject to restrictions prescribed in statute or Executive order, or restrictions specified by the donor or agency from which the records were transferred and imposed by the Archivist of the United States. Restrictions on access to particular records that have been specified by the donor or transferring agency are known as ''specific restrictions.'' Restrictions on access that may apply to more than one record group are termed ''general restrictions,'' and apply to the kinds of information or classes of records designated, regardless of the record group to which such records have been allocated. Both specific and general restrictions have been published in the ''Guide to the National Archives of the United States.'' (See §1254.30.) Subparts A and B contain restrictions that have been added or revised since the publication of the latest edition of the Guide.

[40 FR 56892, Dec. 5, 1975. Redesignated at 50 FR 15723, Apr. 19, 1985]

§1256.4 Access to records containing personal information.

(a) *NARA policy*. Access to archival records containing information access to which would invade the privacy of an individual is restricted by §1256.16.

(1) NARA may authorize access to such records for the purpose of statistical or quantitative research to qualified persons doing biomedical research under the conditions outlined in this section.

(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 part 1254 of this chapter.

(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).

(4) NARA will not grant access contrary to a specific restriction to records which have specific restrictions on access imposed by the agency of origin in accordance with § 1256.40.

(b) *Request for access.* Researchers who wish to have access to records the use of which is restricted by § 1256.16 to conduct biomedical research must submit a written request to the Assistant Archivist for the National Archives (NN), National Archives and Records Administration, Washington, DC 20408. OMB control number 3095–0002 has been assigned to this collection of information requirement. Researchers are encouraged to consult informally NARA prior to 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;

(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 great 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 National Archives, and the director(s) of the NARA division(s) which 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:

(i) Whether the requested information is of such a highly sensitive personal nature that disclosure should not be permitted even for biomedical statistical or quantitative research;

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

(iii) Whether the research results will be published or presented at an academic or research conference;

(iv) Whether the requester is a *bona-fide* biomedical researcher who has previous experience in conducting statistical research projects and publishing articles or books on such research;

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

(vi) Whether 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 ADP facility handling the records or data elements containing personal identifiers shall agree in writing to maintain the confidentiality of the information and to adhere to the conditions of access imposed by NARA. NARA may impose some or all of 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 statistical research and for the statistical reporting of research findings as described in the approved research project. The records may not be used for any other purpose without NARA approval;

(2) The records and copies of any data elements which permit the identification of an individual or which can be identified with an individual may not be transferred to any person or institution not directly involved with the approved research project;

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

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

(5) Any individually identifiable information in the researcher's notes or in authorized copies of the records shall be rendered anonymous by the researcher at the earliest possible time consistent with the purpose of the research project;

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

(7) Prior to publication or public presentation of the data, the final research product(s) shall be provided to the Assistant Archivist for the National Archives for review. NARA's review shall be 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;

(8) All research notes containing personally identifiable information from privacy-restricted records and/or copies of such records shall, upon completion of the project, be destroyed or returned to NARA, whichever condition NARA has imposed as a condition of access. If the notes and/or copies are destroyed, the researcher shall verify in writing to the Assistant Archivist for the National Archives that the research notes and/or copies have been destroyed.

(e) *Noncompliance with conditions of access.* If NARA discovers that a researcher has violated any of the conditions of access imposed by NARA, NARA shall take steps to revoke the NARA research privileges of that person and shall consult with the NARA legal counsel 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 which provided grant funds for the project;

(4) The sponsor of the publication or public presentation; and/or

(5) Appropriate professional organizations.

[53 FR 6821, Mar. 3, 1988]

Subpart A—General Restrictions

§ 1256.10 National security information.

(a) *Records.* Records containing information regarding national defense or foreign policy and properly classified under an Executive order.

(b) *Restrictions.* Such records may be disclosed only in accordance with the provisions of such Executive order and its implementing directive.

(c) *Imposed by.* Archivist of the United States in accordance with 5 U.S.C. 552 and 44 U.S.C. 2108.

[48 FR 6540, Feb. 14, 1983. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1256.12 Information exempted from disclosure by statute.

(a) *Records.* Records containing information which is specifically exempted from disclosure by statute.

(b) *Restrictions.* Such records may be disclosed only in accordance with the provisions of 44 U.S.C. 2108.

(c) *Imposed by*. Archivist of the United States in accordance with 5 U.S.C. 552 and 44 U.S.C. 2108.

[48 FR 6541, Feb. 14, 1983, as amended at 48 FR 45393, Oct. 5, 1983. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1256.14 Trade secrets and commercial or financial information.

(a) *Records*. Records not restricted by statute but which contain trade secrets and commercial or financial information submitted to the government with an expressed or implied understanding of confidentiality.

(b) *Restrictions*. Such records may be disclosed only if:

(1) The party that provided the information agrees to its release; or

(2) In the judgment of the Archivist of the United States, the passage of time is such that release of the information would not result in substantial competitive harm.

(c) *Imposed by*. Archivist of the United States in accordance with 5 U.S.C. 552 and 44 U.S.C. 2108.

[48 FR 6541, Feb. 14, 1983. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1256.16 Information which would invade the privacy of an individual.

(a) *Records*. Records containing information about a living individual which reveal details of a highly personal nature that the individual could reasonably assert a claim to withhold from the public to avoid a clearly unwarranted invasion of privacy, including but not limited to information about the physical or mental health or the medical or psychiatric care or treatment of the individual, and that—

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

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

(b) *Restrictions*. Such records may be disclosed only:

(1) To those officers and employees of the agency that transferred the records to the National Archives who have a need for the record in the performance of their official duties;

(2) To those officers and employees of the agency that originated the information in the records who have a need for the records in the performance of their official duties;

(3) To researchers for the purpose of statistical or quantitative research when such researchers have provided the National Archives with adequate written assurance that the record will be used solely as a statistical research or reporting record and that no individually identifiable information will be disclosed; or

(4) To the subject individual or his duly authorized representative (the individual requesting access will be required to furnish reasonable and appropriate identification). Access will not be granted, however, to records containing the following categories of information:

(i) Investigatory material compiled for law enforcement purposes or for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, or Federal contracts if the identity of the source who furnished the information to the Government under an expressed or implied promise of confidentiality is revealed;

(ii) Evaluation material used to determine potential for promotion in the armed services if the identity of the source who furnished the information to the government under an expressed or implied promise of confidentiality is revealed; and

(iii) Security classified material.

(c) *Imposed by*. Archivist of the United States in accordance with 5 U.S.C. 552 and 44 U.S.C. 2108.

[48 FR 6541, Feb. 14, 1983. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1256.18 Information related to law enforcement investigations.

(a) *Records*. Records compiled for law enforcement purposes.

(b) *Restrictions*. Such records may be disclosed only:

(1) If the release of the information does not interfere with enforcement proceedings, and

(2) If confidential sources and/or confidential information are not revealed, and

(3) If the release of the information would not constitute an unwarranted invasion of personal privacy, and

(4) If confidential investigation techniques are not described, and

(5) If the release of the information would not endanger the safety of law enforcement personnel, or

(6) If, in the judgment of the Archivist of the United States the passage of time is such that:

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

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

(c) *Imposed by*. Archivist of the United States in accordance with 5 U.S.C. 552 and 44 U.S.C. 2108.

[48 FR 6541, Feb. 14, 1983, as amended at 48 FR 45393, Oct. 5, 1983. Redesignated at 50 FR 15723, Apr. 19, 1985]

Subpart B—Specific Restrictions

§1256.40 Agency-imposed restrictions.

Some records in NARA legal custody are covered by restrictions imposed by the agency of origin that are in conformance with the Freedom of Information Act.

[50 FR 15727, Apr. 19, 1985]

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

SOURCE: 62 FR 31725, June 11, 1997, unless otherwise noted.

EFFECTIVE DATE NOTE: At 62 FR 31725, June 11, 1997, subpart C to part 1256 was added, effective July 11, 1997.

§1256.50 Scope of subpart.

This subpart prescribes 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).

§1256.52 Purpose.

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 prescribes procedures by which the public may inspect and obtain copies of USIA audiovisual records and other materials prepared for dissemination abroad that have been transferred to NARA for preservation and domestic distribution.

§1256.54 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.

§1256.56 Transfer of USIA audiovisual records to NARA.

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 §1228.184(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.

§1256.58 Domestic distribution of USIA audiovisual records transferred to NARA.

No USIA audiovisual records in the National Archives of the United States that were prepared for dissemination abroad will be available for copying until it has been at least 12 years since such materials were first disseminated abroad, or, in the case of materials prepared for foreign dissemination but not disseminated abroad, until it has been at least 12 years since the preparation of the materials.

(a) *Access to USIA audiovisual records that neither have copyright protection nor contain copyright material.* USIA audiovisual records prepared for dissemination abroad that NARA determines neither have copyright protection nor contain copyrighted material are available for examination and copying in accordance with the regulations set forth in parts 1252, 1253, 1254, 1256, and 1258 of this chapter. In determining

whether materials have copyright protection or contain copyrighted material, NARA will rely on information contained within or affixed to individual records (e.g., copyright notices); information contained within relevant USIA production, title, or other files that have been transferred to NARA by USIA; information provided by requesters pursuant to paragraph (b)(2) of this section (e.g., evidence from the Copyright Office that copyright has lapsed or expired); and information provided by copyright or license holders.

(b) *Reproduction of USIA audiovisual records that either have copyright protection or contain copyrighted material.*

(1) USIA audiovisual records prepared for dissemination abroad that NARA determines may have copyright protection or may contain copyrighted material will be made available for examination in NARA research facilities in accordance with the regulations set forth in this Title.

(2) Copies of USIA audiovisual records prepared for dissemination abroad that NARA determines may have copyright protection or may contain copyrighted material will be provided to persons seeking the release of such materials in the United States once NARA has:

(i) Ensured, in accordance with paragraph (b)(3) of this section, that the persons seeking copies have secured and paid for necessary United States rights and licenses;

(ii) Been provided with evidence from the Copyright Office sufficient to determine that copyright protection in the materials sought, or relevant portions therein, has lapsed or expired; or

(iii) Received a requester's signed certification in accordance with paragraph (b)(4) of this section that the materials sought will be used 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 to NARA.

(3) 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 written evidence from all copyright and/or license owner(s) that any necessary fees have been paid or waived and any necessary licenses have been secured.

(4) 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.

(c) In every instance where a copy of an audiovisual record is provided under this subpart, and NARA has determined that the work being reproduced may have copyright protection or may contain copyrighted material, NARA shall provide a warning notice of copyright.

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

§ 1256.60 Fees.

Copies or reproductions 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).

PART 1258—FEES

Sec.

1258.1 Authority.
1258.2 Applicability.
1258.4 Exclusions.
1258.6 Color reproductions.
1258.8 Copy negatives.
1258.10 Mail orders.

1258.11 Fees for reproduction of archival records in response to FOIA requests.
1258.12 Fee schedule.
1258.14 Payment of fees.
1258.16 Effective date.

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

§1258.1 Authority.

44 U.S.C. 2116(c) authorizes the charging of a fee for making or authenticating copies or reproductions of materials transferred to the Archivist's custody. Under 44 U.S.C. 2307 the Chairman, National Archives Trust Fund Board, is authorized to prepare and publish special works and collections of sources and to prepare, duplicate, edit, and release historical photographic materials and sound recordings and sell those publications and releases at a price that will cover their cost, plus 10 percent.

[40 FR 7926, Feb. 24, 1975. Redesignated and amended at 50 FR 15723, 15727, Apr. 19, 1985]

§1258.2 Applicability.

(a) Except as otherwise provided in this section, fees for the reproduction of NARA archival records, donated historical materials, and records filed with the Office of the Federal Register are as set forth in §1258.12. Some reproduction services listed in §1258.12 may not be available at all NARA facilities.

(b) The fees set forth in §1258.12 apply to reproduction of FRC records, except when NARA and the agency that transferred the records have agreed to apply that agency's fee schedule.

(c) The following categories are excluded from the fees set forth in §1258.12.

(1) National Archives Trust Fund Board publications, including microfilm publications. Prices are available from the Product Sales Section (NWPS), 700 Pennsylvania Ave., NW., Room G–9, Washington, DC 20408.

(2) [Reserved]

(3) Motion picture, sound recording, and video holdings of the National Archives and Presidential libraries. Information on the availability of and prices for reproduction of these materials are available from the Motion Picture, Sound, and Video Branch (NWDNM), 8601 Adelphi Rd., Room 3340, College Park, MD 20740–6001, or from the Presidential library which has such materials (see §1253.3 of this chapter for addresses).

(4) Electronic records. Information on the availability of and prices for duplication are available from the Center for Electronic Records (NWRE), 8601 Adelphi Rd., Room 5320, College Park, MD 20740–6001, or from the Presidential library which has such materials (see §1253.3 of this chapter for addresses).

(5) Still photography, including aerial film, and oversize maps and drawings. Information on the availability and prices of reproductions of records held in the Still Pictures Branch (NWDNS) and the Cartographic and Architectural Branch (NWDNC), both located at the National Archives at College Park facility, 8601 Adelphi Rd., College Park, MD 20740–6001, and in the Presidential libraries and regional records services facility (see §§1253.3 and 1253.7 of this chapter for addresses) should be obtained from the unit which has the original records.

(6) Reproduction of the following types of records using the specified order form:

(i) Military service files and pension files more than 75 years old (order form NATF Form 80). Reproduction of a military service file (or selected documents from the file if voluminous)—$10.

(ii) Passenger arrival lists (order form NATF Form 81)—$10.

(iii) Federal Census requests (order form NATF Form 82)—$6.

(iv) Eastern Cherokee applications to the Court of Claims (order form NATF Form 83)—$10.

(v) Land entry records (order form NATF Form 84)—$10.

(7) Reproductions of NARA administrative records made in response to FOIA requests under part 1250 of this chapter. Fees for such reproductions are found in §1250.40 of this chapter.

(8) Orders for expedited service (''rush'' orders) for reproduction of still pictures and motion picture and video recordings among the holdings of a Presidential library. Orders may be accepted on an expedited basis by the library when the library determines that sufficient personnel are available to

handle such orders or that the NARA contractor making the reproduction can provide the service. Rush orders are subject to a surcharge to cover the additional cost of providing expedited service.

(9) Orders requiring additional expense to meet unusual customer specifications such as the use of special techniques to make a photographic copy more legible than the original document, or unusual format or background requirement for negative microfilm. Fees for these orders are computed for each order.

[40 FR 7928, Feb. 24, 1975, as amended at 49 FR 9726, Mar. 15, 1984; 49 FR 42934, Oct. 25, 1984. Redesignated and amended at 50 FR 15723, 15727, Apr. 19, 1985; 52 FR 29521, Aug. 10, 1987; 53 FR 12151, Apr. 13, 1988; 53 FR 23760, June 24, 1988; 56 FR 3776, Jan. 31, 1991; 57 FR 21743, May 22, 1992; 60 FR 5580, Jan. 30, 1995; 62 FR 32203, June 13, 1997]

EFFECTIVE DATE NOTE: At 62 FR 32203, June 13, 1997, § 1258.2 was amended by revising paragraphs (c)(1) and (c)(3) through (c)(5), adding paragraph (c)(6)(v), and removing paragraph (c)(10), effective July 14, 1997. For the convenience of the user, the superseded text is set forth as follows:

§ 1258.2 Applicability.

* * * * *

(c) * * *

(1) National Archives publications, including microfilm publications. Prices are available from Publications Distribution (NECD), National Archives, Washington, DC 20408.

* * * * *

(3) Motion picture, sound recording, and video holdings of the National Archives and Presidential libraries. Prices for reproduction of these materials are available from the Motion Picture, Sound and Video Branch (NNSM), National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001, or from the Presidential library which has such materials (see § 1253.3 of this chapter for addresses).

(4) Machine-readable records. Prices for duplication are available from the Center for Electronic Records (NSX), National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

(5) Still photography, including aerial film, and oversize maps and drawings. Information on the availability and prices of reproductions of records held in the Still Pictures Branch (NNSP) and the Cartographic and Architectural Branch (NNSC), both located at the National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001, and in the Presidential libraries and regional archives (see §§ 1253.3 and 1253.7 of this chapter for addresses) should be obtained from the unit which has the original records.

* * * * *

(10) The fees for reproductions of archival records made in response to FOIA requests are set forth in § 1258.11.

§ 1258.4 Exclusions.

No fee is charged for reproduction or certification in the following instances:

(a) Documents furnished 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;

(f) For records center records 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).

[40 FR 7928, Feb. 24, 1975. Redesignated at 50 FR 15723, Apr. 19, 1985, and amended at 50 FR 50905, Dec. 13, 1985; 57 FR 21743, May 22, 1992; 62 FR 32203, June 13, 1997]

EFFECTIVE DATE NOTE: At 62 FR 32203, June 13, 1997, § 1258.4 was amended by revising paragraph (f) introductory text, effective July 14, 1997. For the convenience of the user, the superseded text is set forth as follows:

§ 1258.4 Exclusions.

* * * * *

(f) For Federal records center (FRC) records only:

* * * * *

§ 1258.6 Color reproductions.

Color reproductions are furnished to the public and the Government only on a fee basis.

[40 FR 7928, Feb. 24, 1975. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1258.8 Copy negatives.

Requests for photographs of materials for which no copy negative is on file are handled as follows:

(a) The cost of the negative shall be charged to the customer; except in cases where NARA wishes to retain the negative for its own use.

(b) When no fee is charged the negative becomes the property of NARA. When a fee is charged the negative becomes the property of the customer.

[40 FR 7928, Feb. 24, 1975. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1258.10 Mail orders.

(a) There is a minimum fee of $10 per order for reproductions which are sent by mail to the customer.

(b) Orders to addresses in the United States are sent either first class or UPS depending on the weight of the order and availability of UPS service. When a customer requests special mailing services (such as Express Mail or registered mail) and/or shipment to a foreign address, the cost of the special service and/or additional postage for foreign mail is added to the cost of the reproductions.

[49 FR 9726, Mar. 15, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985, and amended at 56 FR 3777, Jan. 31, 1991; 62 FR 32203, June 13, 1997]

EFFECTIVE DATE NOTE: At 62 FR 32203, June 13, 1997, § 1258.10 was amended by revising paragraph (a), effective July 14, 1997. For the convenience of the user, the superseded text is set forth as follows:

§ 1258.10 Mail orders.

(a) There is a minimum fee of $6.00 per order for reproductions which are sent by mail to the customer.

* * * * *

§ 1258.11 Fees for reproduction of archival records in response to FOIA requests.

(a) *Electrostatic copies.* (1) Paper to paper copies (up to 11 in. by 17 in.):

NARA makes the copy	$0.25
Customer makes the copy on a NARA self-service copier	$0.10

(2) Oversized electrostatic copies (per foot): $1.80 (plus $0.20 per foot for vellum paper)

(b) *Other processes.* Fees for other reproduction processes not listed in § 1258.11 are computed upon request.

[56 FR 3777, Jan. 31, 1991]

EFFECTIVE DATE NOTE: At 62 FR 32203, June 13, 1997, § 1258.11 was removed, effective July 14, 1997.

§ 1258.12 Fee schedule.

(a) *Certification:* $10.

(b) *Electrostatic copying:* (1) Paper-to-paper copies (up to and including 11 in. by 17 in.) made by the customer on a NARA self-service copier: $0.10 per copy.

(2) Paper-to-paper copies (up to and including 11 in. by 17 in.) made by NARA staff:

(i) At a Presidential library; at a regional records services facility; and,

when ordered on a same-day ''cash and carry'' basis, at a Washington, DC, area facility: $0.50 per copy.

(ii) All other orders placed at a Washington, DC, area facility: $10 for the first 1–20 copies; $5 for each additional block of up to 20 copies.

(3) Oversized electrostatic copies (per linear foot): $2.50.

(4) Electrostatic copies (22 in. by 34 in.): $2.50.

(5) Microfilm or microfiche to paper copies made by the customer on a NARA self-service copier: $0.25.

(6) Microfilm or microfiche to paper copies made by NARA staff: $1.75.

(c) *Microfilm.* (1) Original negative microfilm (paper-to-microfilm): $10 for the first 1–15 images; $14 for each additional block of up to 20 pages.

(2) Direct duplicate copy of accessioned microfilm: $34.00 per roll.

(3) Positive copy of accessioned microfilm: $34.00 per roll.

(d) *Diazo microfiche duplication (per fiche):* $2.10.

(e) *Self-service video copying in the Motion Picture, Sound and Video Research Room:* (1) Initial 90-min use of video copying station with 120-minute videocassette: $20.

(2) Additional 90-minute use of video copying station with no videocassette: $14.

(3) Blank 120-minute VHS videocassette: $6.

(f) *Self-service Polaroid prints:* $9 per print.

(g) *Preservation of records.* In order to preserve certain records which are in poor physical condition, NARA may restrict customers to microfilm copies instead of electrostatic copies.

(h) *Unlisted processes.* Fees for reproduction processes not listed in § 1258.12 are computed upon request.

[56 FR 3777, Jan. 31, 1991; 56 FR 5652, Feb. 12, 1991, as amended at 57 FR 21743, May 22, 1992; 57 FR 46306, Oct. 8, 1992; 60 FR 5580, Jan. 30, 1995; 62 FR 32204, June 13, 1997]

EFFECTIVE DATE NOTE: At 62 FR 32204, June 13, 1997, § 1258.12 was amended by revising paragraphs (a) through (f), removing paragraph (g), and redesignating paragraphs (h) and (i) as paragraphs (g) and (h), respectively, effective July 14, 1997. For the convenience of the user, the superseded text is set forth as follows:

§ 1258.12 Fee schedule.

(a) *Certification*: $2.00.

(b) [Reserved]

(c) *Electrostatic copying:* (1) Paper to paper (up to 11 in. by 17 in.):

Customer makes the copy at a NARA self-service copier	$0.10
NARA makes the copy	.25

(2) Oversized electrostatic copies (per foot): $1.80. Add per foot for vellum paper: .20.

(3) Electrostatic copies (22 in. by 34 in.): $1.50.

(4) Red-line copies: $1.30.

(5) Microfilm or microfiche to paper copies (up to 11 in. by 17 in.):

Customer makes the copy at a NARA self-service copier	$0.25
NARA makes the copy	$1.00

(6) Microfilm to paper copies (18 in. by 24 in.):

Customer makes the copy at a NARA self-service copier	$0.90
NARA makes the copy	$1.55

(d) *Microfilm:*

	16mm	35mm
(1) Camera negative (per frame) ..	$0.32	$0.33
(2) Positive (per foot)	.30	.30
(3) Direct duplicate negative (per foot)	.30	.30

(e) *Diazo microfiche duplication (per fiche):* $1.25

(f) *Technical services:*

	Regular	Overtime
Photographer (per hour)	$15.00	$22.50
Microfilm preparation (per hour)	12.25	18.50
Sound & video recordings (per hour) ..	16.50	24.75

(g) *Self-service video copying in the Motion Picture, Sound and Video Research Room:*

(1) Initial 90-minute use of video copying station with 120-minute videocassette: $15.25.

(2) Additional 90-minute use of video copying station with no videocassette: $8.75.

(3) Blank 120-minute videocassette: $6.75.

* * * * *

§ 1258.14 Payment of fees.

Fees may be paid in cash, by check or money order made payable to the National Archives Trust Fund, or by selected credit cards. Remittances 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. Fees must be

paid in advance except when the appropriate director approves a request for handling them on an account receivable basis. Purchasers with special billing requirements must state them when placing orders and must complete any special forms for NARA approval in advance.

[57 FR 21743, May 22, 1992]

§1258.16 Effective date.

The fees in §1258.12 are effective on July 14, 1997.

[62 FR 32204, June 13, 1997]

EFFECTIVE DATE NOTE: At 62 FR 32204, June 13, 1997, §1258.16 was revised, effective July 14, 1997. For the convenience of the user, the superseded text follows:

§1258.16 Effective date.

The fees in §§1258.11 and 1258.12 are effective on March 1, 1991.

[56 FR 3777, Jan. 31, 1991]

SUBCHAPTER D—DECLASSIFICATION

PART 1260—DECLASSIFICATION OF AND PUBLIC ACCESS TO NATIONAL SECURITY INFORMATION

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Subpart A—Mandatory Review of Classified U.S. Government Originated Information and Foreign Government Information Provided to the United States in Confidence

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1260.60 Mandatory review of classified White House information in the custody of other agencies.

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1260.70 Information originated by or under the declassification jurisdiction of Federal agencies.
1260.72 Information originated in the White House and under the declassification jurisdiction of the Archivist.
1260.74 Appeals.

AUTHORITY: 44 U.S.C. 2104(a); Executive Order 12356 of April 2, 1982 (3 CFR 1982 Comp., p. 166).

SOURCE: 49 FR 1344, Jan. 11. 1984, unless otherwise noted. Redesignated at 50 FR 15723, Apr. 19, 1985.

§ 1260.1 Scope of part.

(a) Declassification of and public access to national security information and material (hereafter referred to as ''classified information'' or collectively termed ''information'') is governed by Executive Order 12356 of April 2, 1982 (47 FR 14874, 3 CFR 1982 Comp, p. 166) and by the Information Security Oversight Office Directive Number 1 of June 22, 1982 (47 FR 27836, June 25, 1982).

(b) Documents declassified in accordance with this regulation may be withheld from release under the provisions of 5 U.S.C. 552(b) for accessioned agency records; 36 CFR 1254.36 for donated historical materials; 44 U.S.C. 2201 et seq. and 36 CFR part 1270 for Presidential records; and 44 U.S.C. 2111 note and 36 CFR part 1275 for Nixon Presidential materials. Procedures for public requests for mandatory review of classified information under Executive Order 12356 are found in § 1254.46 of this chapter.

[57 FR 21744, May 22, 1992]

§ 1260.2 Declassification responsibility.

(a) *Classified U.S. Government originated information less than 30 years old.* Declassification of U.S. Government originated information less than 30 years old is the responsibility of the agency that originated the information.

(b) *Foreign government information provided to the United States in confidence and less than 30 years old.* Declassification of foreign government information (provided to the U.S. in confidence) less than 30 years old, is the responsibility of the agency that initially received or classified the foreign government information in consultation with concerned agencies. NARA may make a declassification determination on foreign government information less than 30 years old only when the responsible agency has specifically authorized this action.

(c) *Classified U.S. Government originated information and foreign government information provided in confidence more than 30 years old.* Systematic reviews of U.S. Government originated information and foreign government information (provided to the U.S. in confidence) more than 30 years old (except for intelligence file series described in paragraph (d) of this section) accessioned into the National Archives or donated to the Government are the responsibility of NARA. NARA shall conduct systematic declassification reviews in accordance with guidelines provided by the head of the originating agency or, with respect to foreign government information, in accordance with guidelines provided by the head of the agency having declassification jurisdiction over the information. If no guidelines for review of foreign government information have been provided by the agency heads, the Director of the Information Security Oversight Office, after coordinating with the agencies having declassification authority over the information, shall issue general guidelines for systematic declassification reviews. With respect to the systematic reviews of Presidential papers or records, guidelines shall be developed by the Archivist of the United States and approved by the National Security Council.

(d) *Classified U.S. Government originated information concerning intelligence and cryptology.* Systematic reviews of file series of accessioned records and presidential papers or records concerning intelligence activities (including special activities), or intelligence sources or methods, and cryptology created after 1945, shall be conducted as the records become 50 years old. NARA shall conduct systematic declassification reviews in accordance with guidlines provided by the Director of the Central Intelligence Agency concerning information on intelligence activities and intelligence sources and methods, and by the Secretary of Defense concerning cryptologic information.

(e) *White House information.* Declassification of information from a previous administration which was originated by the President; by the White House staff; by committees, commission, or boards appointed by the President; or by others specifically providing advice and counsel to a President or acting on behalf of the President (hereinafter referred to as ''White House information'') is the responsibility of the Archivist of the United States. Declassification determinations will be made after consultation with agencies having primary subject matter interest and will be consistent with the provisions of applicable laws or lawful agreements.

(f) *Information orginated by a defunct agency.* NARA is responsible for declassification of all information in the custody of NARA originated by an agency that has ceased to exist and whose functions have not been transferred to another agency and of all foreign government information originally received or classified by such an agency. NARA shall make declassification determinations after consultation with all agencies having primary subject matter interest.

[49 FR 1349, Jan. 11, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985 and 51 FR 22076, June 18, 1986. Further redesignated at 59 FR 29194, June 6, 1994]

§1260.4 Agency liaison.

To ensure that NARA will be able to respond promptly to mandatory review requests and appeals from denials, the head of each agency shall be requested to provide NARA with the current name, title, and address of the agency's designated mandatory review and appellate authority.

[49 FR 1344, Jan. 11, 1984. Redesignated and amended at 50 FR 15723, 15727, Apr. 19, 1985]

Subpart A—Mandatory Review of Classified U.S. Government Originated Information and Foreign Government Information Provided to the United States in Confidence

§ 1260.10 NARA action.

(a) *Information less than 30 years old.* NARA shall promptly acknowledge receipt of a request for mandatory review of classified U.S. Government originated information, and within 30 calendar days of receipt of the request, shall forward the request, with copies of the documents containing the requested information, to the agency that originated the information or to the agency that the Archivist determines has primary subject matter interest. With respect to foreign government information, the request and copies of the documents shall be forwarded to the agency which initially received or classified the information. If unable to identify that agency, NARA shall forward the request to the agency which has primary subject matter interest. NARA shall inform the requester that referrals have been made to the appropriate Government agency.

(b) *Information more than 30 years old.* NARA shall acknowledge receipt of a request for mandatory review of classified U.S. Government originated information or foreign government information which NARA may review for declassification using systematic review guidelines, and within 60 days of receipt of the request shall act upon it and notify the requester of the action taken. If additional time is necessary to make a declassification determination, NARA shall notify the requester of the time needed to process the request. Except in unusual circumstances, NARA will make a final determination within 1 year of the receipt of the request. Information which NARA may not declassify using the systematic review guidelines will be promptly forwarded, with copies of the documents containing the requested information, to the responsible agency. NARA shall inform the requester that referrals have been made to the appropriate Government agency.

[51 FR 22076, June 18, 1986]

§ 1260.12 Agency action.

Upon receipt of a request for mandatory review of classified U.S. Government originated information or foreign government information forwarded by NARA, the originating or responsible agency shall:

(a) Either make a prompt declassification determination and notify NARA accordingly, or inform NARA of the additional time needed to process the request. NARA will inform the requester of the agency action. Except in unusual circumstances, agencies shall make a final determination within one year.

(b) Notify NARA of any other agency to which it forwarded the request in those cases requiring the declassification determination of another agency.

(c) Return to NARA a complete copy of each declassified document with the agency determination. NARA will forward the reproduction to the requester. When a request cannot be declassified in its entirety, the agency must also furnish NARA, for transmission to the requester, the following:

(1) A brief statement of the reasons the requested information cannot be declassified; and

(2) A statement of the requester's right to appeal within 60 calendar days of receipt of the denial; the procedures for taking such action; and the name, title, and address of the appeal authority.

(d) The agency appellate authority shall make a determination within 30 working days following receipt of an appeal. If additional time is required to make a determination, the agency appellate authority shall notify NARA of the additional time needed and the reason for the extension. The agency appellate authority shall notify NARA in writing of the final determination and of the reasons for any denial. NARA will provide the researcher a copy of any notifications.

(e) Furnish to NARA a complete copy of each document to be released only in part, clearly marked to indicate the portions which remain classified.

[49 FR 1344, Jan. 11, 1984. Redesignated at 50 FR 15723, Apr. 19, 1985, and amended at 51 FR 22077, June 18, 1986; 57 FR 21744, May 22, 1992]

Subpart B—[Reserved]

Subpart C—Mandatory Review of Classified Information Originated by a Defunct Agency or Received by a Defunct Agency From a Foreign Government

§1260.30 NARA action.

NARA is responsible for declassification of all information in the custody of NARA originated by an agency which has ceased to exist and whose functions have not been transferred to another agency and of all foreign government information originally received or classified by such an agency. NARA will promptly acknowledge receipt of requests for such information, review the information using applicable systematic review guidelines, and, when necessary, consult with any agency having primary subject matter interest. NARA shall either make a prompt declassification determination and notify the requester accordingly, or inform the requester of the additional time needed to process the request. Except in unusual circumstances NARA shall make a final determination within one year. If the request is denied in whole or in part, the Assistant Archivist for the National Archives or the Assistant Archivist for Presidential Libraries will furnish the requester a brief statement of the reasons for denial and a notice of the right to appeal the determination within 60 calendar days to the Deputy Archivist of the United States (mailing address: National Archives (ND), Washington, DC 20408). Upon receipt of an appeal the Deputy Archivist shall, within 30 working days:

(a) Review the previous decision made to deny the information and, as necessary;

(b) Consult with the appellate authorities in any agency having primary subject matter interest in the information previously denied; and

(c) Notify the requester of the determination and make available to the requester any additional information that has been declassified as a result of the appeal.

§1260.32 Agency action.

Upon receipt of a request forwarded by NARA for consultation regarding the declassification of information originated by a defunct agency or of foreign government information originally received or classified by a defunct agency, the agency with primary subject matter interest shall:

(a) Advise the Archivist whether the information should be declassified in whole or in part or should continue to be exempt from declassification; and

(b) Return the request to NARA along with a brief statement of the reasons any requested information should not be declassified.

Subpart D—Mandatory Review of Classified White House Originated Information and Foreign Government Information Received or Classified in the White House Less Than 30 Years Old

§1260.40 Information subject to mandatory review.

Information originated by a President, the White House staff, by committees, commissions, or boards appointed by a President, or others specifically providing advice and counsel to a President or acting on behalf of a President (hereafter cited as White House originated information) is subject to mandatory review consistent with the provisions of applicable laws or lawful agreements that pertain to the respective Presidential papers or records. Unless precluded by such laws or agreements, White House originated information is subject to mandatory review 10 years after the close of the administration which created the materials or when the materials have been archivally processed, whichever occurs first.

[49 FR 1344, Jan. 11, 1984. Redesignated and amended at 50 FR 15723, 15728, Apr. 19, 1985

§1260.42 NARA action.

(a) NARA shall promptly acknowledge receipt of a request for mandatory review of such classified White House originated information and foreign

government information received or classified in the White House.

(b) NARA will review the requested information, determine which agencies have primary subject matter interest, forward to those agencies copies of material containing the requested information, and request their recommendations regarding declassification.

(c) NARA will review the recommendations returned by the agencies and make its declassification determination within one year of receipt of the request, except in unusual circumstances.

(d) When the request cannot be declassified in its entirety, NARA will furnish the requester:

(1) A brief statement of the reasons the requested information cannot be declassified;

(2) Access to those portions of documents releasable only in part that constitute a coherent segment; and

(3) A notice of the right to appeal the determination within 60 calendar days to the Deputy Archivist of the United States (mailing address: National Archives (ND), Washington, DC 20408).

§ 1260.44 NARA appellate process.

Upon receipt of an appeal, the Deputy Archivist shall within 30 working days:

(a) Review the decision made to deny the information;

(b) Consult with the appellate authorities in agencies having primary subject matter interest in the information previously denied;

(c) Notify the requester of the determination and make available to the requester any additional information which has been declassified as a result of the appeal; and

(d) Notify the requester of the right to appeal denials of access to the Director, Information Security Oversight Office (mailing address: General Services Administration (Z), Washington, DC 20405).

§ 1260.46 Agency action.

Upon receipt of a request forwarded by NARA for consultation regarding declassification of White House originated information and foreign government information received by or classified in the White House, the agency with primary subject matter interest shall:

(a) Advise the Archivist whether the information should be declassified in whole or in part or should continue to be exempt from declassification; and

(b) Provide a brief statement of the reasons any requested information should not be declassified and return a complete copy of the reproductions to NARA; and

(c) Return all reproductions referred for consultation including a complete copy of each document which should be released only in part, clearly marked to indicate the portions which remain classified.

[49 FR 1344, Jan. 11, 1984, as amended at 57 FR 21744, May 22, 1992]

Subpart E—Mandatory Review of Classified White House Information More Than 30 Years Old

§ 1260.50 Mandatory review of classified White House originated information and foreign government information received by or classified in the White House more than 30 years old.

(a) NARA shall promptly acknowledge the receipt of a request for mandatory review of classified White House originated information and foreign government information received by or classified in the White House more than 30 years old, and shall act upon that request within 60 calendar days. If additional time is necessary to make a declassification determination, NARA shall notify the requester of the time needed to process the request. NARA will make a final determination within 1 year of the receipt of the request, except in unusual circumstances.

(b) NARA shall review the information using applicable systematic review guidelines and will make available to the requester information declassified using those guidelines.

(c) Information which cannot be declassified by NARA using systematic review guidelines will be promptly forwarded to the agencies with primary subject matter interest and further processed in accordance with § 1260.42(b) through (d) and §§ 1260.44 through 1260.46.

Subpart F—Other Mandatory Review

§1260.60 Mandatory review of classified White House information in the custody of other agencies.

Agencies having custody of classified White House information of a previous administration shall forward requests for mandatory review of such information to the Office of the National Archives (mailing address: National Archives (NND), Washington, DC 20408) together with copies of documents containing the requested information and the agency's recommendations regarding declassification. NARA will make a declassification determination on such requests after consulting with any other agency with primary subject matter interest and will reply to the requester. If the request is denied in whole or in part, the requester may appeal within 60 calendar days of receipt of the denial to the Deputy Archivist of the United States (mailing address: National Archives (ND), Washington, DC 20408). Appeals are processed in accordance to the procedures listed in §1260.44.

Subpart G—Requests for Reclassification of Information

§1260.70 Information originated by or under the declassification jurisdiction of Federal agencies.

An agency may request NARA to temporarily close, re-review, and possibly reclassify records and donated historical materials originated by the agency which were declassified in accordance with E.O. 12356 or predecessor Orders. The agency shall submit the request in writing to the Assistant Archivist for the National Archives (NN) or to the Assistant Archivist for Presidential Libraries (NL) (mailing address: National Archives (NL), Washington, DC 20408). If the urgency of the matter precludes a written request, an authorized agency official may make a preliminary request by telephone. A written request shall follow the oral request within 5 workdays. In the request the authorized agency official shall:

(a) Identify the records or donated historical materials involved as specifically as possible;

(b) Explain the reason the agency believes a re-review and possible reclassification may be necessary in the interest of national security; and

(c) Provide any information the agency may have concerning any previous public disclosure of the information in the records or donated historical materials.

§1260.72 Information originated in the White House and under the declassification jurisdiction of the Archivist.

Requests from agencies to re-review and possibly reclassify information originated by a President; the White House staff; committees commissions, or boards appointed by the President; or others specifically providing advice and counsel to a President or acting on behalf of a President and which has been declassified and disclosed shall be submitted in writing to the Archivist of the United States. In the request the authorized agency official shall:

(a) Specifically identify the record or donated historical material;

(b) Explain the reason the agency believes a re-review and possible reclassification may be necessary in the interest of national security; and

(c) Provide any information the agency may have concerning the public disclosure of the information in the records or donated historical material.

§1260.74 Appeals.

NARA may appeal to the Director, Information Security Oversight Office, any re-review or reclassification request from an agency when, in the Archivist's opinion, the facts of previous disclosure suggest that such action is unwarranted or unjustified.

SUBCHAPTER E—PRESIDENTIAL RECORDS

PART 1270—PRESIDENTIAL RECORDS

Subpart A—General Provisions

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1270.10 Scope of part.
1270.12 Application.
1270.14 Definitions.

Subpart B—Actions Taken on Behalf of Former Presidents

1270.20 Designation of person or persons to act for former President.
1270.22 When Archivist may act for former President.

Subpart C—Disposal of Presidential Records

1270.30 Disposal of Presidential Records by incumbent President.
1270.32 Disposal of Presidential Records in the custody of the Archivist.

Subpart D—Access to Presidential Records

1270.40 Identification of restricted records.
1270.42 Denial of access to public; right to appeal.
1270.44 Exceptions to restricted access.
1270.46 Notice of intent to disclose Presidential Records.

Subpart E—Presidential Records Compiled for Law Enforcement Purposes

1270.50 Consultation with law enforcement agencies.

AUTHORITY: The Presidential Records Act of 1978, Pub. L. 95–591, 92 Stat. 2523–27, as amended by the National Archives and Records Administration Act of 1984, Pub. L. 98–497, sec. 107(b)(7), 98 Stat. 2287 (1984) (codified at 44 U.S.C. 2201–07).

SOURCE: 53 FR 50404, Dec. 15, 1988, unless otherwise noted.

Subpart A—General Provisions

§ 1270.10 Scope of part.

These regulations implement the provisions of the Presidential Records Act of 1978, Pub. L. No. 95–591, 92 Stat. 2523–27, as amended by Pub. L. No. 98–497, sec. 107(b)(7), 98 Stat. 2287 (1984) (codified at 44 U.S.C. 2201–07), by setting forth the policies and procedures governing preservation, protection, and disposal of, and access to Presidential and Vice-Presidential records created during a term of office of the President or Vice President beginning on or after January 20, 1981. Nothing in these regulations is intended to govern procedures for assertion of, or response to, any constitutionally based privilege which may be available to an incumbent or former President.

§ 1270.12 Application.

(a) These regulations apply to all Presidential records created during a term of office of the President beginning on or after January 20, 1981.

(b) Vice-Presidential records shall be subject to the provisions of this part in the same manner as Presidential records. The Vice President's duties and responsibilities, with respect to Vice-Presidential records, shall be the same as the President's duties and responsibilities with respect to Presidential records. The Archivist's authority with respect to Vice-Presidential records shall be the same as the Archivist's authority with respect to Presidential records, except that the Archivist may, when he determines it to be in the public interest, enter into an agreement with a non-Federal archival repository for the deposit of Vice-Presidential records.

§ 1270.14 Definitions.

For the purposes of this part—

(a) The terms *documentary material, Presidential records, personal records, Archivist,* and *former President* have the meanings given them by 44 U.S.C. 2201 (1)–(5), respectively.

(b) The term *agency* has the meaning given it by 5 U.S.C. 551(1) (A)–(D) and 552(f).

(c) The term *Presidential archival depository* has the meaning given it by 44 U.S.C. 2101(1).

(d) The term *Vice-Presidential records* means documentary materials, or any reasonably segregable portion thereof, created or received by the Vice President, his immediate staff, or a unit or individual of the Office of the Vice President whose function is to advise and assist the Vice President, in the

course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the Vice President. The term includes documentary materials of the kind included under the term *Presidential records*.

(e) The term *filed* means the date something is received in the office of the official to whom it is addressed.

Subpart B—Actions Taken on Behalf of Former Presidents

§1270.20 Designation of person or persons to act for former President.

(a) A President or former President may designate some person or persons to exercise, upon death or disability of the President or former President, any or all of the discretion or authority granted to the President or former President by chapter 22 of title 44 U.S.C.

(b) When a President or former President designates a person or persons to act for him pursuant to paragraph (a) of this section, this designation shall be effective only if the Archivist has received notice of the designation before the President or former President dies or is disabled.

(c) The notice required by paragraph (b) of this section shall be in writing, and shall include the following information:

(1) Name(s) of the person or persons designated to act for the President or former President;

(2) The current addresses of the person or persons designated; and

(3) The records, identified with reasonable specificity, over which the designee(s) will exercise discretion or authority.

§1270.22 When Archivist may act for former President.

In those instances where a President has specified, in accordance with 44 U.S.C. 2204(a), restrictions on access to Presidential records, but has not made a designation under §1270.20 of this subpart, the Archivist shall, upon the death or disability of a President or former President, exercise the discretion or authority granted to a President or former President by 44 U.S.C. 2204.

Subpart C—Disposal of Presidential Records

§1270.30 Disposal of Presidential records by incumbent President.

A President may, while in office, dispose of any Presidential records which in his opinion lack administrative, historical, informational, or evidentiary value if one of the following two sets of requirements is satisfied:

(a)(1) The President has obtained the written views of the Archivist concerning the proposed disposal; and

(2) The Archivist states in his written views to the President that he does not intend to request, with respect to the President's proposed disposal of Presidential records, the advice of the Committees on Rules and Administration and Governmental Affairs of the Senate, and the Committees on House Administration and Government Operations of the House of Representatives because he does not consider—

(i) The records proposed for disposal to be of special interest to the Congress; or

(ii) Consultation with the Congress concerning the proposed disposal to be in the public interest; or

(b)(1) The President has obtained the written views of the Archivist concerning the proposed disposal;

(2) The Archivist states in his written views either—

(i) That the records proposed for disposal may be of special interest to the Congress; or

(ii) That consultation with the Congress concerning the proposed disposal is in the public interest; and

(3) The President submits copies of the proposed disposal schedule to the Committees on Rules and Administration and Governmental Affairs of the Senate and the Committees on House Administration and Government Operations of the House of Representatives at least 60 calendar days of continuous session of Congress in advance of the proposed disposal date. For the purpose of this section, continuity of session is broken only by an adjournment of Congress *sine die*, and the days on which either House is not in session because of

an adjournment of more than 3 days to a day certain are excluded in the computation of the days in which Congress is in continuous session.

§ 1270.32 Disposal of Presidential Records in the custody of the Archivist.

(a) The Archivist may dispose of Presidential records which he has appraised and determined to have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation.

(b) When Presidential records are scheduled for disposal pursuant to paragraph (a) of this section, the Archivist shall publish a notice of this disposal in the FEDERAL REGISTER at least 60 days before the proposed disposal date.

(c) The notice required by paragraph (b) of this section, shall include the following:

(1) A reasonably specific description of the records scheduled for disposal; and

(2) A concise statement of the reason for disposal of the records.

(d) Publication in the FEDERAL REGISTER of the notice required by paragraph (b) of this section shall constitute a final agency action for purposes of review under chapter 7 of title 5 U.S.C. (5 U.S.C. 701–706).

Subpart D—Access to Presidential Records

§ 1270.40 Identification of restricted records.

(a) If a President, prior to the conclusion of his term of office or last consecutive term of office, as the case may be, specifies durations, not to exceed 12 years, for which access to certain information contained in Presidential records shall be restricted, in accordance with 44 U.S.C. 2204, the Archivist or his designee shall identify the Presidential records affected, or any reasonably segregable portion thereof, in consultation with that President or his designated representative(s).

(b) The Archivist shall restrict public access to the information contained in those records identified as affected until—

(1) The date on which the former President waives the restriction on disclosure of the record or information contained within;

(2) The expiration of the period of restriction specified under 44 U.S.C. 2204(a) for the category of information under which a certain record, or a portion thereof, was restricted; or

(3) The Archivist has determined that the former President or an agent of the former President has placed in the public domain through publication a restricted record or a reasonably segregable portion thereof, if this date is earlier than either of the dates specified in paragraph (b)(1) or (2) of this section.

§ 1270.42 Denial of access to public; right to appeal.

(a) Any person denied access to a Presidential record (hereinafter *the requester*) because of a determination that the record or a reasonably segregable portion thereof was (1) properly restricted under 44 U.S.C. 2204(a), and (2) not placed in the public domain by the former President or his agent, may file an administrative appeal with the Assistant Archivist for Presidential Libraries (NL), Washington, DC 20408.

(b) Appeals shall be filed no later than 10 working days after the requester receives written notification that access to Presidential records has been denied.

(c) Appeals shall be in writing and shall set forth the reason(s) why the requester believes access to the records sought should be allowed. The requester shall identify the specific records sought.

(d) Upon receipt of an appeal, the Assistant Archivist for Presidential Libraries shall have 30 working days from the date an appeal is filed to consider the appeal and to respond in writing to the requester. The Assistant Archivist's response shall state whether or not the Presidential records requested are to be released and the basis for this determination. The decision of the Assistant Archivist to withhold release of Presidential records is final and not subject to judicial review.

§1270.44 Exceptions to restricted access.

(a) Notwithstanding any restrictions on access imposed pursuant to section 2204 or these regulations, and subject to any rights, defenses, or privileges which the United States or any agency or person may invoke, Presidential records shall be made available in the following instances:

(1) Pursuant to subpoena or other judicial process properly issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;

(2) To an incumbent President if the records sought contain information which is needed for the conduct of current business of his office and is not otherwise available;

(3) To either House of Congress, or, to the extent of matter within its jurisdiction, to a Congressional committee or subcommittee if the records sought contain information which is needed for the conduct of business within its jurisdiction and is not otherwise available.

(b) Requests by an incumbent President, a House of Congress, or a Congressional committee or subcommittee pursuant to paragraph (a) of this section shall be addressed to the Archivist. All requests shall be in writing and, where practicable, identify the records sought with reasonable specificity.

(c) Presidential records of a former President shall be available to the former President or his designated representative upon request.

§1270.46 Notice of intent to disclose Presidential records.

(a) The Archivist or his designee shall notify a former President or his designated representative(s) before any Presidential records of his Administration are disclosed.

(b)(1) The notice given by the Archivist or his designee shall:

(i) Be in writing;

(ii) Identify the particular records with reasonable specificity;

(iii) State the reason for the disclosure; and

(iv) Specify the date on which the record will be disclosed.

(2) In the case of records to be disclosed in accordance with §1270.44, the notice shall also:

(i) Identify the requester and the nature of the request;

(ii) Specify whether the requested records contain materials to which access would otherwise be restricted pursuant to 44 U.S.C. 2204(a) and identify the category of restriction within which the record to be disclosed falls; and

(iii) Specify the date of the request.

(c) If, after receiving the notice required by paragraph (a) of this section, a former President raises rights or privileges which he believes should preclude the disclosure of a Presidential record, and the Archivist nevertheless determines that the record in question should be disclosed, in whole or in part, the Archivist shall notify the former President or his representative of this determination. The notice given by the Archivist or his designee shall:

(1) Be in writing;

(2) State the basis upon which the determination to disclose the record is made; and

(3) Specify the date on which the record will be disclosed.

(d) The Archivist shall not disclose any records covered by any notice required by paragraph (a) or (c) of this section for at least 30 calendar days from receipt of the notice by the former President, unless a shorter time period is required by a demand for Presidential records under §1270.44.

(e) Copies of all notices provided to former Presidents under this section shall be provided at the same time to the incumbent President.

Subpart E—Presidential Records Compiled for Law Enforcement Purposes

§1270.50 Consultation with law enforcement agencies.

(a) For the processing of Presidential records compiled for law enforcement purposes that may be subject to 5 U.S.C. 552(b)(7), the Archivist shall request specific guidance from the appropriate Federal agency on the proper treatment of a record if there is no general guidance applicable, if the record is particularly sensitive, or if

the type of record or information is widespread throughout the files.

(b) When specific agency guidance is requested under paragraph (a) of this section, the Archivist shall notify the appropriate Federal agency of the decision regarding disclosure of the specific documents. Notice shall include the following:

(1) A description of the records in question;

(2) Statements that the records described contain information compiled for law enforcement purposes and may be subject to the exemption provided by 5 U.S.C. 552(b)(7) for records of this type; and,

(3) The name of a contact person at NARA.

(c) Agency guidance under this section is not binding on the Archivist. The final determination on whether Presidential records may be subject to the exemption in 5 U.S.C. 552(b)(7) is the Archivist's responsibility.

SUBCHAPTER F—NIXON PRESIDENTIAL MATERIALS

PART 1275—PRESERVATION AND PROTECTION OF AND ACCESS TO THE PRESIDENTIAL HISTORICAL MATERIALS OF THE NIXON ADMINISTRATION

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APPENDIX A TO PART 1275—SETTLEMENT AGREEMENT

AUTHORITY: Sec. 102(a) of the National Archives and Records Administration Act of 1984, Pub. L. 98–497; 44 U.S.C. 2104; and secs. 103 and 104 of the Presidential Recordings and Materials Preservation Act 88 Stat. 1695; 44 U.S.C. 2111 note.

SOURCE: 51 FR 7230, Feb. 28, 1986, unless otherwise noted.

§1275.1 Scope of part.

This part sets forth policies and procedures concerning the preservation and protection of and access to the tape recordings, papers, documents, memorandums, transcripts, and other objects and materials which constitute the Presidential historical materials of Richard M. Nixon, covering the period beginning January 20, 1969, and ending August 9, 1974.

Subpart A—General Provisions

§1275.10 Purpose.

This part 1275 implements the provisions of title I of the Presidential Recordings and Materials Preservation Act (Pub. L. 93–526; 88 Stat. 1695). It prescribes policies and procedures by which the National Archives and Records Administration will preserve, protect, and provide access to the Presidential historical materials of the Nixon Administration.

§1275.12 Application.

This part 1275 applies to all of the Presidential historical materials of the Nixon Administration in the custody of the Archivist of the United States pursuant to the provisions of title I of the Presidential Recordings and Materials Preservation Act (Pub. L. 93–526; 88 Stat. 1695).

§ 1275.14 Legal custody.

The Archivist of the United States has or will obtain exclusive legal custody and control of all Presidential historical materials of the Nixon Administration held pursuant to the provisions of title I of the Presidential Recordings and Materials Preservation Act (Pub. L. 93–526; 88 Stat. 1695).

§ 1275.16 Definitions.

For the purposes of this part 1275, the following terms have the meaning ascribed to them in this § 1275.16.

(a) *Presidential historical materials.* The term *Presidential historical materials* (also referred to as *historical materials* and *materials*) shall mean all papers, correspondence, documents, pamphlets, books, photographs, films, motion pictures, sound and video recordings, machine-readable media, plats, maps, models, pictures, works of art, and other objects or materials made or received by former President Richard M. Nixon or by members of his staff in connection with his constitutional or statutory powers or duties as President and retained or appropriate for retention as evidence of or information about these powers or duties. Included in this definition are materials relating to the political activities of former President Nixon or members of his staff, but only when those activities directly relate to or have a direct effect upon the carrying out of constitutional or statutory powers or duties. Excluded from this definition are documentary materials of any type that are determined to be the official records of an agency of the Government; private or personal materials; stocks of publications, processed documents, and stationery; and extra copies of documents produced only for convenience or reference when they are clearly so identified.

(b) *Private or personal materials.* The term *private or personal materials* shall mean those papers and other documentary or commemorative materials in any physical form relating solely to a person's family or other non-governmental activities, including private political associations, and having no connection with his constitutional or statutory powers or duties as President or as a member of the President's staff.

(c) *Abuses of governmental power popularly identifed under the generic term ''Watergate.''* The term *abuses of governmental power popularly identified under the generic term ''Watergate''* (also referred to as *abuses of governmental power*), shall mean those alleged acts, whether or not corroborated by judicial, administrative or legislative proceedings, which allegedly were conducted, directed or approved by Richard M. Nixon, his staff or persons associated with him in his constitutional or statutory functions as President, or as political activities directly relating to or having a direct effect upon those functions, and which—

(1) Were within the purview of the charters of the Senate Select Committee on Presidential Campaign Activities or the Watergate Special Prosecution Force; or

(2) Are circumscribed in the Articles of Impeachment adopted by the House Committee on the Judiciary and reported to the House of Representatives for consideration in House Report No. 93–1305.

(d) *General historical significance.* The term *general historical significance* shall mean having administrative, legal, research or other historical value as evidence of or information about the constitutional or statutory powers or duties of the President, which an archivist has determined is of a quality sufficient to warrant the retention by the United States of materials so designated.

(e) *Archivist.* The term *Archivist* shall mean the Archivist of the United States or his designated agent. The term *archivist* shall mean an employee of the National Archives and Records Administration who, by education or experience, is specially trained in archival science.

(f) *Agency.* The term *agency* shall mean an executive department, military department, independent regulatory or nonregulatory agency, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government including the Executive Office of the President. For purposes of § 1275.32 only, the term *agency* shall also include the White House Office.

(g) *Archival processing.* The term *archival processing* may include the following general acts performed by archivists with respect to the Presidential historical materials: Shelving boxes of documents in chronological, alphabetical, numerical or other sequence; surveying and developing a location register and cross-index of the boxes; arranging materials; refoldering and reboxing the documents and affixing labels; producing finding aids such as folder title lists, scope and content notes, biographical data, and series descriptions; rewinding, duplicating and preserving the original tape recordings; enhancing the tape recordings on which the conversations are wholly or partially unintelligible so that extraneous noises may be filtered out; producing general subject matter logs of the tape recordings; reproducing and transcribing tape recordings; reviewing the materials to identify items that appear subject to restriction; identifying items in poor physical condition and assuring their preservation; identifying materials requiring further processing; and preparation for public access of all materials which are not subject to restriction.

(h) *Staff.* The term *staff* shall mean those persons whose salaries were paid fully or partially from appropriations to the White House Office or Domestic Council, or who were detailed on a nonreimbursable basis to the White House Office or Domestic Council from any other Federal activity; or those pesons who otherwise were designated as assistants to the President, in connection with their service in that capacity; or any persons whose files were sent to the White House Central Files Unit or Special Files Unit, for purposes of those files.

(i) *National security classified information.* The term *national security classified information* shall mean any matter which is security classified under existing law, and has been or should be designated as such.

[51 FR 7230, Feb. 28, 1986, as amended at 61 FR 17844, Apr. 23, 1996]

§ 1275.18 Requests or demands for access.

Each agency which receives a request or legal demand for access to Presidential historical materials of the Nixon Administration shall immediately forward the request or demand to the Archivist of the United States, National Archives and Records Administration (NARA), Washington, DC 20408.

Subpart B—Preservation and Protection

§ 1275.20 Responsibility.

The Archivist is responsible for the preservation and protection of the Nixon Presidential historical materials.

[61 FR 17845, Apr. 23, 1996]

§ 1275.22 Security.

The Archivist is responsible for providing adequate security for the Presidential historical materials.

§ 1275.24 Archival processing.

When authorized by the Archivist and until the commencement of archival processing in accordance with subpart D of this part, archivists may process the Presidential historical materials to the extent necessary for protecting and preserving the materials, and for providing authorized access to the materials pursuant to subpart C of this part.

§ 1275.26 Access procedures.

(a) The Archivist will receive and/or prepare appropriate documentation of each access authorized under this part 1275.

(b) Entry to the records storage areas will be provided by the Archivist only to archival, maintenance, security, or other necessary personnel or to Mr. Nixon or his agent. Two persons, at least one of whom represents the Archivist, will be present at all times that records storage areas are occupied.

(c) The Archivist will determine that each individual having access to the Presidental historical materials has a security clearance equivalent to the highest degree of national security classification that may be applicable to any of the material examined.

(d) The Archivist will provide former President Nixon or his designated attorney or agent (hereinafter Mr. Nixon), prior notice of, and allow him to be present during, each search necessary to comply with an authorized access under § 1275.32 or § 1275.34.

(e) Only NARA archivists shall conduct searches necessary to comply with authorized accesses under §§ 1275.32 and 1275.34.

(f) Prior to releasing Presidential historical materials in accordance with an access authorized under § 1275.32 or § 1275.34, the Archivist will give Mr. Nixon notice of the nature and identity of, and at his request allow him access to, those Presidential historical materials which the archivists have determined are covered by the subpoena, or other lawful process, or request. The notice will also inform Mr. Nixon that he may file a claim with the Archivist objecting to the release of all or portions of the described materials within 5 workdays of his receiving the notice described herein. The claim should detail the alleged rights and privileges of Mr. Nixon which would be violated by the release of the materials. The Archivist will refrain from releasing any of the materials to the requester during this period, and while any claim of right or privilege is pending before him, will refrain from releasing the materials subject to the claim.

(g) The Archivist will notify Mr. Nixon in writing of the administrative determination on any claims filed in accordance with paragraph (f) of this section. In the event the determination is wholly or partially adverse to the claim, the Archivist will refrain from releasing the materials to the requester for an additional 5 workdays from Mr. Nixon's receipt of the determination.

(h) Whenever possible, a copy, which shall be certified upon request, instead of the original documentary Presidential historical materials shall be provided to comply with a subpoena or other lawful process or request. Whenever the original documentary material is removed, a certified copy of the material shall be inserted in the proper file until the return of the original.

§ 1275.28 Extraordinary authority during emergencies.

In the event of an emergency that threatens the physical preservation of the Presidential historical materials or their environs, the Archivist will take such steps as may be necessary, including removal of the materials to temporary locations outside the metropolitan area of the District of Columbia, to preserve and protect the materials.

Subpart C—Access to Materials by Former President Nixon, Federal Agencies, and For Use in Any Judicial Proceeding

§ 1275.30 Access by former President Nixon.

In accordance with the provisions of subpart B of this part, former President Richard M. Nixon or his designated agent shall at all times have access to Presidential historical materials in the custody and control of the Archivist.

§ 1275.32 Access by Federal agencies.

In accordance with the provisions of subpart B of this part, any Federal agency or department in the executive branch shall have access for lawful Government use to the Presidential historical materials in the custody and control of the Archivist to the extent necessary for ongoing Government business. The Archivist will only consider written requests from heads of agencies or departments, deputy heads of agencies or departments, or heads of major organizational components or functions within agencies or departments.

§ 1275.34 Access for use in judicial proceedings.

In accordance with the provisions of subpart B of this part, and subject to any rights, defenses, or privileges which the Federal Government or any person may invoke, the Presidential historical materials in the custody and control of the Archivist will be made available for use in any judicial proceeding and are subject to subpoena or other lawful process.

Subpart D—Access by the Public

§1275.40 Scope of subpart.

This subpart sets forth policies and procedures concerning public access to the Presidential historical materials of Richard M. Nixon.

§1275.42 Processing period; notice of proposed opening.

(a)(1) The archivists will conduct archival processing of those materials other than tape recordings to prepare them for public access. In processing the materials, the archivists will give priority to segregating private or personal materials and transferring them to their proprietary or commemorative owner in accordance with §1275.48. In conducting such archival processing, the archivists will restrict portions of the materials pursuant to §§1275.50 and 1275.52. All materials other than tape recordings to which reference is made in §1275.64 will be prepared for public access and released subject to restrictions or outstanding claims or petitions seeking such restrictions. The Archivist will open for public access each integral file segment of materials upon completion of archival processing of that segment.

(2) The archivists will conduct archival processing of the tape recordings to prepare them for public access in accordance with the provisions set forth in the Settlement Agreement (see Appendix A to this part). In conducting the archival processing of the tape recordings, the archivists will restrict segments of the tape recordings pursuant to §§1275.50 and 1275.52. The tape segments which consist of abuses of governmental power information, as defined in §1275.16(c), will be given priority processing by the archivists and will be prepared for public access and released following review and resolution of objections from the Nixon estate and other interested parties as set forth in the Settlement Agreement (see Appendix A to this Part). After the tape segments which consist of abuses of governmental power information have been released, the archivists will conduct archival processing of those tape recordings which were taped in the Cabinet Room, as set forth in the Settlement Agreement, Appendix A to this Part. Following release of the Cabinet Room tape recordings, the remaining tape recordings will be prepared for public access and released in five segments in accordance with the schedule set forth in the Settlement Agreement. In addition, NARA will identify and return any additional private or personal segments to the Nixon estate, at approximately the time that NARA proposes each segment for public release.

(b) At least 30 calendar days prior to the opening to public access of any integral file segment of the materials, the Archivist will publish notice in the FEDERAL REGISTER of the proposed opening. The notice will reasonably identify the material to be opened and will include a reference to the right of any interested person to file a claim or petition in accordance with §1275.44. Copies of the notice will be sent to the incumbent President of the United States or his designated agent and by first-class mail to the last known address of: Mr. Nixon, or his designated agent or heirs; any former staff member reasonably identifiable as the individual responsible for creating or maintaining the file segment proposed to be opened; any individual named in the material which the Archivist may not restrict in accordance with §1275.50(b) because the material is essential to an understanding of any abuse of governmental power; and any persons named in the materials who are registered with the National Archives and Records Administration in accordance with paragraph (c) of this section.

(c) The Archivist will maintain a registry which shall contain the names and mailing addresses of persons who wish to receive personal notice of the proposed opening of integral file segments of the materials when those segments contain references about them. To be included in the registry, a person must submit his/her name and mailing address to the National Archives and Records Administration (NLN), Washington, DC 20408. Both the envelope and letter should be prominently marked, ''Nixon Materials Registry.'' By submitting his/her name for inclusion in the registry, a person agrees to reimburse the United States for the cost of

first-class postage for each instance of personal notice received.

[51 FR 7230, Feb. 28, 1986, as amended at 61 FR 17845, Apr. 23, 1996]

§ 1275.44 Rights and privileges; right to a fair trial.

(a) Within 30 days following publication of the notice prescribed in § 1275.42(b), any person claiming a legal or constitutional right or privilege which would prevent or limit public access to any of the materials shall notify the Archivist in writing of the claimed right or privilege and the specific materials to which it relates. Unless the claim states that particular materials are private or personal (see paragraph (d) of this section), the Archivist will notify the claimant by certified mail, return receipt requested, of his decision regarding public access to the pertinent materials. If that decision is adverse to the claimant, the Archivist will refrain from providing public access to the pertinent materials for at least 30 calendar days from receipt by the claimant of such notice.

(b) Within 30 days following publication of the notice prescribed in § 1275.42(b), officers of any Federal, State, or local court and other persons who believe that public access to any of the materials may jeopardize an individual's right to a fair and impartial trial should petition the Archivist setting forth the relevant circumstances that warrant withholding specified materials. The Archivist will notify the petitioner by certified mail, return receipt requested, of his decision regarding public access to the pertinent materials. If that decision is adverse to the petitioner, the Archivist will refrain from providing public access to the pertinent materials for at least 30 calendar days from receipt by the petitioner of such notice.

(c) In reaching decisions required by paragraphs (a) and (b) of this section, the Archivist may consult with other appropriate Federal agencies. If these consultations require the transfer of copies of the materials to Federal officials in agencies other than the National Archives and Records Administration, the Archivist will transfer these copies in accordance with the procedures prescribed in §§ 1275.26 and 1275.32.

(d) Within 30 days following publication of notice prescribed in § 1275.42(b), any person claiming that materials proposed for public access are in fact private or personal, as defined in § 1275.16(b), and that he or she is the proprietary or commemorative owner of those materials shall notify the Archivist in writing. The claim shall describe the specific materials to which it refers, and the claimant's basis for concluding that these materials are private or personal. Upon receipt of such a claim, the Archivist will transmit it to the Presidential Materials Review Board for its consideration and determination in accordance with § 1275.46(i). The Archivist will refrain from providing public access to the pertinent materials or from returning them to the claimant for at least 30 calendar days from receipt by the claimant or any intervening parties of the Board's determination.

(e)(1) In place of the right to make all other objections with respect to the tape segments that NARA has designated as abuses of governmental power materials, the Nixon estate may object to their release only on the ground that such designation by NARA is clearly inconsistent with the term ''abuses of governmental power'' as used in § 104(a)(1) of the Presidential Recordings and Materials Preservation Act (PRMPA) and defined in § 1275.16(c), as qualified by § 1275.50(b). Any such objection may not be based on isolated instances of alleged failure by NARA to apply the appropriate review standard, but only on a pattern of misapplication of the requirements of the PRMPA and its implementing regulations. Further, any such objection must be accompanied by specific examples of alleged review errors and contain sufficient information to enable the review panel of three Presidential Library archivists appointed by the Archivist, as described in the Settlement Agreement, Appendix A to this Part, to locate those examples readily.

(2) If an objection is made by the Nixon estate to the abuses of governmental power tape segments, the matter shall be immediately referred to a

panel of three Presidential Library archivists appointed by the Archivist as set forth in the Settlement Agreement, Appendix A to this Part. The decision of the panel shall be either that the Nixon estate's objection is sustained or that it is rejected. The decision shall include a brief statement of the panel's reasons, but it need not include an item-by-item determination. In deciding whether the designation by NARA of the material proposed to be released is clearly inconsistent with the definition of ''abuses of governmental power'', the panel shall consider whether the release would seriously injure legitimate interests of identifiable individuals, whether the errors suggest a pattern of misinterpretation, and any other factor that bears on the issue of whether NARA's designation of material as relating to ''abuses of governmental power'' was reasonable, considered as a whole. The panel's decision shall be final and binding on all parties to the *Kutler* litigation, and no party may exercise any right to appeal to any person, board, or court that might otherwise be available.

(3) The Nixon estate may, at any time, elect to use the procedures outlined in paragraphs (e)(1) and (e)(2) of this section for the tape recordings other than the abuses of governmental power segments, except that the standard under which objections shall be made by the Nixon estate, and under which the review panel shall decide their merits, is whether the release taken as a whole is plainly inconsistent with the requirements of the Presidential Recordings and Materials Preservation Act of 1974 and these regulations. If the Nixon estate elects to use the procedures in paragraph 1 of the Settlement Agreement (Appendix A to this Part) in place of the provisions in paragraphs 4 (b) and (d) and 5(c) of the Settlement Agreement for a tape segment, the estate cannot subsequently revert back to the formal objection process set forth in this section for that tape segment.

[51 FR 7230, Feb. 28, 1986; 51 FR 8671, Mar. 13, 1986, as amended at 61 FR 17845, Apr. 23, 1996]

§1275.46 Segregation and review; Senior Archival Panel; Presidential Materials Review Board.

(a) During the processing period described in §1275.42(a), the Archivist will assign archivists to segregate private or personal materials, as defined in §1275.16(b). The archivists shall have sole responsibility for the initial review and determination of private or personal materials. At all times when the archivists or other authorized officials have access to the materials in accordance with these regulations, they shall take all reasonable steps to minimize the degree of intrusion into private or personal materials. Except as provided in these regulations, the archivists or other authorized officials shall not disclose to any person private or personal or otherwise restricted information learned as a result of their activities under these regulations.

(b) During the processing period described in §1275.42(a), the Archivist will assign archivists to segregate materials neither relating to abuses of governmental power, as defined in §1275.16(c), nor otherwise having general historical significance, as defined in §1275.16(d). The archivists shall have sole responsibility for the initial review and determination of those materials which are not related to abuses of governmental power and do not otherwise have general historical significance.

(c) During the processing period described in §1275.42(a), the Archivist will assign archivists to segregate materials subject to restriction, as prescribed in §§1275.50 and 1275.52. The archivists shall have sole responsibility for the initial review and determination of materials that should be restricted. The archivists shall insert a notification of withdrawal at the front of the file folder or container affected by the removal of restricted material. The notification shall include a brief description of the restricted material and the basis for the restriction as prescribed in §§1275.50 and 1275.52.

(d) If the archivists are unable to make a determination required in paragraphs (a), (b), or (c) of this section, or if the archivists conclude that

the required determination raises significant issues involving interpretation of these regulations or will have far-reaching precedential value, the archivists shall submit the pertinent materials, or representative examples of them, to a panel of senior archivists selected by the Archivist. The Panel shall then have the sole responsibility for the initial determination required in paragraphs (a), (b), or (c) of this section.

(e) If the Senior Archival Panel is unable to make a determination required in paragraph (d) of this section, or if the panel concludes that the required determination raises significant issues involving interpretation of these regulations or will have far-reaching precedential value, the Panel shall certify the matter and submit the pertinent materials, or representative examples of them, to the Presidential Materials Review Board.

(f) The Presidential Materials Review Board (Board) shall consist of the Archivist, who shall serve as Chairman, and the following additional members:

(1) The Assistant Archivist for the Office of the National Archives;

(2) The Assistant Archivist for the Office of the Presidential Libraries;

(3) The Director of the Legal Counsel Staff of the National Archives and Records Administration; and

(4) The Historian of a Federal agency who shall be selected by the Archivist in his capacity as Chairman.

The Board shall meet at the call of the Chairman. Three members of the Board shall constitute a quorum for the conduct of the Board's business, although each member of the Board may participate in all of the Board's decisions. Members of the Board may be represented by their delegates on those occasions when they are unable to attend the meetings of the Board. The Board may consult with officials of interested Federal agencies in formulating its decisions. To the extent these consultations require the transfer of copies of materials to Federal officials outside the National Archives and Records Administration, the Board shall comply with the requirements of §§ 1275.26 and 1275.32.

(g) When the matter certified to the Board by the Senior Archival Panel involves a determination required in paragraphs (a) or (b) of this section, the Board shall prepare a final written decision, together with dissenting and concurring opinions, of the proper categorization and disposition of the pertinent materials. The Board's decision will be the final administrative determination.

(h) When the matter certified to the Board by the Senior Archival Panel involves a determination required in paragraph (c) of this section, the Board shall recommend an initial determination to the Senior Archival Panel, which shall retain the sole responsibility for the initial determination.

(i) When the Board considers a matter referred to it by the Archivist as provided in § 1275.44(d), it shall follow these procedures:

(1) The Board shall notify the claimant of its consideration of the claim, and invite the claimant to supplement at his discretion the basis for the claim.

(2) The Board will publish notice in the FEDERAL REGISTER, advising the public of its consideration of the claim, and describing the materials in question as fully as reasonably possible without disclosing arguably private or personal information. The notice will further advise that any member of the public may petition the Board within 15 calendar days of the publication of notice, setting forth the intervenor's views concerning the public or private nature of the materials.

(3) The Board shall take into account the positions maintained by the claimant and any intervenors in reaching its decision. The Board shall issue its decision, including dissenting and concurring opinions, no sooner than 20 days nor later than 60 days from the publication of notice in the FEDERAL REGISTER provided in paragraph (h)(2), of this section. The Board's decision shall be the final administrative determination. The Archivist will notify the claimant and any intervenors of the Board's decision by certified mail, return receipt requested, and shall refrain from acting upon that decision for 30 calendar days as provided in § 1275.44(d).

[51 FR 7230, Feb. 28, 1986, as amended at 61 FR 17845, Apr. 23, 1996]

§ 1275.48 Transfer of materials.

(a) The Archivist will transfer sole custody and use of those materials determined to be private or personal, or to be neither related to abuses of governmental power nor otherwise of general historical significance, to former President Nixon's estate, or, when appropriate and after notifying the Nixon estate, to the former staff member having primary proprietary or commemorative interest in the materials; however, no physical part of any original tape recording or a master preservation copy to which reference is made in § 1275.64 shall be transferred to the heirs of former President. NARA will maintain the original tape recordings and a master preservation copy, including the private and personal segments, in a manner consistent with the PRMPA and these regulations and will restrict access to all private or personal material on the originals and the master preservation copy.

(b) Materials determined to be neither related to abuses of governmental power nor otherwise of general historical significance, and transferred pursuant to paragraph (a) of this section, shall upon such transfer no longer be deemed Presidential historical materials as defined in § 1275.16(a).

[51 FR 7230, Feb. 28, 1986, as amended at 61 FR 17845, Apr. 23, 1996]

§ 1275.50 Restriction of materials related to abuses of governmental power.

(a) The Archivist will restrict access to materials determined during the processing period to relate to abuses of governmental power, as defined in § 1275.16(c), when:

(1) The Archivist, in accordance with § 1275.44, is in the process of reviewing or has determined the validity of a claim by any person of a legal or constitutional right or privilege; or

(2) The Archivist, in accordance with § 1275.44, is in the process of reviewing or has determined the validity of a petition by any person of the need to protect an individual's right to a fair and impartial trial; or

(3) The release of the materials would violate a Federal statute; or

(4) The materials are authorized under criteria established by Executive order to be kept secret in the interest of national defense or foreign policy, provided that any question as to whether materials are in fact properly classified or are properly subject to classification shall be resolved in accordance with the applicable Executive order or as otherwise provided by law. However, the Archivist may waive this restriction when:

(i)(A) The requester is engaged in a historical research project; or

(B) The requester is a former Federal official who had been appointed by the President to a policymaking position and who seeks access only to those classified materials which he originated, reviewed, signed or received while in public office; and

(ii) The requester has a security clearance equivalent to the highest degree of national security classification that may be applicable to any of the materials to be examined; and

(iii) The Archivist has determined that the heads of agencies having subject matter interest in the material do not object to the granting of access to the materials; and

(iv) The requester has signed a statement, which declares that the requester will not publish, disclose, or otherwise compromise the classified material to be examined and that the requester has been made aware of Federal criminal statutes which prohibit the compromise or disclosure of this information.

(b) The Archivist will restrict access to any portion of materials determined to relate to abuses of governmental power when the release of those portions would constitute a clearly unwarranted invasion of personal privacy or constitute libel of a living person: *Provided,* That if material related to an abuse of governmental power refers to, involves or incorporates such personal information, the Archivist will make available such personal information, or portions thereof, if such personal information, or portions thereof, is essential to an understanding of the abuses of governmental power.

§ 1275.52 Restriction of materials of general historical significance unrelated to abuses of governmental power.

(a) The Archivist will restrict access to materials determined during the processing period to be of general historical significance, but not related to abuses of governmental power, under one or more of the circumstances specified in § 1275.50(a).

(b) The Archivist will restrict access to materials of general historical significance, but not related to abuses of governmental power, when the release of these materials would:

(1) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential; or

(2) Constitute a clearly unwarranted invasion of personal privacy or constitute libel of a living person; or

(3) Disclose investigatory materials compiled for law enforcement purposes, but only when the disclosure of such records would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel.

§ 1275.54 Periodic review of restrictions.

The Archivist periodically will assign archivists to review materials placed under restriction by § 1275.50 or § 1275.52 and to make available for public access those materials which, with the passage of time or other circumstances, no longer require restriction. If the archivists are unable to determine whether certain materials should remain restricted, the archivists shall submit the pertinent materials, or representative examples of them, to the Senior Archival Panel described in § 1275.44(d), which shall then have the responsibility for determining if the materials should remain restricted. The Senior Archival Panel may seek the recommendations of the Presidential Materials Review Board, in the manner prescribed in paragraph (e) and (h) of § 1275.46, in making its determination. Before opening previously restricted materials, the Archivist will comply with the notice requirements of § 1275.42(b).

[51 FR 7230, Feb. 28, 1986; 51 FR 8671, Mar. 13, 1986]

§ 1275.56 Appeal of restrictions.

Upon petition of any researcher who claims in writing to the Archivist that the restriction of specified materials is inappropriate and should be removed, the archivists shall submit the pertinent materials, or representative examples of them, to the Presidential Materials Review Board described in § 1275.46(f). The Board shall review the restricted materials, and consult with interested Federal agencies as necessary. To the extent these consultations require the transfer of copies of materials to Federal officials outside the National Archives and Records Administration, the Board shall comply with the requirements of §§ 1275.26 and 1275.32. As necessary and practicable, the Board shall also seek the views of any person, including former President Nixon, whose rights or privileges might be adversely affected by a decision to open the materials. The Board shall prepare a final written decision, including dissenting and concurring opinions, as to the continued restriction of all or part of the pertinent materials. The Board's decision shall be the final administrative determination. The Archivist will notify the petitioner and other interested persons of the final administrative determination within 60 calendar days following receipt of such petition. If the Board's decision is to open previously restricted materials, the Archivist will comply with the notice requirements of § 1275.42(b).

[51 FR 7230, Feb. 28, 1986, as amended at 61 FR 17846, Apr. 23, 1996]

§1275.58 Deletion of restricted portions.

The Archivist will provide a requester any reasonably segregable portions of otherwise restricted materials after the deletion of the portions which are restricted under this §1275.50 or §1275.52.

§1275.60 Requests for declassification.

Challenges to the classification and requests for the declassification of national security classified materials shall be governed by the provisions of 36 CFR part 1254 of this chapter, as that may be amended from time to time.

§1275.62 Reference room locations, hours, and rules.

The Archivist shall, from time to time, separately prescribe the precise location or locations where the materials shall be available for public reference, and the hours of operation and rules governing the conduct of researchers using such facilities. This information may be obtained by writing to: Office of Presidential Libraries (NL), The National Archives, Washington, DC 20408.

§1275.64 Reproduction of tape recordings of Presidential conversations.

(a) To ensure the preservation of original tape recordings of conversations which were recorded or caused to be recorded by any officer or employee of the Federal Government and which:

(1) Involve former President Richard M. Nixon or other individuals who, at the time of the conversation, were employed by the Federal Government; and

(2) Were recorded in the White House or in the office of the President in the Executive Office Buildings located in Washington, DC; Camp David, MD; Key Biscayne, FL; or San Clemente, CA; and

(3) Were recorded during the period beginning January 20, 1969, and ending August 9, 1974, the Archivist will produce duplicate copies of such tape recordings in his custody for public and official reference use. The original tape recordings shall not be available for public access.

(b) Since the original tape recordings may contain information which is subject to restriction in accordance with §1275.50 or §1275.52, the archivists shall review the tapes and delete restricted portions from copies for public and official reference use.

(c) Researchers may listen to reference copies of the tape recordings described in paragraph (a) of this section in a National Archives building in the Washington, DC area and at other reference locations established by the Archivist in accordance with §1275.62.

(d) The reproduction for members of the public of the reference copies of the available tape recordings described in paragraph (a) of this section will be permitted as follows: Copies of tape recordings will be made available following the public release of the last of the tape segments contemplated in §1275.42(a). If the releases contemplated in §1275.42(a) are not completed by December 31, 1999, NARA will, beginning January 1, 2000, allow members of the public to obtain copies only of the abuses of governmental power tapes, together with any other tapes publicly released as of the effective date of the Settlement Agreement. If the releases contemplated in §1275.42(a) are not completed by December 31, 2002, NARA will, beginning January 1, 2003, allow members of the public to obtain copies of all tapes that have been made available to the public by that date and tapes that subsequently become available as they are released. Such copying will be controlled by NARA or its designated contractor. The fees for the reproduction of the tape recordings under this section shall be those prescribed in the schedule set forth in part 1258 of this chapter or pertinent successor regulation, as that schedule is amended from time to time.

(e) The Archivist shall produce and maintain a master preservation copy of the original tape recordings for preservation purposes.

[51 FR 7230, Feb. 28, 1986, as amended at 61 FR 17846, Apr. 23, 1996]

§1275.66 Reproduction and authentication of other materials.

(a) Copying of materials other than tape recordings described in §1275.64 may be done by NARA, by a contractor

designated by NARA, or by researchers using self-service copiers. Such self-service copying shall be done in accordance with the NARA policy on self-service copying set forth at 36 CFR 1254.71, to ensure that such copying will not harm the materials or disrupt reference activities.

(b) The Archivist may authenticate and attest copies of materials when necessary for the purpose of the research.

(c) The fees for reproduction and authentication of materials under this section shall be those prescribed in the schedule set forth in part 1258 of this chapter or pertinent successor regulation, as that schedule is amended from time to time.

[51 FR 7230, Feb. 28, 1986, as amended at 61 FR 17846, Apr. 23, 1996]

§ 1275.68 Amendment of regulations.

The Archivist may from time to time amend the regulations of this subpart D in accordance with the applicable law concerning such amendments.

§ 1275.70 Freedom of information requests.

(a) The Archivist will process Freedom of Information Act requests for access to only those materials within the Presidential historical materials which are identifiable by an archivist as records of an agency as defined in § 1275.16(f). The Archivist will process these requests in accordance with the Freedom of Information regulations set forth in § 1254.30 of this chapter or pertinent successor regulations.

(b) In order to allow NARA archivists to devote as much time and effort as possible to the processing of materials for general public access, the Archivist will not process those Freedom of Information requests where the requester can reasonably obtain the same materials through a request directed to an agency (as defined in § 1275.16(f)), unless the requester demonstrates that he or she has unsuccessfully sought access from that agency or its successor in law or function.

[51 FR 7230, Feb. 28, 1986, as amended at 61 FR 17846, Apr. 23, 1996]

APPENIDX A TO PART 1275—SETTLEMENT AGREEMENT

Settlement Agreement filed April 12, 1996, in *Stanley I. Kutler and Public Citizen* v. *John W. Carlin, Archivist of the United States, and William E. Griffin and John H. Taylor, Co-executors of Richard M. Nixon's Estate,* Civil Action No. 92–0662–NHJ (D.D.C.) (Johnson, J.)

Settlement Agreement

This Settlement Agreement (''Agreement'') is made by and entered into among plaintiffs Stanley I. Kutler and Public Citizen; defendant/cross-claim defendant John W. Carlin, in his official capacity as Archivist of the United States; and defendant-intervenors/cross-claimants John H. Taylor and William E. Griffin, co-executors of the estate of Richard M. Nixon (''the Nixon estate''), in the above-entitled action by and through the parties' undersigned attorneys.

It is hereby agreed, by and among the parties, appearing through their undersigned attorneys, that this action is partially settled on the following terms:

Terms of Agreement

1(a). As soon as practicable, the National Archives and Records Administration (''the Archives'') will publicly release the segments of tape recordings made during the Presidency of Richard M. Nixon (''tape recordings'' or ''tapes'') identified by the Archives as relating to ''abuses of governmental power,'' as defined by 36 C.F.R. Part 1275, along with the corresponding portions of the tape log and any other finding aid. The date of that release, which is expected to be on or about November 15, 1996, shall be determined in the following manner.

(b). No later than April 15, 1996, the Archives shall deliver to an agent of the Nixon estate a copy of the approximately 201 hours of abuses of governmental power tape segments that it proposes to release, together with the corresponding portions of the tape log and any other finding aid, for review by the Nixon estate to determine whether it intends to object to the release. The Archives agrees to provide a period of orientation to the designated Nixon estate agent with respect to the review of the abuses of governmental power tape segments and to be available to respond to questions thereafter.

(c). In place of the right to make all other objections with respect to the tape recordings that the Archives has designated as abuses of governmental power materials, the Nixon estate agrees that it may object to their release only on the ground that such designation by the Archives is clearly inconsistent with the term ''abuses of governmental power'' as used in section 104(a)(1) of the Presidential Recordings and Materials Preservation Act of 1974 (''the Act''), 44

U.S.C. §2111 note, and defined in 36 C.F.R. 1275.16(c), as qualified by 36 C.F.R. 1275.50(b). Any such objection shall be in writing and may not be based on isolated instances of alleged failure by the Archives to apply the appropriate review standard, but only on a pattern of misapplication of the requirements of the Act and its implementing regulations. Further, any such objection must be accompanied by specific examples of alleged review errors and contain sufficient information to enable the review panel described in subparagraph 1(e) below to locate those examples readily. Nothing in this paragraph shall preclude the Nixon estate and the Archives from having informal discussions regarding the appropriate treatment of any of the abuses of governmental power tape segments.

(d). The Nixon estate shall have until October 1, 1996, to submit any objection in accordance with subparagraph 1(c) above. If no such objection is filed, the Archives shall proceed to issue a notice of proposed release pursuant to 36 C.F.R. 1275.42 as soon as possible, but no later than October 15, 1996.

(e). If an objection is made, the matter shall be immediately referred to a panel of the following three Presidential Library archivists: David Alsobrook, Frances Seeber, and Claudia Anderson. If any of these three persons is unable to serve, the Archivist shall appoint a substitute who is acceptable to the other parties.

(f). The panel shall have such access to the tapes as it deems necessary to make its decision. The decision of the panel shall be either that the Nixon estate's objection is sustained or that it is rejected. The decision shall include a brief statement of the panel's reasons, but it need not include an item-by-item determination. In deciding whether the designation by the Archives of the material proposed to be released is clearly inconsistent with the definition of ''abuses of governmental power,'' the panel shall consider whether the release would seriously injure legitimate interests of identifiable individuals, whether the errors suggest a pattern of misinterpretation, and any other factor that bears on the issue of whether the Archives' designation of material as relating to abuses of governmental power was reasonable, considered as a whole. The decision of the panel shall be made within sixty (60) days of the date of the objection. However, if the panel determines that exceptional circumstances interfere with its ability to meet this deadline, the panel shall have up to an additional sixty (60) days to make its decision. The Archives shall notify the other parties of the need for an extension and briefly describe the reasons therefor. The panel's decision shall be final and binding on all parties, and no party may exercise any right to appeal to any person, board, or court that might otherwise be available. Nothing contained in this Agreement shall preclude the panel from advising the Archives of any particular processing errors that it believes may have been made, but the Archivist shall make the final determination as to whether to accept such advice.

(g). If the objection of the Nixon estate is sustained, the Archives shall re-review the tapes sufficiently to address the concerns raised by whatever aspect of the objection is sustained. At the conclusion of such re-review, the same process of review, first by the Nixon estate and then by the panel in the event of further objection, shall be repeated for those tape segments concerning the subject matter of the sustained objection prior to any release of tape recordings designated as relating to abuses of governmental power.

(h). The Nixon estate agrees to inform the Archives and plaintiffs whether it intends to file objections as soon as it has made its decision. If there is an objection by the Nixon estate and it is overruled, the FEDERAL REGISTER notice shall be published within ten (10) days of the date of the panel's decision.

(i). If, following the FEDERAL REGISTER notice, no objection by other individuals to a release is received within the time provided by law, the Archives shall release the tape recordings within ten (10) days after such time has expired. If objections are received, they shall be promptly considered by the Archives and shall be decided as soon thereafter as practical. Any materials as to which an objection to release has been timely filed shall not be released until such objection has been resolved pursuant to 36 C.F.R. 1275.44. All materials not objected to shall be released no later than thirty (30) days after the time for objections has expired, provided that the Archives may withhold any additional conversation to which no objection has been made, pending final resolution of an objection to another conversation, if (i) such additional conversation is in close proximity on the tapes to the objected-to conversation and it would be burdensome for the Archives to separate out the releasable and objected-to portions, or (ii) the subjects of the releasable and the objected-to conversations are closely related to one another and the Archives determines that it might be misleading or might unfairly prejudice a living individual to release only one conversation. Any release under this Agreement shall include the corresponding portions of the tape log and any other finding aid.

(j). The Archives shall send to plaintiff Kutler, to arrive no later than the day that the release of the tapes occurs, a copy of the portions of the tape log and any other finding aid that correspond to the tapes being released. The Archives shall also make suitable arrangements for plaintiff Kutler to listen to such tapes on the date of their release, and/or on such other subsequent business days as plaintiff Kutler shall designate.

2(a). Although the Agreement provides that the Archives will identify and return to the Nixon estate a copy of any private or personal materials identified on the tapes, the parties have been unable to reach agreement regarding the Archivist's retention and maintenance of the original tape recordings in their entirety, including those segments deemed to be private or personal, along with a master preservation copy. The government's position is that it is complying with the Act by retaining the original tapes and a master preservation copy, including those portions containing private or personal conversations. The Nixon estate's position, with which plaintiffs agree, is that the family has statutory, constitutional, and other rights that prevent the Archives from retaining private or personal materials, on both the original tapes and all copies.

(b). The parties have agreed to litigate the issue described in subparagraph 2(a) above, including the validity of 36 C.F.R. 1275.48(a) and 1275.64(e) as proposed for amendment. The parties further agree that the Court shall retain jurisdiction of that issue, as provided in paragraph 14 below, and that the right to litigate this issue includes the right to seek review in the United States Court of Appeals for the District of Columbia Circuit and the United States Supreme Court. If there is litigation between the Nixon estate and the Archivist over the issue described in subparagraph 2(a) above, the plaintiffs shall support the Nixon estate in any such litigation by filing a brief supporting the estate's position in District Court. The parties agree to make all reasonable efforts to expedite resolution of this issue.

(c). This Agreement and all discussions, negotiations and exchanges of information leading to it shall be entirely without prejudice to any positions the parties may take in the event of such litigation. Nothing in this Agreement, in any discussions leading to it, or in any information or materials exchanged by the parties as part of the mediation may be relied on or disclosed by any party to support or rebut the position of any party with respect to the treatment of private or personal materials on the original tapes. Nothing in this subparagraph prevents any party from expressing its understanding as to the meaning and effect of the legal position of another party.

3. The Archives will provide to the Nixon estate any additional private or personal materials at approximately the time that the Archives proposes each segment identified in paragraphs 4 and 5 below for public release. Any additional copies of that material (other than on a master preservation copy, the status of which will be determined in accordance with the resolution of the issue as described in subparagraph 2(a) above), will be destroyed by appropriate method, with appropriate means of verification.

4(a). The second group of tapes to be processed for release is the approximately 278 hours recorded in the Cabinet Room. The projected date for publishing a notice of proposed opening of tapes in that group is August 1, 1997. The Archives will make the Cabinet Room tapes proposed for release available to the Nixon estate in no fewer than four (4) segments. The process by which those tapes will be reviewed by the Nixon estate, and the objections handled by the Archives, is set forth in the following subparagraphs of this paragraph 4.

(b). The Nixon estate agrees to review each segment as it is received and promptly to call to the attention of the Archives any concerns that it may have. The Archives and the Nixon estate agree to attempt to work out their differences informally in order to minimize any objections to a proposed release. To facilitate informal consultation between the Nixon estate and the Archives concerning the tape review, the Archivist shall designate a panel member identified in subparagraph 1(e) above who will serve as a contact with the Nixon estate and assure access to information relating to Presidential libraries practices and procedures that may arise in the course of the tape review. The designated individual will be responsible for assuring that the Nixon estate has access to the appropriate person to answer its concerns. The Nixon estate may communicate with the designated individual orally or in writing. If the Archives agrees with the Nixon estate that any portion of a segment that has been sent to the Nixon estate as a proposed release should not be released, the Archives shall assure that there is appropriate documentation to reflect that change.

(c). The Nixon estate will have a period of at least six (6) months in which to review all of the Cabinet Room tapes, beginning on the date the Archives makes the first installment of such tapes available to the estate for review (but in no event will the six (6) months begin earlier than November 15, 1996). During the review of the Cabinet Room tapes, the Nixon estate will employ an agent or agents who will spend an average of at least thirty two (32) hours a week (total) in actual review of the tapes. The Nixon estate may request from the Archives an extension of the six-month review period, which the Archives shall grant if good cause is shown.

(d). If, during its review, the Nixon estate becomes aware that there are materials proposed for release that it believes should not be heard even by individuals on the registry list, it will promptly advise the Archives of any such materials so that they can be reviewed and/or segregated by the Archives before any other individual is permitted to listen to them. The Nixon estate will cooperate with the Archives so that the required FEDERAL REGISTER notice is published as soon as possible, but in no event shall such notice be

provided later than ten (10) days after the time the Nixon estate completes its review. Final objections from the Nixon estate to the release of portions of the tapes shall be filed in accordance with 36 C.F.R. Part 1275 no later than the date for filing objections by other persons. Thereafter, subject to paragraph 7 below, the provisions of subparagraphs 1(i) and 1(j) above will apply.

5(a). The remaining tapes, consisting of approximately 2338 hours, shall be processed for release in five (5) segments. Because the precise number of hours of tapes for each month cannot readily be determined, the parties have agreed to divide the releases into the segments set forth below. The Archives will begin processing (which includes, but is not limited to, tape review, preparing tapes for declassification review, tape editing and production of finding aids) each segment before processing of the preceding segment is concluded. Processing of the tapes in each segment is projected to take from about fifteen (15) to about twenty three (23) months. The approximate number of hours of tapes to be reviewed in each segment is set forth in parentheses in the following listing of the segments. The projected number of months between the completion of the Archives' processing of the immediately preceding segment and the completion of the Archives' processing of each listed segment is set forth in brackets.

1. February 1971–July 1971 (437 hours) [8 months]
2. August 1971–December 1971 (405 hours) [7 months]
3. January 1972–June 1972 (440 hours) [7 months]
4. July 1972–October 1972 (410 hours) [6 months]
5. November 1972–July 1973 (646 hours) [10 months]

(b). The time estimates in this Agreement are not enforceable as such, but the parties agree to have the Court retain jurisdiction to consider requests that it enter a binding order setting a schedule for the Archives to complete the processing of the tapes. No party may seek such an order unless that party first provides twenty (20) days' written notice to the other parties of that party's intention to seek such an order. Further, no party may seek such an order except on the ground that the Archives has unreasonably failed to meet the estimates contained herein by a substantial amount. The type of proof that will demonstrate reasonableness on the part of the Archives in this regard may include, but will not necessarily be limited to, a showing that the Archives is reasonably allocating its resources among its various programs and activities in the event that it experiences a shortage of resources, including any occasioned by court order.

(c). Portions of each segment processed by the Archives shall be provided to the Nixon estate when the processing of each month of tape recorded material is completed, unless there are a very few hours for two (2) or more months, which may then be combined into a single unit. During its review of the chronological tape segments, the Nixon estate will employ an agent or agents who will spend an average of at least thirty two (32) hours a week (total) in actual review of the tapes, forty eight (48) weeks of the year. As its review of the tapes proceeds, the Nixon estate shall provide a written report of its progress to the Archives and the plaintiffs on a bimonthly basis. The report shall include the number of hours worked in each week, the number of hours of tapes reviewed in each week, and the Nixon estate's projected completion date for review of the segment currently under review. The provisions of subparagraphs 4(b) and 4(d) above shall apply to the review, objections, and releases with respect to the chronological tape segments, subject to paragraph 7 below.

(d). If one of the other parties to this Agreement determines that the Nixon estate's review is not being conducted diligently or in good faith, or that the estate's estimated completion date(s) of one or more segments is unreasonable, that party may petition the Archivist to establish an earlier date(s) for the completion of the review of that segment and/or of future segments. Any such date(s) established by the Archivist shall provide the Nixon estate with a reasonable opportunity to protect and assert its interests without unduly delaying the release of the tapes, and shall be based upon consideration of the progress of the Archives' review and its scheduled completion date(s); the progress to date of the estate's review; and the time reasonably necessary to complete the estate's review and to formulate and present any objections. The Archives may also propose earlier dates for the completion of the review by the Nixon estate on the basis provided for in this subparagraph. If a proposal for an earlier date is made, the Nixon estate will have a reasonable opportunity to respond.

6. Once the Archives has completed processing the approximately 2338 hours of tapes discussed in paragraph 5 above, and has made corresponding releases, the Archives shall identify any additional copies of partial tape segments in its possession. If the Archives determines that some or all of such additional partial tape segments are duplicative of any tape recordings that it has already processed, the Archives may dispose of the duplicative tape segments, following notification to the parties, subject to paragraph 3 above. To the extent that such partial tape segments are not duplicative of the tape recordings already processed, the Archives shall promptly process such non-duplicative

portions and shall treat any portions determined to be private or personal consistently with the resolution of the issue to be litigated as described in paragraph 2 above.

7(a). After completion of the procedures described in paragraph 4 above, the Cabinet Room tapes that are found to be releasable under paragraph 4 above may be released if either there has been a final decision by the district court on the issue to be litigated as described in subparagraph 2(a) above, or the release is scheduled after April 1, 1998, whichever of these two events happens sooner.

(b). After completion of the procedures described in paragraph 5 above, the tapes described in paragraph 5(a) above that are found to be releasable may be released if either there has been a final judgment by the district court, which is not subject to further review by appeal or certiorari, with regard to the issue to be litigated as described in subparagraph 2(a) above, or there has been a final decision by the United States Court of Appeals for the District of Columbia Circuit on this issue, or the release is scheduled to take place after November 1, 1999, whichever of these three events happens sooner.

(c). As used in subparagraphs 7(a) and (b) above, the term ''final decision'' means a decision not subject to reconsideration under Rule 59 of the Federal Rules of Civil Procedure, or Rules 35 or 40 of the Federal Rules of Appellate Procedure, respectively.

8. The Nixon estate may, at any time, elect to use the procedures in paragraph 1 above with respect to any tape segment in place of the provisions of paragraphs 4(b) and (d) and 5(c) above, with the following substitution: The standard under which objections shall be made, and under which the panel shall decide their merits, is whether the release taken as a whole is plainly inconsistent with the requirements of the Act and its implementing regulations. Provided, however, that once the Nixon estate elects to use the procedures in paragraph 1 above in place of the provisions in paragraphs 4(b) and (d) and 5(c) above, it cannot subsequently revert back to the formal objection process set forth in 36 C.F.R. Part 1275 for that tape segment.

9. Within thirty (30) days of the Court's entry of an order as described in paragraph 14 below, the Archivist shall designate a particular person who shall be responsible for responding to reasonable inquiries from the plaintiffs on the status of the releases and objections. Such designation may be changed at any time at the Archivist's discretion by a notice to plaintiffs through their counsel.

10. If the Archives appoints a Senior Archival Panel as defined in 36 C.F.R. 1275.46(d) and (e), no party to the Agreement may object to the appointment of such a panel on the ground that the suggestion to appoint such a panel was originated by an individual other than the processing archivists assigned to the Archives' Nixon Presidential Materials Staff.

11. The Archives will allow members of the public to obtain copies of publicly accessible portions of the tapes after the releases described in paragraph 5 above, are completed; provided, however, that if the releases described in paragraph 5 above are not completed by December 31, 1999, the Archives will allow members of the public to obtain copies only of the abuses of governmental power tapes, together with any other tapes publicly released as of the date of the filing of this Agreement with the Court, beginning January 1, 2000. Further provided, that if the releases described in paragraph 5 above are not completed by December 31, 2002, the Archives will, beginning January 1, 2003, allow members of the public to obtain copies of all tapes that have been made available to the public by that date and tapes that subsequently become available, as they are released.

12(a). Promptly after the Court enters the Order provided for in paragraph 14 below, plaintiff Kutler will withdraw his request under the Freedom of Information Act, 5 U.S.C. 552, for any and all tape logs and other finding aids, which is pending in *Kutler* v. *Carlin, et al.*, Civ. A. No. 92–0661–NHJ (D.D.C.). In all other respects, plaintiff Kutler's request in that action shall be unaffected by this Agreement.

(b). Nothing in this Agreement shall affect the processing by the Archives of any dictabelts, which are a collection of recordings of former President Nixon and other White House staff members dictating memoranda, correspondence and speech drafts, that are included in the materials that are subject to the Act.

13. Pursuant to Rule 315 of this Court, the plaintiffs and the defendant shall attempt to resolve the plaintiffs' claim for attorneys' fees and expenses and shall advise the Court no later than forty-five (45) days after this Court has entered the Order provided for in paragraph 14 below on whether they have been able to resolve the issue of attorneys' fees and expenses. If no resolution has been reached, they will, at that time, recommend a schedule to the Court to resolve such claim.

14. The parties agree to the dissolution of the preliminary injunction entered on August 9, 1993, and dismissal with prejudice of this action, including all claims and cross-claims, except for the issue to be litigated as described in subparagraph 2(a) above, and any fees and expenses claimed pursuant to paragraph 13 above, by filing the attached Joint Motion to Vacate Preliminary Injunction and to Dismiss Claims, and the attached Consent Order. The parties agree that the Court shall retain jurisdiction to: (a) Consider the entry of an order in accordance with the terms of paragraph 5 above; (b) resolve the issue to be litigated as described in subparagraph 2(a) above; (c) determine any fees and expenses claimed pursuant to paragraph 13 above; and (d) for the purpose of enforcing the terms of this Agreement. The parties further agree that such jurisdiction, except with respect to the issue described in paragraph 2 above, will be retained only until the later of the implementation of paragraph 11 above or the completion of the releases called for in paragraph 5 above. Plaintiffs and the Nixon estate further agree that they will not challenge any regulations issued by the Archives which implement and are consistent with this Agreement.

15. The terms of this Agreement may not be altered except with the written consent of the parties. Nothing in this Agreement constitutes an admission of liability or wrongdoing on the part of any party.

Executed this 12th day of April, 1996.

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[61 FR 17846, Apr. 23, 1996]

SUBCHAPTER G—NARA FACILITIES

PART 1280—PUBLIC USE OF FACILITIES

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1280.60 Use of conference rooms.
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AUTHORITY: 44 U.S.C. 2104(a).

Subpart A—General Provisions

SOURCE: 52 FR 23822, June 25, 1987, unless otherwise noted.

§ 1280.1 Applicability.

All persons using the facilities in the National Archives Building and the Presidential Libraries (referred to in this subpart as ''NARA property'') are subject to the provisions of subpart A of this part. Persons using other NARA facilities are subject to the GSA regulations, Conduct on Federal Property, at 41 CFR subpart 101–20.3.

§ 1280.2 Admittance of children under the age of 16.

Children under the age of 16 will not be admitted to NARA facilities unless accompanied by an adult. Children under the age of 16 must be supervised by the accompanying adult at all times while on NARA property. The director of a NARA facility may authorize a lower age limit for admission of unaccompanied children to meet local circumstances, e.g., students who have been given permission to conduct research without adult supervision.

[56 FR 2137, Jan. 22, 1991]

§ 1280.3 Conformity with signs and directions.

Persons in and on NARA property shall at all times comply with official NARA signs (e.g., restrictions on smoking or parking) and with the directions of the guards and NARA staff.

§ 1280.4 Vehicular and pedestrian traffic.

(a) The blocking of entrances, driveways, walks, loading platforms, or fire hydrants on NARA property is prohibited.

(b) Except in emergencies, members of the public may not park in spaces reserved for holders of NARA parking permits.

§ 1280.5 Dogs and other animals.

Dogs and other animals, except seeing eye dogs or other guide dogs, may not be brought upon NARA property

without permission of the appropriate NARA official.

§ 1280.6 Inspection.

Packages, briefcases, and other containers brought into, while on, or being removed from the NARA property are subject to inspection.

§ 1280.7 Distribution of handbills and other materials.

Distribution or posting of handbills, flyers, pamphlets or other materials on bulletin boards or elsewhere is prohibited on NARA property, except in those spaces designated by NARA as public forums. This prohibition also does not apply to displays or notices distributed as part of authorized Government activities or bulletin boards used by employees to post personal notices.

§ 1280.8 Prohibited activities.

(a) *Gambling.* Participating in games for money or other personal property or the operating of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets, in or on NARA property is prohibited. This prohibition does not apply to the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and conducted by an agency of a State as authorized by section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107, *et seq.*).

(b) *Illegal drugs.* The possession or use of illegal drugs on NARA property and/or entering on NARA property under the influence of alcohol or any illegal drug is prohibited.

(c) *Weapons and explosives.* No person entering or while on NARA property shall carry or possess firearms, other dangerous or deadly weapons, either openly or concealed, except for official purposes. No person entering or while on NARA property shall carry or possess explosives, or items intended to be used to fabricate an explosive or incendiary device.

(d) *Soliciting, vending, and debt collection.* Charitable or commercial or political soliciting, vending of all kinds, displaying or distributing commercial advertising, or collecting private debts on NARA property is prohibited. National or local drives for funds for welfare, health or other purposes which are authorized by the Office of Personnel Management and approved by NARA are exempt from this paragraph.

(e) *Disturbances.* Loitering, disorderly conduct, or other conduct on NARA property which creates a loud or unusual noise or a nuisance; which unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking areas; which otherwise impedes or disrupts the performance of official duties by Government employees; or which prevents the general public from obtaining NARA-provided services in a timely manner, is prohibited.

(f) *Other.* The improper disposal of rubbish on NARA property; the willful destruction of or damage to NARA property; the theft of property; the creation of any hazard on NARA property to persons or things; or the throwing of any kind of articles from or at a NARA building is prohibited.

Subpart B—National Archives Building

§ 1280.10 Admittance of visitors to National Archives Exhibition Hall.

Unless otherwise directed by the Archivist of the United States, visitors are admitted to the Exhibition Hall from 10 a.m. to 9 p.m. except during winter months (the day after Labor Day through March 31) when the Exhibition Hall is closed at 5:30 p.m. The building is closed on Christmas Day. Visitors are admitted only through the Constitution Avenue entrance. However, the guards are authorized to admit handicapped visitors to the Exhibition Hall through the Pennsylvania Avenue entrance and the Main Floor gates.

[45 FR 29577, May 5, 1980. Redesignated and amended at 50 FR 15723, 15728, Apr. 19, 1985]

§ 1280.12 Filming or photographing the exterior of the National Archives Building.

(a) *Definition. Property under the control of the Archivist* includes the Pennsylvania Avenue NW., entrance between 7th and 9th Streets including the area within the retaining walls on either side of the entrance, inclusive of the statues, and the steps leading up to

the entrance of the building; on the 7th Street, 9th Street, and Constitution Avenue NW., sides of the building, all property between the National Archives Building and the street, including the sidewalks and other grounds; the steps leading up to the Constitution Avenue NW., entrance; the Constitution Avenue entrance; and the portico area between the steps and the Constitution Avenue entrance. Use of the sidewalks and other grounds on the Pennsylvania Avenue side of the National Archives Building not under the control of the Archivist of the United States is controlled by the National Park Service and/or the Pennsylvania Avenue Development Corporation.

(b) *Applicability*. This section applies to all persons and groups who wish to film or photograph the exterior of the National Archives Building from property under the control of the Archivist of the United States, except for individuals who wish to film or photograph the exterior of the National Archives Building for their own personal use.

(c) *Pennsylvania Avenue entrance.* Persons and groups must obtain the permission of the National Archives Public Affairs Officer or his/her designee (NXI), either in writing or by telephone, before filming or photographing the Pennsylvania Avenue entrance of the National Archives Building. Filming and photographing will be permitted only for the purpose of providing background to stories about either NARA or a researcher who has made use of National Archives holdings. Press interviews will not be permitted unless NARA or other Government employees are being interviewed in connection with official business.

(d) *Constitution Avenue entrance.* Permission to film or photograph the Constitution Avenue entrance, the portico, or the steps leading to these areas will only be granted if the filming or photographing to be done relates to interviews done with NARA or other Government employees or to the coverage of NARA-sponsored programs, e.g., Constitution Day programs.

(e) *Conditions and restrictions.* The following conditions and restrictions apply to all persons and groups granted permission under this section:

(1) Permission to film or photograph will not be granted to persons or groups wishing to promote commercial enterprises or commodities, or to persons or groups involved with political, sectarian, or similar activities.

(2) Filming or photographing may not impede ingress or egress of visitors to the National Archives Building.

(3) Permission to film or photograph the exterior of the National Archives Building does not constitute approval or sponsorship by NARA of the persons or groups involved, of their activities or views, or of the uses to which the works depicting the National Archives Building are put.

(4) Permission to film or photograph does not release the perons or groups involved from liability for injuries to persons or property that result from their activities on property to which the Archivist controls access.

(5) Persons and groups granted permission to film or photograph under this section must conduct their activities at all times in accordance with the regulations contained in subpart A of this part (§§ 1280.1 through 1280.8).

[55 FR 29577, July 20, 1990]

§ 1280.14 Permission for filming the interior of the National Archives Building, the Washington National Records Center, and the Pickett Street Annex.

(a) *Applicability*. (1) This section applies to all persons and groups who wish to film or photograph the interior of the National Archives Building, the interior of the Washington National Records Center, and interior of the Pickett Street Annex, with the following exceptions:

(i) Individuals covered by § 1280.16 of this chapter; and

(ii) Individuals who have permission to use privately-owned microfilming equipment to film archival records and donated historical materials under the provisions of §§ 1254.90 through 1254.102 of this chapter.

(2) This section does not apply to the following areas within the National Archives Building, which are covered by §§ 1280.22 through 1280.28 of this chapter:

(i) Conference rooms;

(ii) The National Archives Theater; and

(iii) The Archivist's Reception Room.

(b) *Permission for filming or photographing.* Persons and groups must obtain the permission of the Public Affairs Officer or his/her designee before filming or photographing the interior of the National Archives Building, the Washington National Records Center, and/or the Pickett Street Annex. Permission must be requested in writing at least one week prior to the proposed activity. Filming and photographing will only be permitted for the purpose of providing background to stories about NARA or a researcher making use of National Archives holdings. Press interviews will not be permitted unless NARA or other Government employees are being interviewed in connection with official business. Filming or photographing will not be permitted in areas of the buildings not open to the general public or to researchers, or in records storage (stack) areas.

(c) *Conditions and restrictions.* The following conditions and restrictions apply to all persons and groups granted permission under this section:

(1) Permission to film or photograph will not be granted to persons or groups wishing to promote commercial enterprises or commodities, or to persons or groups involved with political, sectarian, or similar activities.

(2) Persons and groups must be accompanied at all times by a member of the Public Affairs Staff when in the National Archives Building, Washington National Records Center, or Pickett Street Annex for other than research purposes (see part 1254 of this chapter for regulations on research use of records and donated historical materials.)

(3) The filming and photographing of documents shall take place only in areas designated by the NARA Public Affairs Staff. NARA may limit or prohibit use of artificial light in connection with the filming or photographing of documents.

(4) Interviews with NARA staff and researchers shall take place only in areas designated by the NARA Public Affairs Staff.

(5) Approved film and photography sessions will normally be limited to two hours.

(6) Persons and groups are subject at all times to the regulations set forth at subpart A of this part.

(7) Permission to film or photograph under this section does not constitute approval or sponsorship by NARA of the persons or groups involved, of their activities or views, or of the uses to which the works depicting the facilities are put.

(8) Permission to film or photograph under this section does not release the persons or groups involved from liability for injuries to persons or property that result from their activities on NARA property.

[55 FR 29577, July 20, 1990]

§1280.16 Filming or photographing documents in exhibit areas for personal use.

Filming or photographing documents or exhibits in the Exhibition Hall, the Pennsylvania Avenue lobby, or any other exhibit areas in the National Archives Building without supplemental artificial light sources, or tripods, or similar equipment is permitted for personal use at any time during regular hours. However, such activities may not take place on the steps or ramp leading to the Declaration of Independence, the Constitution, and the Bill of Rights.

[55 FR 29578, July 20, 1990]

§1280.18 Artificial lighting in public areas.

Supplemental artificial lighting devices may be used with prior approval of the Public Affairs Officer (NXI) when filming documents in public areas of the National Archives Building subject to the following restrictions:

(a) Facsimiles shall be used in place of the Declaration of Independence, the Constitution, or the Bill of Rights if supplemental artificial lighting is to be used. When high intensity lighting is used, all other exhibited documents that fall within the boundaries of such illumination must be covered or replaced by facsimiles. If approval is granted for filming facsimiles or for filming other exhibited documents, a

high intensity light source may not expose any exhibited item to more than 500 foot-candles nor be used to illuminate any one item for more than five minutes. The use of high intensity lighting in an exhibit area may not exceed one hour.

(b) Ladders, scaffolding, and tripods may be used before regular hours, but must be kept at a distance from documents greater than the height of the equipment.

(c) Auxiliary power units may be used. Existing lights will not be replaced by higher wattage or intensity lights. A NARA electrician must be present at all times whenever there is a change to the normal power supply. Organizations who film after regular hours will be billed for the electrician's time.

[39 FR 11885, Apr. 1, 1974. Redesignated and amended at 50 FR 15723, 15728, Apr. 19, 1985; 52 FR 23822, June 25, 1987. Further redesignated and amended at 55 FR 29577, July 20, 1990; 55 FR 33904, Aug. 20, 1990]

§ 1280.20 The National Archives Library.

The National Archives Library is operated to meet the needs of researchers and NARA staff members. Other persons desiring to use library materials will generally be referred to public libraries and other possible sources of such materials.

[33 FR 4885, Mar. 22, 1968. Redesignated at 50 FR 15723, Apr. 19, 1985. Further redesignated at 55 FR 29577, July 20, 1990; 55 FR 33904, Aug. 20, 1990]

§ 1280.22 National Archives Theater and conference rooms.

The theater in the National Archives Building was designed and will be used primarily for furnishing reference services on the motion picture holdings of the National Archives. Conference rooms in the National Archives Building will be used for conferences and official meetings. When not required for such uses, conference rooms may be assigned to other organizations. Application for use of a room will be approved only if the purpose for which it is requested is educational or is related to the programs of the National Archives and Records Administration. The theater and conference rooms shall not be used to promote commercial enterprises or commodities, for political, sectarian, or similar purposes, or for meetings sponsored by profitmaking organizations. Use of the theater and conference rooms will not be authorized for any organization or group of individuals that engages in discriminatory practices proscribed in the Civil Rights Act of 1964 (42 U.S.C. 2000a, note).

[39 FR 11885, Apr. 1, 1974. Redesignated and amended at 50 FR 15723, 15728, Apr. 19, 1985. Further redesignated at 55 FR 29577, July 20, 1990; 55 FR 33904, Aug. 20, 1990]

§ 1280.24 Application for outside use of National Archives Theater and conference rooms.

(a) Applications for use of the theater and conference rooms shall be submitted in writing by the head of the requesting organization, or his duly authorized representative, at least 1 week in advance of the requested use. Applications for use shall be addressed to National Archives (NA), Washington, DC 20408, and shall include the following information:

(1) The name of the requesting organization;

(2) The date and the hours of contemplated use;

(3) A brief description of the programs;

(4) The number of persons expected to attend the meeting or performance (The capacity of the theater is 216 persons; conference rooms accommodate between 35 and 70 persons.);

(5) A statement regarding the intention to exhibit motion pictures or slides and, if so, the size (35mm or 16mm) of the film or slides, and whether the film to be shown is on nitrate or safety base; and

(6) Samples of any literature, folders, or posters to be distributed or exhibited at the meeting or performance.

(b) No program will be permitted to continue beyond 10 p.m.

(c) Applications for use on Saturdays, Sundays, holidays, or at times when the building is closed will be considered if fully justified.

(d) No admission fee will be charged, no indirect assessment will be made for admission, and no collection will be taken except as specifically authorized

by the Archivist of the United States for special nonprofit-making events which are held by organizations sponsored by the National Archives and Records Administration. Commercial advertising or the sale of articles is not permitted.

(e) The serving or consumption of food or beverages within the theater is prohibited. Food or beverages may be served in the conference rooms if approved in advance.

(f) Smoking within the theater and conference rooms is prohibited. Smoking is allowed only in designated smoking areas.

(g) If the projection of motion pictures or slides is a part of the program, operators will be furnished by the National Archives and Records Administration on a reimbursable basis.

(h) Posting of any material about the premises is subject to prior approval.

(i) All persons attending meetings or performances will be required to go directly to the theater, which is on the fifth floor, or to the assigned conference room. No one will be admitted to the parts of the building that are closed to the public.

[33 FR 4885, Mar. 22, 1968, as amended at 39 FR 11885, Apr. 1, 1974; 41 FR 7750, Feb. 20, 1976. Redesignated and amended at 50 FR 15723, 15728, Apr. 19, 1985; 52 FR 23823, June 25, 1987. Further redesignated at 55 FR 29577, July 20, 1990; 55 FR 33904, Aug. 20, 1990]

§ 1280.26 Archivist's Reception Room.

The Archivist's Reception Room is primarily intended for meetings and other functions of NARA. The Archivist may sponsor, co-sponsor or, if the room is not scheduled for use by NARA, authorize the use of the room by other Federal agencies for official government functions, or by private individuals and organizations. Such use by private individuals and groups must be for the benefit of or in connection with the archival and records activities administered by the National Archives and Records Administration and must be consistent with the public perception of the National Archives as a research and cultural institution. The National Archives Trust Fund Board refurbished the Archivist's Reception Room from private gifts and donations. In order to maintain this Room in its present condition, as well as to cover the cost of additional cleaning, guard and other required services, the use of this Room by private individuals and organizations requires a donation to the National Archives Trust Fund. Federal agencies using the room for official government functions shall reimburse NARA only for the cost of additional guard and NARA staff services. The Archivist's Reception Room shall not be used to promote commercial enterprises or products or for political, sectarian, or similar purposes. Use of the Room will not be authorized for any organization or group that engages in discriminatory practices proscribed by the Civil Rights Act of 1964, as amended.

[52 FR 23823, June 25, 1987. Redesignated at 55 FR 29577, July 20, 1990; 55 FR 33904, Aug. 20, 1990]

§ 1280.28 Application for outside use of the Archivist's Reception Room.

(a) Applications for use of the Archivist's Reception Room shall be submitted in writing by the private individual or by the head of the requesting organization or the duly authorized representative of the organization, normally 30 days in advance. Applications for use shall be submitted to the Assistant Archivist for Public Programs (NE), National Archives and Records Administration, Washington, DC 20408 and shall include the following:

(1) The name of the requesting organization or individual;

(2) The date and hours of contemplated use;

(3) A description of the purpose, anticipated number of attendees, and the name of the individual designated to serve as host and responsible official for the event;

(4) Whether audiovisual services are required (these must be provided by NARA on a reimbursible basis);

(5) Samples of any literature, folders, or posters to be distributed or exhibited.

(b) A donation to the National Archives Trust Fund to cover the costs involved in the maintenance and use of the Room is needed. Further information may be obtained from the Assistant Archivist for Public Programs.

(c) The Room is available from 8:00 a.m. until 9:30 p.m., Monday through Friday, and from 9:00 a.m. until 4:30 p.m. on Saturday. Use of the room at other hours requires the special approval of the Archivist. A NARA staff member must be available at all times when the room is in use.

(d) Those using the Room must obtain approval from NARA before distributing or displaying any item and must not misrepresent their identity to the public nor conduct any activities in a misleading or fraudulent manner. If any notice or advertisement is to mention the National Archives or incorporate its seal, the approval of the Archivist of the United States is required.

(e) Those using the Room must provide persons as needed to register guests, distribute approved literature, name tags, or similar material.

(f) NARA must approve in advance the use of a caterer who will bring beverages, food, or equipment into the National Archives Building. NARA must approve any equipment or decorations to be used and any entertainment to occur in the National Archives Building.

(g) No Government property shall be destroyed, displaced, or damaged by the user. The user must take prompt action to replace, return, restore, repair or repay NARA for any damage caused to Government property during the use of NARA facilities.

[52 FR 23823, June 25, 1987. Redesignated at 55 FR 29577, July 20, 1990; 55 FR 33904, Aug. 20, 1990]

Subpart C—Facilities in Presidential Libraries

§ 1280.40 Museum areas.

(a) Unless otherwise directed by the library director, the hours of admission to museums of the libraries are as follows:

(1) Monday through Saturday, 9 a.m. to 5 p.m., including Federal legal holidays.

(2) Sunday, 2 p.m. to 5 p.m. (10 a.m. to 5 p.m. from May 16 to September 15), including Federal legal holidays.

(3) Museums will be closed on Thanksgiving, Christmas, and New Year's days.

(b) Visitors to the museums of the libraries may be required to check all parcels and luggage at designated places.

(c) Eating and smoking are prohibited in the museums of the libraries and in other library areas except where designated by the library director.

[33 FR 4885, Mar. 22, 1968. Redesignated at 50 FR 15723, Apr. 19, 1985]

§ 1280.42 Auditoriums and other public spaces.

(a) Presidential library auditoriums and other public spaces in the library buildings and the library grounds are intended primarily for the use of the library in carrying out its programs. These areas may also be used by other organizations for lectures, seminars, meetings, and similar activities when these activities are sponsored, cosponsored, or authorized by the Library to further the library's interests, and when such activities will not interfere with the normal operation of the library. Any activities sponsored, cosponsored, or authorized by the library must be related to the mission and programs of the library and must be consistent with the public perception of the library as a research and cultural institution. Application for such use shall be made in writing to the library director (see § 1253.3 of this chapter for the address).

(b) Use of the auditoriums and other public spaces will not be authorized for any profitmaking, commercial advertising and sales, sectarian, or similar purpose or for any use inconsistent with those authorized in paragraph (a) of this section.

(c) No admission fee will be charged except by the library, no indirect assessment fees will be made for admission, and no collections will be taken. The library director may assess additional charges to reimburse the Government for expenses incurred as a result of the use by groups of library facilities.

[48 FR 41770, Sept. 19, 1983. Redesignated at 50 FR 15723, Apr. 19, 1985, and amended at 52 FR 23823, June 25, 1987]

§ 1280.44 Supplemental rules.

Library directors may establish appropriate supplemental rules governing

use of Presidential libraries and adjacent buildings and areas under NARA control.

[52 FR 23823, June 25, 1987]

§1280.46 Book collections.

The book collections of Presidential libraries are available to researchers needing the unique resources of such libraries and to NARA staff members. Other persons desiring to use the book collections will generally be referred to public libraries and other possible sources of such materials.

[35 FR 18737, Dec. 10, 1970. Redesignated at 50 FR 15723, Apr. 19, 1985]

§1280.48 Photographing documents.

(a) Visitors are permitted to take photographs in Presidential libraries and adjacent buildings open to the public, subject to restrictions set forth in paragraph (c) of this section.

(b) Photographs for news, advertising, or commercial purpose may be taken only after the Presidential library director approves the request.

(c) Artificial light devices shall not be used anywhere in a Presidential library where such use may cause damage to documents. Persons desiring to use photolighting devices shall request special permission from the director of the Presidential library concerned and shall follow procedures prescribed in §1280.14(c).

[39 FR 11885, Apr. 1, 1974. Redesignated at 50 FR 15723, Apr. 19, 1985]

Subpart D—Federal Records Centers and National Archives Field Branches

§1280.60 Use of conference rooms.

Conference rooms in Federal Records Centers and National Archives Field Branches will be used for official meetings and for conferences sponsored by NARA. When not required for such use, assignments for other purposes during normal working hours may be made. Applications for such use will be approved only if the purpose for which it is requested is educational or is related to NARA programs. Applications for such use shall be made to the Federal Records Center Director or the National Archives Field Branch Director (see §1253.6 of this chapter for the address).

[52 FR 23823, June 25, 1987]

§1280.62 Restrictions on use.

Use of the conference rooms will not be authorized for any profitmaking, political, sectarian, or similar purpose or for any organization or group that engages in discriminatory practices proscribed in the Civil Rights Act of 1964 (42 U.S.C. 2000a, note).

[39 FR 11885, Apr. 1, 1974. Redesignated and amended at 50 FR 15723, 15728, Apr. 19, 1985]

PART 1284—EXHIBITS

Sec.
1284.1 Scope of part.
1284.20 Temporary exhibition of privately-owned material.

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

§1284.1 Scope of part.

This part sets forth policies and procedures concerning the exhibition of materials at the National Archives Building.

[55 FR 25307, June 21, 1990]

§1284.20 Temporary exhibition of privately-owned material.

(a) Documents, paintings, or other objects belonging to private individuals or organizations normally will not be accepted for display at the National Archives Building except as part of a NARA-produced exhibit.

(b) NARA may accept for temporary special exhibit at the National Archives Building privately-owned documents or other objects under the following conditions:

(1) The material to be displayed relates to the institutional history of the National Archives and Records Administration or its predecessor organizations, the National Archives Establishment and the National Archives and Records Service;

(2) Exhibition space is available in the building that the NARA Office of Public Programs and the Document Conservation Branch judge to be appropriate in terms of security, light level,

climate control, and available exhibition cases or other necessary fixtures; and

(3) NARA has resources (such as exhibit and security staff) available to produce the special exhibit.

(c) The Assistant Archivist for Public Programs (NE), in conjunction with the NARA General Counsel when appropriate, shall review all offers to display privately-owned material and shall negotiate the terms of exhibition for offers that can be accepted. The lender shall provide evidence of title to and authenticity of the item(s) to be displayed before any loan agreement is executed.

(d) The Assistant Archivist shall inform the offeror of NARA's decision within 60 days.

[55 FR 25307, June 21, 1990]

PARTS 1285—1299 [RESERVED]