

2. Section _____.26 is amended by adding paragraph (i) (10) (v) to read as follows:

§ _____.26 Subsistence taking of fish.

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(i) * * *

(10) * * *

(v) You may not use gillnets in freshwater.

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Dated: June 19, 2000.

Kenneth E. Thompson,

Acting Regional Forester, USDA—Forest Service.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

RIN 3095–AA81

Agency Records Centers

AGENCY: National Archives and Records Administration (NARA).

ACTION: Summary of comments received on final rule.

SUMMARY: This document describes the comments that the National Archives and Records Administration (NARA) received in response to the invitation for public comment on three sections of our final rule on agency records center storage standards, published December 2, 1999. We are publishing this document to inform the public of the comments and our disposition of the comments.

DATES: The final rule was effective January 3, 2000, except §§ 1228.234, 1228.236, and 1228.238 which were effective March 2, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at (301) 713–7360, ext. 226.

SUPPLEMENTARY INFORMATION: NARA published its final rule, Agency Records Centers, on December 2, 1999 (64 FR 67634). In that final rule, we delayed the effective date of three new provisions concerning exceptions and waivers to the facility standards to allow a 60-day public comment period. These three new provisions are intended to make it easier for facilities to gain certification. We received timely comments from two offices in the Veterans Administration, an individual, Iron Mountain, United Mine Workers of America (UMWA), Contract Services Association of

America (CSA), and PRISM International (PRISM). We also considered late comments from the Deputy Under Secretary of Defense for Acquisition Reform (DoD) and the Coalition for Government Procurement (Coalition).

One of the agencies stated that they had no comment and the individual commented that the reasoning behind the waiver is understandable. A discussion of the other major comments follows, organized by subject. Most of these comments reiterated comments raised earlier in the rulemaking and addressed in the final rule.

Timing of Approvals of Waivers

The UMWA endorsed the three sections with one recommended modification to § 1228.238(c). That provision applies to waiver of roof requirements for underground storage facilities. It states that NARA will normally grant the waiver and notify the requesting agency within 10 work days if the agency has not also requested a waiver of a different requirement under § 1228.236. If the agency has another waiver request pending for the same facility, NARA will respond to all of the waiver requests at the same time and within the longest time limits.

UMWA argued that approval of one waiver for a facility should not be delayed because another waiver is received unless the initial waiver would be impacted by the new filing for a waiver. While a waiver of roof requirements can be considered independently from waivers addressed by § 1228.236, a facility that requires a waiver of another NARA requirement cannot be approved to store Federal records until the requested waiver of the other provision(s) is approved. We would prefer to make one notification when all waivers are approved and we expect that agencies will submit all waiver requests for a facility at one time.

Limit the Scope of the Regulation to Permanent/Archival Records

Iron Mountain, PRISM, CSA, and the Coalition recommended revising § 1228.222(a) to limit the entire regulation to permanent archival Federal records. We rejected this proposal because (1) recommendations to change other sections of the regulation were outside the scope of the request for comment on § 1228.234, 1228.236, and 1228.238, and (2) NARA had previously addressed comments on our position that all Federal records, not just permanent records, require a minimum level of protection (see 64 FR 67634). We also note that permanent archival records are those records that

have been transferred to NARA's legal custody, not records still in the creating agency's custody. The regulation covers permanent and temporary records that are in the creating agency's custody.

As we stated in the preamble to the proposed rule (64 FR 23504), in our initial regulatory flexibility analysis (64 FR 50028), and again in the final rule, Federal records provide essential documentation of the Federal Government's policies and transactions and protect rights of individuals. The Government has an obligation to protect and preserve these records for their entire retention period, even if that retention period is only a few years, as is the case with IRS income tax returns or invoice payments. NARA believes that records storage facilities should be structurally sound, protect against unauthorized access, and protect against fire and water damage to the records, whether the records are temporary or permanent. Only in the area of environmental conditions is the length of time the records are retained a significant consideration in setting standards.

NARA's Facility Standards are Inconsistent With Commercial Standards and Best Practices

Iron Mountain, CSA, the Coalition, and DoD expressed concern that we did not "baseline" the standards against current commercial best practices and standards. These comments argued that adherence to local building codes and selected National Fire Protection Association (NFPA) standards provide sufficient protection for records in commercial records centers. We did not accept these comments, which also had been made in response to the proposed rule and initial regulatory flexibility analysis. In the preamble to the December 2, 1999, final rule, we discussed at some length why we did not share their views (see 64 FR 67635 and 67639–67640). In brief, the local fire-safety components of building codes are designed to protect the life and safety of occupants, mitigate against the spread of a fire to adjacent structures, and to protect fire fighters, not to limit the loss of valuable contents. The NFPA standards cited by the industry comments pertain to the protection of facilities storing bulk quantities of blank or waste paper, not records. NARA's standards supplement the building codes to provide a safety level for the items stored.

The commercial records storage industry does not currently have any widely accepted or ANSI-approved standards. Unfortunately, they do have a record of disastrous fires, each with

significant quantities of records destroyed. A fire in a commercial records storage facility in Chicago on October 29, 1996, resulted in the loss of over 220,000 boxes of records. The wet pipe sprinkler system was reported to be ordinary hazard, group II, with no sprinklers under the catwalks in 28 foot-high shelving. Preliminary estimates placed the loss at 50 million dollars or more. More than a million boxes of documents were destroyed in three March 1997 fires at a nationwide records storage company's two facilities in an industrial park in South Brunswick, New Jersey. And a May 6, 1997, fire near Scranton, PA destroyed another commercial center that stored 450,000 cubic feet of paper and microfilm records. In comparison, the two recent fires at NARA's Washington National Records Center in Suitland, MD, demonstrated that NARA's fire protection and suppression system does provide the level of fire safety required by the NARA standard in Subpart K. The first fire resulted in loss of 50 or fewer cubic feet of records from fire. The loss from the second fire was limited to no more than 10 cubic feet of records.

NARA fire safety requirements are based on extensive live fire testing conducted by nationally recognized independent laboratories. These tests demonstrate conclusively that the NARA standards are effective and practical. NARA has authorized the unlimited publication of the test reports. To our knowledge, no other U. S. provider of records storage services has conducted any such independent tests; at least no reports have been published. The NARA standards also reflect the National Fire Protection Association's advisory *Guide for Fire Protection for Archives and Records Centers (NFPA/ANSI 232A-1995)*, the most widely accepted documentation of commercial best practices. (The National Fire Protection Association has recently voted to change the advisory guide to a mandatory standard.)

The related Iron Mountain comment that NARA had conducted a fire test subsequent to the final rule that used the widely accepted industry fire suppression standards was misinformed. NARA's successful fire test of 28-foot high storage, conducted by the independent Southwest Research Institute, did not use the widely accepted industry practice of ceiling-only sprinklers. Instead, NARA used sprinklers at three levels: under the first catwalk at approximately 16 feet; under the second catwalk at approximately 24 feet, and at the ceiling. The test fire was controlled by the under-catwalk

sprinklers and the ceiling sprinklers never activated.

NARA Regulation is Inconsistent With Acquisition Reform Initiatives

DoD, CSA, and the Coalition also commented that the final rule is inconsistent with the Government's acquisition reform efforts to eliminate government unique standards, such as military specifications in favor of commercial standards and best practices. We do not view the records center regulation as contravening or impeding the Government's acquisition reform initiative. As discussed in the previous sections of this **SUPPLEMENTARY INFORMATION**, there is no clear ANSI-approved industry fire-safety standard for records centers that could be used in place of the NARA standard. It is important to realize that with regard to fire safety and security issues, the new regulation was written as a performance standard, rather than a prescriptive standard, and replaced Government-specific (MIL-SPEC and FED-STD) references with ANSI-approved references. We also took extensive steps to assure full industry review and comment, as noted in the **SUPPLEMENTARY INFORMATION** section of the December 2, 1999, final rule.

Other Comments

Several of the commenters either enclosed copies of comments that had been submitted in response to the proposed rule, or repeated their earlier comments. These comments generally concerned issues of cost and competition, and were addressed in the December 2, 1999, final rule. The DoD comment indicated a concern that NARA was both the arbiter of the standards and a competitor in the marketplace. While we appreciate the concern, NARA has taken action to assure that the two functions remain separate.

Conclusion

After carefully reviewing the comments received in response to the invitation for public comment on §§ 1228.234, 1228.236, and 1228.238, we determined that these three provisions do not require further amendment to carry out their intended purpose: to allow Federal agencies and the commercial records storage industry more flexibility in meeting the NARA requirements.

Dated: June 23, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00-16308 Filed 6-27-00; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 202

[Docket No. RM 2000-5]

Copyright Rules and Regulations: Copyright, Registration of Claims to Copyright

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule; technical amendments.

SUMMARY: The Copyright Office has reviewed its regulations and found non-substantive errors in its general copyright provisions and its rules governing registration of claims to copyright. This document contains technical amendments to correct these errors.

EFFECTIVE DATE: June 28, 2000.

FOR FURTHER INFORMATION CONTACT:

Marilyn J. Kretsinger, Assistant General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington DC 20024. Telephone: (202) 707-8380. Fax: (202) 707-8366.

SUPPLEMENTARY INFORMATION: The Copyright Office recently conducted an extensive review of Parts 201 and 202 of its regulations. This document is published to update and correct minor errors in the text to these parts as published in the Code of Federal Regulations.

List of Subjects

37 CFR Part 201

Copyright.

37 CFR Part 202

Claims, Copyright.

Final Rule

For the reasons set forth in the preamble, 37 CFR Chapter II is amended by making the following corrections and amendments:

PART 201—GENERAL PROVISIONS

1. The authority citation for Part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 201.1 [Amended]

2. In § 201.1, paragraph (a) remove the "." (period) after "SE".

3. In § 201.1, paragraphs (c) and (d) are revised to read as follows:

§ 201.1 Communications with the Copyright Office.

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