

Compliance: Required as indicated, unless accomplished previously.

To prevent long-term damage to the engine mounting structure (EMS), and loss of redundancy on the EMS, which could result in possible separation of an engine from the airplane, reduced controllability of the airplane, and injury to persons or property on the ground, accomplish the following:

Service Bulletin References

(a) The following information pertains to the service bulletin referenced in this AD:

(1) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Saab Service Bulletin SAAB 2000-71-014, dated January 23, 2003.

(2) Although the service bulletin specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Torque Check

(b) Within 3 months after the effective date of this AD: Measure the torque of the adjustable pin in the rear attachment of the intermediate strut for both engines, in accordance with the inspection requirements and torque values in the service bulletin.

Retorque

(c) Retorque the adjustable pin in the intermediate strut rear attachment of the EMS to the correct torque value, in accordance with the service bulletin.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in Swedish airworthiness directive 1-183, dated January 23, 2003.

Issued in Renton, Washington, on December 23, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04-31 Filed 1-2-04; 8:45 am]

BILLING CODE 4910-13-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1254 and 1256

RIN 3095-AB11

Restrictions on the Use of Records

AGENCY: National Archives and Records Administration.

ACTION: Proposed rule.

SUMMARY: NARA proposes to revise its regulations on access to Federal records and donated historical materials containing restricted information. This proposal entirely rewrites and reorganizes this portion of NARA's regulations to incorporate several

changes, and also to clarify it using plain language. The regulation has been updated to bring the language on access restrictions in better conformance with the Freedom of Information Act (FOIA). In addition, we propose to remove an existing policy that allows access to restricted information for purposes of biomedical statistical research. This proposed rule would affect the public and Federal agencies.

DATES: Comments must be received on or before March 5, 2004.

ADDRESSES: Send comments to Regulation Comments Desk (NPOL), Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. You may fax comments to (301) 837-0319 or e-mail them to comments@nara.gov. You may also comment via www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis Heaps at (301) 837-1801.

SUPPLEMENTARY INFORMATION: This proposed rule contains discussion of important changes in our regulations dealing with access to archival materials. We have made additional changes in presenting the information. We also have written the proposed regulation in plain language following the Presidential Memorandum of June 1, 1998, Plain Language in Government Writing.

What Substantive Changes Have Been Made in These Proposed Regulations?

We have broadened the scope of 36 CFR part 1256, currently titled Restrictions on the Use of Records, to cover access to archival holdings in general. Specifically, we:

- Renamed the part Access to Records and Donated Historical Materials to reflect the proposed scope of the whole part, which covers NARA's policies on access to our holdings, including information about restrictions on Federal records and donated historical materials.

- Updated and renumbered the current §§ 1256.10 through 1256.18 on NARA's general restrictions which parallel selected FOIA exemptions to include all exemptions, reflect Department of Justice guidance on exemption (b)(2), and show statutory changes to the wording of other exemptions.

- Removed references to the publication of restrictions in the *Guide to the National Archives of the United States* because the information on general restrictions in the Guide is no longer current.

- Removed the current subpart B on specific restrictions because all

restrictions that agencies designate must be in compliance with the Freedom of Information Act.

- Created a new section, § 1256.44, on conditions for the release of restricted information in Federal records or materials withheld under any general restriction.

- Added information on how to request access to restricted information in donated historical materials.

- Moved subparts C and D from 36 CFR part 1254 into 36 CFR part 1256 because they relate to general information about access to records and donated historical materials. We will revise the remainder of Part 1254 later this year.

- Removed our procedures for granting permission to do biomedical statistical or quantitative research in privacy-restricted records.

Other than rewriting in plain language, we have not changed the process for access to United States Information Agency (USIA) audiovisual records accessioned into the National Archives of the United States.

How Is NARA Proposing To Change Access to Privacy-Restricted Federal Records for Statistical Biomedical Research?

NARA currently permits full access to privacy-restricted information in Federal records to persons engaged in statistical or quantitative biomedical research on an approval basis under tightly-controlled conditions specified in the current § 1256.4. No researchers have requested access to any records under these conditions since the regulation went into effect in 1988. We propose to remove this provision for access because we have determined that the procedures may not provide sufficient safeguards against the accidental or intentional release of privacy-restricted information.

Instead, as already provided for in law, NARA will provide access to the releasable portions of records and materials containing such information to entities and individuals in accordance with the provisions of the Freedom of Information Act (5 U.S.C. 552, as amended), Presidential Records Act (44 U.S.C. chapter 22), Presidential Recordings and Materials Preservation Act (44 U.S.C. 2111 *note*), Federal Records Act (44 U.S.C. 2108), applicable executive orders, and Deeds of Gift for donated historical materials.

NARA will continue to provide full access to these records to the agency of origin in accordance with the proposed § 1256.44(b).

This proposed change also removes the information collection required for

statistical biomedical researcher applicants under the current regulation.

Why Is NARA Moving Portions of 36 CFR 1254 Into Part 1256?

Part 1254, Availability of Records and Donated Historical Materials, currently includes these subparts: general information; research room rules; access to unclassified records and donated

historical materials; access to national security information; information, reproduction, and authentication services; and microfilming archival records. We propose to move § 1254.8 on how NARA handles subpoenas, the subpart on access to unclassified records and donated historical materials, and the subpart on access to national security information to part

1256 to provide a more comprehensive explanation of how our holdings may be accessed. The proposed §§ 1256.8 and 1256.10 provide references to our regulations on access to Presidential records and Nixon Presidential historical materials, respectively. The following chart provides the proposed and current designations of the relevant subparts:

| Proposed designation of subpart | Current designation |
|---|---|
| 36 CFR part 1256, Subpart A, General Information | Expansion of 36 CFR § 1254.8 and §§ 1254.32 through 1254.36. |
| 36 CFR Part 1256, Subpart B, Access to Federal Archival Records | Expansion of 36 CFR §§ 1254.30 and 1256.2. |
| 36 CFR Part 1256, Subpart C, Access to Donated Historical Materials | Expansion of 36 CFR §§ 1254.36 and 1256.2. |
| 36 CFR Part 1256, Subpart D, General Restrictions | 36 CFR Part 1256, Subpart A, General Restrictions |
| 36 CFR Part 1256, Subpart E, Access to Materials Containing National Security-Classified Information. | 36 CFR Part 1254, Subpart D, Access to National Security Information. |
| 36 CFR Part 1256, Subpart F, Domestic Distribution of United States Information Agency Audiovisual Materials in the National Archives of the United States. | 36 CFR Part 1256, Subpart C, Domestic Distribution of United States Information Agency Materials in the National Archives of the United States. |

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB). As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities because this rule applies to individual researchers. This proposed rule does not have any federalism implications.

List of Subjects

36 CFR Part 1254

Archives and records, Confidential business information, Freedom of information, Micrographics.

36 CFR Part 1256

Archives and records, Copyright.

For the reasons set forth in the preamble, NARA proposes to amend chapter XII of title 36 of the Code of Federal Regulations as follows:

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

1. The authority for part 1254 is revised to read as follows:

Authority: 44 U.S.C. 2101–2118 and 5 U.S.C. 552, as amended.

§§ 1254.30 through 1254.36 and 1254.40 through 1254.50 [Removed]

2. Amend part by removing and reserving subparts C (§§ 1254.30 through 1254.36) and D (§§ 1254.40 through 1254.50).

3. Amend § 1254.1 by revising paragraph (e) to read as follows:

§ 1254.1 General provisions.

* * * * *

(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, as amended) are not considered requests made under the act. Requests under the act must follow the procedures in part 1250.

* * * * *

§ 1254.8 [Removed]

4. Part 1254 is amended by removing § 1254.8.

5. Part 1256 is revised to read as follows:

PART 1256—ACCESS TO RECORDS AND DONATED HISTORICAL MATERIALS

Subpart A—General Information

Sec.

- 1256.1 What does this part cover?
- 1256.2 How do I obtain access to records stored in Federal Records Centers?
- 1256.4 How does NARA handle subpoenas and other legal demands for records in its custody?
- 1256.6 How do I obtain access to records of defunct agencies?
- 1256.8 How do I obtain access to Presidential records?
- 1256.10 How do I obtain access to Nixon Presidential materials?

Subpart B—Access to Federal Archival Records

- 1256.20 May I obtain access to Federal archival records?
- 1256.22 How do I request access to restricted information in Federal archival records?
- 1256.24 How long may access to some records be denied?
- 1256.26 When can I appeal decisions about access to Federal archival records?

Subpart C—Access to Donated Historical Materials

- 1256.30 How do I obtain access to donated historical materials?
- 1256.32 How do I request access to restricted information in donated historical materials?
- 1256.34 How long may access to some donated historical materials be denied?
- 1256.36 When can I appeal decisions about access to donated historical materials?

Subpart D—General Restrictions

- 1256.40 What are general restrictions?
- 1256.42 Who imposes general restrictions?
- 1256.44 Does NARA ever waive general restrictions?
- 1256.46 National security-classified information.
- 1256.48 Information about internal agency rules and practices.
- 1256.50 Information exempted from disclosure by statute.
- 1256.52 Trade secrets and commercial or financial information.
- 1256.54 Inter- and intra-agency memoranda.
- 1256.56 Information that would invade the privacy of a living individual.
- 1256.58 Information related to law enforcement investigations.
- 1256.60 Information relating to financial institutions.
- 1256.62 Geological and geophysical information relating to wells.

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

- 1256.70 What controls access to national security-classified information?
- 1256.72 What are FOIA requests and mandatory review requests?
- 1256.74 How does NARA process Freedom of Information Act (FOIA) requests for classified information?
- 1256.76 How do I request mandatory review of classified information under Executive Order 12958, as amended?
- 1256.78 How does NARA handle my mandatory review request?

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

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

1256.90 What does this subpart cover?

1256.92 What is the purpose of this subpart?

1256.94 Definition.

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

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

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

1256.102 What fees does NARA charge?

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

Subpart A—General Information

§ 1256.1 What does this part cover?

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

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

Agencies that retire their records to a Federal records center (FRC) set rules for access to those records. Address requests for access to records stored in Federal records centers directly to the appropriate agency or to the appropriate FRC director at the address shown in part 1253. When the agency's rules permit, NARA makes FRC records available to requesters. When the agency's rules and restrictions do not permit access, the FRC director refers the requests and any appeals for access, including those made under the Freedom of Information Act (5 U.S.C. 552, as amended), to the responsible agency.

§ 1256.4 How does NARA handle subpoenas and other legal demands for records in its custody?

(a) For records stored in a Federal records center, NARA honors a *subpoena duces tecum* (subpoena) or other legal demand for the production of agency records, to the extent required by law, if the agency that retired the records has not imposed any restrictions. If the agency has imposed restrictions, NARA notifies the authority issuing the subpoena or other legal demand that NARA abides by the agency-imposed restrictions and refers the authority to the agency for further action.

(b) The Archivist of the United States, the General Counsel (NGC) or his or her designee, and the Director of the FRC where the records are stored are the only NARA officials authorized to accept a subpoena or other legal demand for records transferred to an FRC.

(c) The Archivist of the United States, the General Counsel (NGC) or his or her designee, the appropriate Assistant Archivist, Regional Administrator, or Director of a Presidential library are the only NARA officials who may be served a *subpoena duces tecum* or other legal demand for the production of documents designated as Federal archival records or donated historical materials administered by NARA.

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

NARA handles access to archives and FRC records received from agencies that have ceased to exist without a successor in function as described in §§ 1256.20 and 1256.78.

§ 1256.8 How do I obtain access to Presidential records?

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

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

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

Subpart B—Access to Federal Archival Records

§ 1256.20 May I obtain access to Federal archival records?

(a) Most Federal archival records are open for research without submitting a Freedom of Information Act (FOIA) request. Part 1254 specifies procedures for using unrestricted records in a

NARA research room, submitting reference requests, and ordering copies of records.

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

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

(a) You may file a FOIA request. To request access under the provisions of the FOIA, see part 1250 of this chapter, Public Availability and Use of Federal Records.

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

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

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

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

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

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

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

Subpart C—Access to Donated Historical Materials

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

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

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

(a) At Presidential libraries and regional archives, you may write to the appropriate director at the facilities in part 1253 of this chapter. In the Washington, DC, area, you may write to the Director of Access Programs (NWC) for donated textual materials or the Director of Modern Records Programs (NWM) for donated electronic records. The mailing address for NWC and NWM is Office of Records Services—Washington, DC, 8601 Adelphi Road, College Park, MD 20740–6001.

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

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

(d) For classified information in donated historical materials, you may

file a mandatory review request under Executive Order 12958, as amended, as described in § 1256.74.

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

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

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

(a) If you wish to appeal a denial of access from the director or his designated representative in implementing the provisions of a donor's deed of gift, you may write a letter addressed to the Deputy Archivist of the United States, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. The Deputy Archivist, the Assistant Archivist for Presidential Libraries, and the Assistant Archivist for Records Services—Washington, DC, or their designated representatives, compose the Board of Review for appeals relating to donated historical materials.

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

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

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

Subpart D—General Restrictions

§ 1256.40 What are general restrictions?

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

and explained in §§ 1256.46 through 1256.62.

§ 1256.42 Who imposes general restrictions?

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

§ 1256.44 Does NARA ever waive general restrictions?

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

(a) To NARA employees for work purposes;

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

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

(d) To the subject of the records in some cases.

§ 1256.46 National security-classified information.

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

§ 1256.48 Information about internal agency rules and practices.

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

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

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

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

§ 1256.50 Information exempted from disclosure by statute.

In accordance with 5 U.S.C. 552(b)(3), NARA withholds records containing

information that is specifically exempted from disclosure by statute when that statute:

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

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

§ 1256.52 Trade secrets and commercial or financial information.

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

(a) The person who provided the information agrees to its release; or

(b) In the judgment of the Archivist of the United States, enough time has passed that release of the information would not result in substantial competitive harm to the submitter of the information.

§ 1254.54 Inter- and intra-agency memoranda.

(a) In accordance with 5 U.S.C. 552(b)(5), NARA may withhold information found in inter-agency or intra-agency memoranda if that information:

(1) Relates to advice, recommendations, and opinions that are a part of the deliberative, consultative, decision-making process of government, or

(2) Would reveal the theory of an attorney's case or litigation strategy.

(b) The Archivist of the United States may determine that this general restriction does not apply to specific records because enough time has passed that release of the information would not result in harm to the decision-making process of government or an attorney's litigation strategy.

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

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

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

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

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

§ 1256.58 Information related to law enforcement investigations.

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

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

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

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

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

(5) Confidential investigation techniques are not described; and

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

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

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

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

§ 1256.60 Information relating to financial institutions.

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

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

§ 1256.62 Geological and geophysical information relating to wells.

(a) In accordance with 5 U.S.C.

552(b)(9), NARA may withhold information in records that relates to geological and geophysical information and data, including maps, concerning wells.

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

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

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

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

(b) Public access to documents declassified in accordance with this regulation may be restricted or denied for other reasons under the provisions of 5 U.S.C. 552(b) for accessioned agency records; §§ 1256.30 through 1256.36 of this part for donated historical materials; 44 U.S.C. 2111, 44 U.S.C. 2201 *et seq.*, and 36 CFR part 1270 for Presidential records; and 44 U.S.C. 2111 *note* and 36 CFR part 1275 for Nixon Presidential materials.

§ 1256.72 What are FOIA requests and mandatory review requests?

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

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

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

(a) NARA processes FOIA requests for access to classified information in

Federal records in accordance with the provisions of 36 CFR part 1250. Time limits for responses to FOIA requests for classified information are those provided in the FOIA, rather than the longer time limits provided for responses to mandatory review requests specified by Executive Order 12958, Classified National Security Information (3 CFR, 1995 Comp., p. 333), as amended by Executive Order 13292 (68 FR 15315, March 28, 2003).

(b) NARA processes requests for access to classified information in Presidential records under the FOIA and the Presidential Records Act (PRA) in

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

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

(a) You may request mandatory review of classified information that is in the legal custody of NARA, as well as in legislative and judicial records NARA holds. Your mandatory review

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

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

| If the documents are . . . | . . . then address your request to |
|---|--|
| Presidential records and donated historical materials at a Presidential library. | The appropriate library cited in 36 CFR part 1253. |
| Nixon Presidential materials | Director, Nixon Presidential Materials Staff (NLNS), 8601 Adelphi Road, College Park, MD 20740-6001. |
| Presidential materials maintained in the Washington, DC area | Director, Presidential Materials Staff (NLMS), 700 Pennsylvania Avenue, N.W., Washington, DC 20408. |
| <ul style="list-style-type: none"> • Federal records • Donated historical materials related to Federal records • Judicial records • Legislative records maintained in the Washington, DC area | Chief, Special Access/FOIA Staff (NWCTF), 8601 Adelphia Road, College Park, MD 20740-6001. |
| Federal records and judicial records maintained at a regional archives | The appropriate regional archives cited in 36 CFR part 1253. |

§ 1256.78 How does NARA handle my mandatory review request?

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

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

(2) When we do not have guidance from agencies, we coordinate the declassification review with the original classifying agency or agencies under the provisions of part 1260, subchapter D of this chapter.

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

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

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

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

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

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

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

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

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

§ 1256.90 What does this subpart cover?

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

§ 1256.92 What is the purpose of this subpart?

This subpart implements section 501 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1461), as amended by section 202 of Public Law No. 101-246 (104 Stat. 49, Feb. 16, 1990). This subpart also outlines procedures that permit the public to inspect and obtain copies of USIA audiovisual records and other materials in the United States that were prepared for dissemination abroad and that have been transferred to NARA for preservation and domestic distribution.

§ 1256.94 Definition.

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

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

The provisions of 44 U.S.C. 2107 and 36 CFR part 1228 apply to the transfer of USIA audiovisual records to NARA, and to their deposit with the National Archives of the United States. At the time the audiovisual records are transferred to NARA, the Director of USIA, in accordance with § 1228.184(e) of this chapter, also transfers any production or title files relating to the ownership of rights in the productions in connection with USIA's official overseas programming.

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

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

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

(b) If the appropriate time has passed, you may have access to USIA audiovisual records that do not have copyright protection and do not contain copyrighted material. USIA audiovisual records prepared for dissemination abroad that NARA determines do not have copyright protection nor contain copyrighted material are available for

examination and copying as described in the regulations in parts 1252, 1253, 1254, 1256, and 1258 of this chapter. To determine whether materials have copyright protection or contain copyrighted material, NARA relies on information contained within or fastened to individual records (for example, copyright notices); information contained within relevant USIA production, title, or other files that USIA transferred to NARA; information provided by requesters under § 1256.100(b) (for example, evidence from the Copyright Office that copyright has lapsed or expired); and information provided by copyright or license holders.

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

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

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

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

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

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

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

(c) If NARA determines that a USIA audiovisual record prepared for dissemination abroad may have copyright protection or may contain copyrighted material, you may obtain copies of the material by submitting to

NARA written evidence from all copyright and/or license owner(s) that any necessary fees have been paid or waived and any necessary licenses have been secured.

(d) If NARA has determined that a USIA audiovisual record prepared for dissemination abroad may have copyright protection or may contain copyrighted material, persons seeking the release of such material in the United States may obtain copies of the material by submitting to NARA the following certification statement:

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

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

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

§ 1256.102 What fees does NARA charge?

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

Dated: December 23, 2003.

John W. Carlin,

Archivist of the United States.

[FR Doc. 04-174 Filed 1-2-04; 8:45 am]

BILLING CODE 7515-01-P