

## Conformance With Statutory and Regulatory Authorities

### *National Environmental Policy Act*

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940, published May 29, 1992), implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999 (64 FR 1276.)

### *Section 810 of ANILCA*

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

### *Paperwork Reduction Act*

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

### *Other Requirements*

The adjustments have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant

economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as sporting goods dealers. The number of small entities affected is unknown; however, the effects will be seasonally and geographically limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustments will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The

Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

### *Drafting Information*

Bill Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Warren Eastland, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA-Forest Service, provided additional guidance.

**Authority:** 16 U.S.C. 3, 472, 551, 668dd, 3101-3126; 18 U.S.C. 3551-3586; 43 U.S.C. 1733.

Dated: August 4, 2005.

**Thomas H. Boyd,**

*Acting Chair, Federal Subsistence Board.*

Dated: August 4, 2005.

**Steve Kessler,**

*Subsistence Program Leader, USDA-Forest Service.*

[FR Doc. 05-17075 Filed 8-26-05; 8:45 am]

**BILLING CODE 3410-11-P; 4310-55-P**

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Part 1228

RIN 3095-AB31

### Records Center Facility Standards

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Final rule.

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**SUMMARY:** This final rule modifies NARA facility standards for records storage facilities that house Federal records to clarify requirements relating to design or certification of multiple story facilities and fire detection and protection systems; to revise certain requirements relating to fire-ratings of roofs, building columns, and fire barrier walls; and to clarify the application of

other requirements. The rule addresses records center industry concerns identified in the 2003 Report to Congress on Costs and Benefits of Federal Regulations. This rule affects commercial records storage facilities that store Federal records and applies to all agencies, including NARA, that establish and operate records centers, and to agencies that contract for the services of commercial records storage facilities.

**DATES:** This rule is effective September 28, 2005. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of September 28, 2005.

**FOR FURTHER INFORMATION CONTACT:** Nancy Allard at telephone number 301-837-1477, or fax number 301-837-0319.

**SUPPLEMENTARY INFORMATION:** NARA published a proposed rule on September 7, 2004 (69 FR 54091) outlining proposed changes to our regulations governing facilities that store Federal records (records storage facilities). We received comments from eight Federal agencies, seven private sector records storage facilities, Professional Records and Information Services Management (PRISM) International (a records center industry association), ARMA International (a professional organization for persons in the field of records and information management), the International Code Council (an association dedicated to building safety), and 11 individuals. Fourteen respondents generally supported the proposed rule or had no comments; the remaining respondents had concerns with one or more of the proposed provisions. A detailed discussion of the substantive comments follows.

As we discussed extensively in the 1999 rulemaking and restated in the 2004 proposed 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. This rulemaking continues to reflect that belief.

## Discussion of Comments

### *Section 1228.224 (Incorporation by Reference)*

We received two comments on this section, which was modified in the proposed rule to add new standards proposed in that rulemaking. One individual commented that NARA should update paragraph (c) to reflect the latest editions of all of the National Fire Protection Association (NFPA) standards cited in the regulation. We did not adopt this comment. The International Code Council (ICC) ICC requested that NARA modify the proposed rule to adopt by reference the 2003 edition of six ICC Codes in lieu of the NFPA Fuel Code and Uniform Mechanical Code. As we explain elsewhere in this Supplementary Information in response to another ICC comment, all jurisdictions have not adopted the ICC Codes in lieu of other voluntary consensus standards. Moreover, the NFPA Fuel Code and Uniform Mechanical Code are American National Standards Institute (ANSI) approved standards, which reflect that ANSI principles of openness and due process have been followed and that a consensus of all interested stakeholder groups has been reached in development of the standards. Not all ICC Codes have that designation. Therefore, we have not adopted this ICC comment.

### *Section 1228.226 (Definitions)*

Two commenters objected to the proposed change to the definition of *records storage area*. One individual stated that our replacement of the term "fire wall" with the term "fire barrier wall" severely lessens the level of protection provided. The ICC commented that there is a difference in the definitions of "firewall" and "fire barrier wall" and that NARA should delete the definition of "fire barrier wall." ICC further stated that the problem ICC identified would be resolved by the adoption of the IBC, ICC International Fire Code (IFC) and ICC Existing Buildings Code (IEBC) as a minimum baseline. We did not accept these comments. When NARA published the original 1999 final rule, we changed "fire wall" to "fire barrier wall" throughout the regulation. At that time, we inadvertently overlooked the reference to "fire wall" in the definition of *records storage area*. This change to the definition brings it into conformance with the intent of the regulation.

PRISM requested clarification of the definition of *auxiliary space*, which was not modified in the proposed rule. We confirm that NARA does not consider

loading docks (including the adjacent document processing areas) as "auxiliary spaces," and, therefore, this regulation does not require the construction of fire barrier walls between such areas and records storage areas.

### *Section 1228.228(a) (Roof Requirement)*

Two commenters opposed changing § 1228.228(a) to allow roof elements to be constructed with combustible materials if installed in accordance with local building codes and if roof elements are protected by a properly installed, properly maintained automatic sprinkler system. One objector stated that if the sprinkler system is tied to the roof, the loss of the roof would render the sprinkler system useless. The other objector stated that the National Fire Protection Association (NFPA) 232 (2000 ed.), Standard for the Protection of Records, required a non-combustible roof because of a higher level of risk of involvement of the roof in fire in these types of facilities. PRISM, in supporting the provision stated that no basis for concluding that a wood roof has less structural integrity than one with steel members, noting that steel (a noncombustible product) would begin to fail at 1000° F. NARA's fire tests have shown that in an uncontrolled fire the temperature at the roof level can quickly exceed 1000° F. We also note that under the 1999 rule, existing facilities may already obtain a waiver to have wood roof construction under the conditions that the proposed rule would extend to all facilities.

In this final rule, we have modified § 1228.228(a) slightly. To improve clarity, we have separated the provisions of the paragraph into subparagraphs. Paragraph (a) introductory text states the basic requirement for use of non-combustible materials. Paragraph (a)(1) states the conditions under which roof elements constructed with combustible materials are allowed, and we have added a reference to the appropriate NFPA standard for sprinkler systems (NFPA 13, Installation of Sprinkler Systems, 2002 edition) that must be followed. Paragraph (a)(2) restates the steps to be taken to request a waiver for an existing records storage facility with combustible building elements other than the roof to continue to operate until October 1, 2009.

### *Section 1228.228(b) (Certification—Multi-Story Facilities)*

There were two comments that specifically addressed the proposed change to this provision. One comment

suggested that we define “certify” in the definitions (§ 1228.226) and not modify the language here or in later sections. The other comment objected to the change, misunderstanding the change to mean that NARA would only be requiring the fire protection engineer and civil/structural engineer to state whether the facility meets the local building code. A third comment, from ARMA International, noted that the role of the professional engineer in the inspection of such facilities is a key to the protection of records and that relying on local building codes will inevitably result in great variances in the levels of protection the records actually receive.

We did not make any changes to this provision. The nature of the activity required under this provision is the same as previously required “ reviews by a licensed fire protection engineer (FPE) and licensed civil/structural engineer that the fire resistance of separating floors is at least 4 hours and that there are no obvious structural weaknesses that would indicate a high potential for structural catastrophic collapse under fire conditions. Our change to paragraph (b) more accurately reflects our intention that the engineer(s) provide a professional opinion under seal. We did not accept the suggestion to define “certify” in § 1228.226 because we believe it is better to describe the requirement accurately where it occurs than to define a term that is open to misinterpretation and then use that term in the requirements.

*Section 1228.228(d) (Building Code Protection Against Natural Disaster)*

The proposed rule modified § 1228.228(d), which requires designing the records center facility to provide protection from building collapse or failure of essential equipment from earthquake hazards, tornadoes, hurricanes and other potential natural disasters. The 1999 rule only cited regional building codes. At the suggestion of PRISM, we added local or state building codes, since these codes may address a specific local common natural disaster that the regional code does not.

We received three comments on this provision. One Federal agency commented that “\* \* \* ordinarily, Federal agencies are exempt from such requirements [to meet local and state building and fire codes] although they usually meet or exceed such codes. It is difficult to prescribe rules when there are so many state and local variances and I recommend that the Federal exemption continue.” We did not adopt

this comment. Although buildings built on Federal property are exempt from state and local building codes, GSA’s policy, as articulated in P100, The Facilities Standards for the Public Buildings Service, is to comply with state and local building codes to the maximum extent practicable. Moreover, the NARA standards apply to commercial facilities that agencies use for the storage of their records.

The International Code Council (ICC) stated that the ICC codes have replaced the three regional model codes that were in existence in 1999 when the original NARA rule was issued. ICC urged that NARA replace references to regional, state and local codes with reference to the ICC model codes. We have added a reference to the ICC model (*i.e.*, national) code, but not removed the references to the other codes. Newly adopted building codes apply to new construction and renovation that take place after the new code is adopted. This regulation covers both existing and new facilities that are covered by a variety of editions of codes. Thus, it would not be appropriate to cite only the ICC codes.

The third commenter, PRISM, believes that the balance struck by NARA will not create undue confusion, and represents a significantly better balance than the previous rule.

*Section 1228.228(i) (Storage Shelving)*

The proposed rule added racking systems as an acceptable form of records storage shelving and added state and local building code requirements for seismic bracing. We received two comments on this provision. One individual requested that we modify the text to prohibit double or triple stacking boxes on the individual shelves. We did not adopt this comment. The basic requirement in the proposed revision to paragraph (i)(2) provides adequate protection. If a facility’s practice is to double or triple stack boxes of records on a shelf, the shelf would have to be rated for 100 or 150 pounds, respectively. NARA is setting performance requirements, not specifying how a storage facility must shelve its records.

The other commenter expressed a concern with racking systems, which are designed to go to heights in excess of 50 feet, and recommended the requirement for seismic bracing should be extended to racking, if a facility desires to use this type of shelving. The commenter noted that when these large volumes of records are exposed to water, either during a fire or in the event of an accidental discharge of a sprinkler system, the weight bearing on the

racking system is severe. We note that this requirement already existed in the proposed rule and have retained it in this final rule.

*Section 1228.228(n)(3) (Requirement for Backup Power Source)*

We received a comment from ICC on § 1228.228(n)(3), which was not proposed for revision. ICC stated that the provision, as currently wording, is not mandatory. If a backup power source is determined necessary, NARA should require one. We did not modify this section as the comment was out of scope.

*Section 1228.228(n)(4) (Requirement for Positive Air Pressure)*

In the 1999 rule, § 1228.228(n)(4) required that all new facilities must be kept under positive air pressure and loading docks must have an air supply and exhaust system that is separate from the remainder of the facility. The proposed rule would limit this provision to new facilities that store permanent Federal records. (It is not practicable to impose this retroactively on existing facilities.) We received two comments opposing the proposed change and one comment supporting the change. One non-Federal records manager and one Federal agency opposed this provision, noting that long-term temporary records would be adversely affected. The records manager proposed that it be required for facilities storing 20-year records. PRISM supported the change, stating that literature shows that other factors, such as the acid in the paper and exposure to UV light prior to being placed in storage, are the principal causes of records degradation.

This final rule retains the proposed rule language limiting the provision to new facilities that store permanent records. While there may be a potential for degradation of records from exposure to exhaust fumes (the reason for positive air pressure), such exposure is not constant. Paper-based records are further protected from direct exposure by their enclosure in folders within closed boxes.

*Section 1228.230(a) (Certification—Fire Detection and Protection Systems)*

We received one comment from an individual objecting to the change in this paragraph. The commenter stated that it is imperative that the design and protection provided be reviewed and certified by a professional whose primary duties are related to the adequate protection of a facility from the hazards of a fire. Having the individual who designed and/or

installed the system stating it is adequate is akin to "having the fox guarding the henhouse."

As we explained in the preamble to the proposed rule, the change made in this provision was to substitute for the word "certify" specific information that the licensed FPE must provide in the report furnished under seal. That information will be sufficient for NARA to evaluate whether the facility complies with the requirements in § 1228.230.

#### *Section 1228.230(b) (Interior Walls)*

We received three comments from individuals opposing the proposed change to § 1228.230(b) to require that interior walls separating records storage areas from each other and from other storage areas in the building be at least 3-hour fire resistant, instead of requiring 4-hour fire barrier walls. We agree that there is a substantial difference in level of protection from fire between a 3-hour and 4-hour fire barrier wall; however, there is also a substantial difference in cost for records center owners. The data provided by PRISM stated that the cost of a 3-hour wall at 40 feet (the height of the typical commercial records center) is about \$560 per linear foot; a 4-hour wall at 40 feet is \$865 per linear foot. We have adopted the proposed rule wording in this final rule because we believe that the significant difference in the cost of a 4-hour wall does not justify the enhanced records protection.

Additionally, the ICC commented that because ICC codes define, refer to and contain provisions for fire walls and fire barriers, a reference to the ICC codes would address the safety issue for NARA and the cost issue for the storage industry while maintaining consistency with state and local codes. We respectfully disagree with this comment. ICC did not identify a specific ICC code that addresses records centers. In general, the 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. NFPA 232 and NARA's regulation supplement the building codes to provide a safety level for the items stored.

#### *Section 1228.230(b) (Compartment Size)*

In the preamble to the proposed rule, NARA noted that we did not modify the requirement that no more than 250,000 cubic feet of Federal records be stored in a single records storage area. ARMA commented that:

"Although the proposed rule maintains the maximum volume of 250,000 cu. ft. of Federal records in a single compartment, it says nothing about the total capacity of the compartment. This has the impact of allowing virtually unlimited volumes of records to be stored in a single compartment, as long as no more than 250,000 cu. ft. of Federal records are stored there. While this limits the exposure of the Federal records, it could easily put other consumers at considerably more potential exposure \* \* \*

"Before the rule is finalized, consideration should be given to using NFPA 13 *Installation of Sprinkler Systems* as a basis for calculating the storage capacity of a facility. NFPA 13 indicates that 40,000 sq. ft. is the maximum area covered by one sprinkler system. If one takes this as the maximum size of a compartment and uses the commercial industry standard of storage capacity within square footage, the result is approximately 1 million cubic feet of storage under control of one sprinkler system. This could be considered as the basis for providing some limitation on the loss of records. Such a limitation provides a secondary line of defense if a sprinkler system fails or is compromised."

NARA appreciates ARMA's concern for the holdings of other organizations, but our authority is limited to Federal records.

#### *Section 1228.230(e) (Fire Resistive Rating of Roof)*

We received one comment supporting and three comments opposing the proposed change to paragraph (e). This change deletes the requirement that new facilities must have a roof with a maximum fire-resistive rating of one hour and to allow protection of the roof by an automatic sprinkler system designed, installed, and maintained in accordance with NFPA 13, Standard for the Installation of Sprinkler Systems, as an alternative to the requirement for a minimum fire resistive rating of 1/2 hour.

PRISM noted that the change brings the provision in line with the modern building codes. One commenter raised a general objection that "it would be a risk to both our intellectual heritage and to those who live near records centers to weaken the standards for fire-retardance." Another individual asked whether NARA researched NFPA 13 to make certain that by allowing roofs with lower fire-resistive ratings, NFPA 13 was not itself rendered non-viable, as it may well have depended on a certain level of fire resistance for the roof. A third individual stated that there is little if any logic behind lowering the fire-resistive rating of the roof from 1 hour to 1/2 hour.

This final rule retains the proposed rule language. Both the 1999 rule and this revision require a minimum fire-resistive rating of 1/2 hour for roofs for

existing and new facilities. The revision removes a requirement for a *maximum* fire resistive rating of 1 hour for new facilities. We note that NFPA 13, *Installation of Sprinkler Systems*, 2002 edition, provides for sprinkler systems to protect wood roofs.

#### *Section 1228.230(i) (Building Columns)*

We received three comments opposing, for a variety of reasons, the proposed change in the fire resistance requirement for building columns in records storage areas from 2 hours for existing facilities and 4 hours for new facilities to 1 hour or protected in accordance with NFPA 13 for all facilities. One comment noted that the NARA proposal was less stringent than NFPA 232-2000; another asked about the value of the columns having an even lower fire-resistance rating than the walls; and the third suggested that the change would result in a significant lessening of the protection measures for storage of records with no additional benefit.

This final rule retains the proposed rule language. We considered both the commenters' concerns and industry issues with impact of the provision on the records center industry, most of which are small businesses. As we noted in the preamble to the proposed rule, PRISM claimed that the 1999 rule imposes insurmountable costs on most commercial storage facilities, which, in general, use columns (including exposed steel) that are not fire rated. We have concluded, for the reasons stated in the proposed rule at 69 FR 54093, that it is appropriate to proceed with the change.

#### *Section 1228.230(l) (Use of Open Flame Equipment)*

We received four comments opposing the proposal to allow open flame oil and gas unit heaters or equipment in storage areas if they are installed and used in accordance with NFPA 54, National Fuel Gas Code and the International Association of Plumbing and Mechanical Officials (IAPMO) Uniform Mechanical Code. Three of the comments expressed fire-safety concerns; one of these comments noted a higher risk to the records in high seismic risk zones where a fuel line might rupture. Installation in accordance with the applicable code will ensure a safe installation. Seismic safety requirements are met by designing the equipment and installation in accordance with the appropriate seismic zones as called for in local building codes, which dictate

design requirements for attachment and bracing of piping.

ICC commented that the National Fuel Gas Code and the Uniform Mechanical Code both cover gas-heating equipment and may not have the same requirements. To require compliance with both documents could create a conflict for the designer, contractor and building owner. In addition, state and local codes would also address such equipment; as do two ICC codes. ICC also suggested that the requirements for positive air pressure and environmental controls conflict with this provision, rendering it moot. ICC believes that reliance on the ICC codes would eliminate such conflicts and provide a baseline upon which NARA could address any unique issues associated with the control of the environment in which Federal records are stored. We did not accept these comments. Both the National Fuel Gas Code and the Uniform Mechanical Code are approved American National Standards (ANSI standards), while the two ICC codes proposed as alternatives are not.

#### *Section 1228.232 (Environmental Controls)*

The proposed rule modified paragraphs (b) on non-textual temporary records and (c) on permanent and certain other paper-based records to revise the effective date for new records centers to be the effective date of this final rule instead of January 3, 2000, the effective date set by the 1999 rule. We did not propose to change the substance of the requirements themselves.

We received one comment from an agency on paragraph (b) and a comment from the ICC on paragraph (c). The agency representative stated that the best environment for long term storage of paper records is not the same as the comfort requirements for office space, and recommended revising the wording “ \* \* \* equivalent to that required for office space” to read “ \* \* \* that will meet the long-term preservation requirements of paper-based permanent records.” We did not accept this comment. We decided as part of the 1999 rulemaking that it is not reasonable to require more stringent environmental conditions for paper records stored off-site than what they would have in office space.

The ICC commented that the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRE) standards referenced in paragraph (c) had been replaced by more recent editions, and suggested that NARA either reference the newer editions or reference comparable ICC codes. We declined to

act on this comment at this final rule stage. Except for extreme circumstances, new versions are not retroactive to existing buildings (until they are substantially modified). Based on the PRISM and small business records center operators’ comments, most commercial records centers are existing buildings.

#### *Section 1228.236 (Waivers)*

The proposed rule set forth text to amend paragraph (a)(2) to update the effective date of new standards that previously compliant agency records centers must meet. That effective date is the effective date of this final rule. One commenter suggested that this action was creating an unintended loophole for commercial records centers that fell out of compliance with the NARA standards after January 2, 2000. The commenter misinterpreted the paragraph, which applies only to records centers owned or operated by Federal agencies. We have retained this change in the final rule.

This same commenter suggested that NARA should retain the 1999 language “NARA may grant \* \* \* ” rather than automatically grant waivers. While NARA intends to grant waivers to specific requirements in the NARA regulation in all cases where our review of the waiver request (see § 1228.238) determines that the supporting documentation confirms that the condition(s) for the waiver have been met, the existing §§ 1228.238(a)(2) and (b)(2) clearly show that NARA may deny the waiver request if the conditions are not met to NARA’s satisfaction. We have withdrawn the proposed change to the introductory text of § 1228.236(a). It will continue to read: “(a) *Types of waivers that may be approved.* NARA may approve exceptions to one or more of the standards in this subpart for:”

#### *Section 1228.242(a) (Certifying Fire Safety Detection and Suppression Systems)*

The proposed rule modified § 1228.242(a) by adding Southwest Research Institute as a provider of independent live fire testing; removing a requirement for computer modeling as part of the report furnished by a licensed FPE in lieu of live fire testing or use of a NARA-certified system; and providing the specific details required in such a report. We received two comments on this section.

One comment from an individual objected to removing the requirement for computer modeling. The commenter stated “\* \* \* there is no data that supports the removal of the use of computer modeling as an accurate method of determining the potential

loss in the event of a fire. In the absence of the possibility of live testing, computer modeling has proven to be a qualified method for ensuring the adequate protection of a facility.” We did not accept this comment. As stated in the preamble to the proposed rule: “While we continue to see the value of computer modeling as a supplement to live fire testing, we acknowledge that the costs of such modeling may not always be justified in the records center environment.” The new language in revised § 1228.242(a)(3) on the detailed information to be provided by the FPE will allow NARA to evaluate the adequacy of the fire protection.

ICC pointed out that retaining “or equivalent” in the listing of organizations that perform independent fire testing raised questions about NARA’s basis for determining equivalency and felt that the basis should be part of the rules so that other third parties can understand the criteria under which they will be evaluated. Alternatively, ICC recommended that the text in paragraph (a)(2) be modified to read “a report of the results of independent fire testing conducted by a testing laboratory deemed as meeting the criteria of International Organization for Standardization (ISO) Standard 17025 by an agency accredited as meeting ISO Guide 65.” To meet ICC’s concerns, we have removed the words “or equivalent” from § 1228.242(a)(2). We considered ICC’s alternative language, but believe that listing the specific organizations will better serve small businesses who wish to take advantage of this alternative.

#### *Other Provisions of the Proposed Rule*

No comments were received on the other proposed rule provisions and they have been adopted without change in this final rule.

#### *Impact on NFPA 232*

Three individuals raised concerns with the impact of NARA’s regulatory changes on NFPA 232, Standard for the Protection of Records. That standard is independently undergoing review within the NFPA. The individuals expressed concern that the “weakening” of the NARA regulation would have a ripple effect on NFPA 232. ARMA noted that the proposed rule is not in compliance with NFPA 232 and is likely to increase the vulnerability of public and private records stored in off-site facilities. ARMA urged NARA to survey other international standards, such as the National Archives of Australia and the British Standards Institute standards, as a point of comparison. We appreciate the comments and concerns

but, as a Federal agency, we must consider the impact of our regulations on the regulated industry as well as the Federal user.

#### *Impact on Small Business*

In our initial regulatory flexibility analysis (IRFA) that was published with the proposed rule, we invited comments on the impact on small businesses. We asked small businesses to comment on other alternatives, if any, NARA should consider, as well as the costs and benefits of those alternatives to small business. We received comments from seven companies and from PRISM International supporting the regulation. These comments are discussed in greater depth in the following final regulatory flexibility analysis (FRFA) statement.

#### **Final Regulatory Flexibility Analysis**

As required by the 5 U.S.C. 604, NARA has prepared this final regulatory flexibility analysis.

#### *Background*

In the proposed rule published on September 7, 2004 (69 FR 54091), NARA stated its belief that the rule will affect small businesses that are records storage providers and provided an initial regulatory flexibility analysis (IRFA) in accordance with the Regulatory Flexibility Act and Executive Order 13272. We specifically invited comments on the IRFA in addition to comments on the proposed rule.

#### **1. Succinct Statement of the Need for and Objectives of the Rule**

NARA's records center regulations specify the minimum structural, environmental, property, security, and fire safety standards that a records storage facility must meet when the facility is used for the storage of Federal records. Because Federal records provide essential documentation of the Federal Government's policies and transactions and protect rights of individuals, they must be stored in appropriate space to ensure that they remain available for their scheduled life. The 2003 Report to Congress on Costs and Benefits of Federal Regulations identified the NARA regulations as a candidate for reform because of an identified adverse impact on small businesses.

The objective of this regulation is to clarify the records center facility standards and modify them, where appropriate, to better enable records centers, particularly those that are small businesses, to be able to offer their services to Federal agencies while ensuring the continued appropriate

protection of Federal records stored in off-site facilities.

#### **2a. Summary of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis**

We received 8 comments specifically noting the impact of the proposed rule on small businesses. Seven comments were from records center providers, 5 of which specifically identified themselves as small businesses. The eighth comment was from PRISM International, which identified itself as the not-for-profit trade association representing the records and information management services (RIMS) industry, representing 590 RIMS businesses in the United States, 99 percent of which are small businesses.

All eight comments supported the proposed rule, noting that it would improve their ability to compete equitably for Federal contracts for records storage services. Only one comment specifically commented on the issues raised in the initial regulatory flexibility analysis. That small business strongly favored a relaxed waiver process outlined as alternative 2, noting that it believes the benefits to small businesses of such a process vastly outweigh the minor disadvantage of increased complexity of the Records Center Facility Standards. Alternative 2 was to allow records centers that qualify as small businesses to apply for a waiver from § 1228.228(a)'s requirement for noncombustible roofs, and to have two tiers of requirements in § 1228.230 relating to the fire-resistive rating of building elements. The existing (January 2000) requirements would be retained for NARA records centers, agency records centers, and commercial records centers that are other than small businesses.

No comments provided detailed information on the costs and benefits of the regulation.

#### **2b. Summary of NARA's Assessment of the Issues Raised**

The initial regulatory flexibility analysis noted that we rejected alternative 2 because we felt that this approach would merely add an additional step and paperwork for small businesses, and the two-tier approach may be confusing to them. The proposed rule and this final rule allow small businesses to meet the roof requirement without submitting a waiver request. The commenter did not provide any details on the benefits from alternative 2 that would be derived by small businesses.

#### **2c. Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments**

As noted in the earlier discussion of the comments received on the proposed rule, NARA clarified some provisions but did not accept comments that would have restored the burdensome provisions in the 1999 regulation.

#### **3. Description of the Number of Small Entities to Which the Rule Will Apply and Explanation of Why No Estimate Is Available**

The proposed rule will apply to NARA, to Federal agencies that operate their own records centers, and to any individual commercial records center facilities that a Federal agency uses to store its records.

We explained in the initial regulatory flexibility analysis at 69 FR 54096 why we were not able to provide an estimate of the number of small entities to which the rule will apply. We did not obtain any more precise data during the rulemaking that would enable us to develop such an estimate.

#### **4. Description of the Projected Reporting, Record Keeping and Other Compliance Requirements for Small Entities**

All reporting requirements are placed on Federal agencies, which must secure NARA approval before moving Federal records to a commercial records center. However, we expect that a substantial portion of the reporting requirements would "flow down" to commercial records center operators. To demonstrate compliance with requirements in §§ 1228.228(b) and 1228.230(a) relating to design of facilities with two or more stories and the fire detection and protection system, respectively, the rule offers the records centers an option of obtaining a report under professional seal by a licensed fire protection engineer (both sections) and a licensed civil/structural engineer (§ 1228.228(b)). We received no comment refuting our assumption that documentation requirements relating to multi-story facilities would apply to a relatively small percentage of small business records centers.

If the records center owner has maintained the facility design records, no special professional skills would be necessary to provide documentation to the contracting agency that the facility meets the NARA standards. If the design records are not available, the center would have need for the services of a licensed Fire Protection Engineer to inspect the facility and prepare a report on a one-time basis. We estimate that

the inspection and preparation of a report would take no more than 16 hours total.

All records centers that store Federal records, including commercial records centers operated by small businesses, must comply with the facility requirements in the rule. Certain specific requirements differ for newly constructed facilities and existing facilities. Also, existing facilities have until October 1, 2009, to become compliant with some of these requirements. The facility compliance requirements are found in §§ 1228.228, 1228.230, and 1228.236.

#### 5. Steps Taken To Minimize Significant Economic Impact on Small Entities

NARA's records center regulations specify the minimum structural, environmental, property, security, and fire safety standards that a records storage facility must meet when the facility is used for the storage of Federal records. The objective of this regulation is to clarify the records center facility standards and modify them, where appropriate, to better enable records centers, particularly those that are small businesses, to be able to offer their services to Federal agencies while ensuring the continued appropriate protection of Federal records stored in off-site facilities. As discussed in the preamble to the proposed rule, NARA worked with PRISM International to develop the revised rule. In evaluating the comments received on the proposed rule, NARA carefully considered the impact of those comments on the ability of small business records centers to comply with the regulation.

NARA is authorized, under 44 U.S.C. 2907, to establish, maintain and operate records centers for Federal agencies. NARA is authorized, under 44 U.S.C. 3103, to approve a records center that is maintained and operated by an agency. NARA is also authorized to promulgate standards, procedures, and guidelines to Federal agencies with respect to the storage of their records in commercial records storage facilities. See 44 U.S.C. 2104(a), 2904 and 3102.

NARA considered, but did not adopt the following alternatives to this rule:

1. *No regulation.* One alternative would be to replace the existing regulation with a single requirement that agencies must use a records center that complies with NFPA/ANSI 232–2000, *Standard for the Protection of Records*. This is the voluntary consensus standard that applies to records storage facilities (we note that other NFPA standards apply to other types of warehousing). Office of Management and Budget (OMB)

Circular A–119 Circular directs agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical. We rejected this alternative as it would be more stringent with regard to fire protection issues than the existing NARA records center facility standards (which incorporate most but not all of the NFPA 232 provisions), while not including the environmental and pest control portions of our existing regulation. Based on the industry comments made on the draft *2003 Report to Congress on Costs and Benefits of Federal Regulations* and subsequent dialog with PRISM International, we believe that this alternative would not minimize the economic impact on small business records centers that want to provide records storage services for Federal agencies. We are unable to quantify the economic impact of this alternative on small business.

2. *Relax the waiver process for small businesses.* This alternative would (A) allow records centers that qualify as small businesses to apply for a waiver from § 1228.228(a)'s requirement for noncombustible roofs but retain the requirement for records centers that are not small businesses, and (B) reduce the requirements in § 1228.230 relating to the fire-resistive rating of building elements for small businesses only. The existing (January 2000) requirements would be retained for NARA records centers, agency records centers, and commercial records centers that are other than small businesses. We rejected this alternative because it would not provide a distinct advantage to small businesses, given our research that the majority of records centers would qualify as small businesses (see 69 FR 54096).

#### Other Information Pertaining to This Rule

This final rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. This regulation does not have any federalism implications. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

#### List of Subjects in 36 CFR Part 1228

Archives and records, Incorporation by reference.

■ For the reasons set forth in the preamble, NARA amends Part 1228 of Title 36 of the CFR as follows:

#### PART 1228—DISPOSITION OF FEDERAL RECORDS

■ 1. The authority citation for part 1228 continues to read as follows:

**Authority:** 44 U.S.C. chs. 21, 29, and 33.

■ 1. Revise paragraph (b) of § 1228.222 to read:

#### § 1228.222 What does this subpart cover?

\* \* \* \* \*

(b) Except where specifically noted, this subpart applies to all records storage facilities. Certain noted provisions apply only to new records storage facilities established or placed in service on or after September 28, 2005.

■ 3. Amend § 1228.224 by revising the entry for “NFPA 13” and adding a new entry for “NFPA 54” in numerical order in paragraph (c) and adding paragraph (g) to read as follows:

#### § 1228.224 Publications incorporated by reference.

\* \* \* \* \*

(c) \* \* \*  
NFPA 13, Standard for Installation of Sprinkler Systems (2002 Edition), IBR approved for §§ 1228.228(a)(1), 1228.230(e), and 1228.230(i)

\* \* \* \* \*

NFPA 54, National Fuel Gas Code (2002 Edition), IBR approved for § 1228.230

\* \* \* \* \*

(g) *International Association of Plumbing and Mechanical Officials (IAPMO) standards.* The following IAPMO standard is available from the International Association of Plumbing and Mechanical Officials, 5001 E. Philadelphia Street, Ontario, CA 91761: IAPMO, Uniform Mechanical Code (2003 Edition), IBR approved for § 1228.230.

■ 4. Amend § 1228.226 by revising the definitions of “Existing records storage facility”, “New records storage facility”, and “Records storage area” to read:

#### § 1228.226 Definitions.

\* \* \* \* \*

*Existing records storage facility* means any records center or commercial records storage facility used to store records on September 27, 2005, and that has stored records continuously since that date.

\* \* \* \* \*

*New records storage facility* means any records center or commercial records storage facility established or converted for use as a records center or commercial records storage facility on or after September 28, 2005.

\* \* \* \* \*

*Records storage area* means the area intended for long-term storage of records that is enclosed by four fire barrier walls, the floor, and the ceiling.

\* \* \* \* \*

■ 5. Amend § 1228.228 by revising paragraphs (a), (b), (d), (g)(1), (h)(1), (i) introductory text, (i)(1), (i)(2), (n)(1), and (n)(4) to read:

**§ 1228.228 What are the facility requirements for all records storage facilities?**

(a) The facility must be constructed with non-combustible materials and building elements, including walls, columns and floors. There are two exceptions to this requirement:

(1) Roof elements may be constructed with combustible materials if installed in accordance with local building codes and if roof elements are protected by a properly installed, properly maintained wet-pipe automatic sprinkler system, as specified in NFPA 13, Installation of Sprinkler Systems (incorporated by reference, see § 1228.224).

(2) An agency may request a waiver of the requirement specified in paragraph (a) from NARA for an existing records storage facility with combustible building elements to continue to operate until October 1, 2009. In its request for a waiver, the agency must provide documentation that the facility has a fire suppression system specifically designed to mitigate this hazard and that the system meets the requirements of § 1228.230(s). Requests must be submitted to the Director, Space and Security Management Division (NAS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001.

(b) A facility with two or more stories must be designed or reviewed by a licensed fire protection engineer and civil/structural engineer to avoid catastrophic failure of the structure due to an uncontrolled fire on one of the intermediate floor levels. For new buildings the seals on the construction drawings serve as proof of this review. For existing buildings, this requirement may be demonstrated by a professional letter of opinion under seal by a licensed fire protection engineer that the fire resistance of the separating floor(s) is/(are) at least four hours, and a professional letter of opinion under seal by a licensed civil/structural engineer that there are no obvious structural weaknesses that would indicate a high potential for structural catastrophic collapse under fire conditions.

\* \* \* \* \*

(d) The facility must be designed in accordance with the applicable national,

regional, state, or local building codes (whichever is most stringent) to provide protection from building collapse or failure of essential equipment from earthquake hazards, tornadoes, hurricanes and other potential natural disasters.

\* \* \* \* \*

(g) \* \* \*

(1) New records storage facilities must meet the requirements in this paragraph (g) beginning on September 28, 2005.

\* \* \* \* \*

(h) \* \* \*

(1) New records storage facilities must meet the requirements in this paragraph (h) beginning on September 28, 2005.

\* \* \* \* \*

(i) The following standards apply to records storage shelving and racking systems:

(1) All storage shelving and racking systems must be designed and installed to provide seismic bracing that meets the requirements of the applicable state, regional, and local building code (whichever is most stringent);

(2) Racking systems, steel shelving, or other open-shelf records storage equipment must be braced to prevent collapse under full load. Each racking system or shelving unit must be industrial style shelving rated at least 50 pounds per cubic foot supported by the shelf;

\* \* \* \* \*

(n) \* \* \*

(1) Do not install mechanical equipment, excluding material handling and conveyance equipment that have operating thermal breakers on the motor, containing motors rated in excess of 1 HP within records storage areas (either floor mounted or suspended from roof support structures).

\* \* \* \* \*

(4) A facility storing permanent records must be kept under positive air pressure, especially in the area of the loading dock. In addition, to prevent fumes from vehicle exhausts from entering the facility, air intake louvers must not be located in the area of the loading dock, adjacent to parking areas, or in any location where a vehicle engine may be running for any period of time. Loading docks must have an air supply and exhaust system that is separate from the remainder of the facility.

■ 6. Amend § 1228.230 by revising paragraphs (a), (b), (e), (i), (l), and (s) to read:

**§ 1228.230 What are the fire safety requirements that apply to records storage facilities?**

(a) The fire detection and protection systems must be designed or reviewed by a licensed fire protection engineer. If the system was not designed by a licensed fire protection engineer, the review requirement is met by furnishing a report under the seal of a licensed fire protection engineer that describes the design intent of the fire detection and suppression system, detailing the characteristics of the system, and describing the specific measures beyond the minimum features required by code that have been incorporated to minimize loss. The report should make specific reference to appropriate industry standards used in the design, such as those issued by the National Fire Protection Association, and any testing or modeling or other sources used in the design.

(b) All interior walls separating records storage areas from each other and from other storage areas in the building must be at least three-hour fire barrier walls. A records storage facility may not store more than 250,000 cubic feet total of Federal records in a single records storage area. When Federal records are combined with other records in a single records storage area, only the Federal records will apply toward this limitation.

\* \* \* \* \*

(e) The fire resistive rating of the roof must be a minimum of ½ hour for all records storage facilities, or must be protected by an automatic sprinkler system designed, installed, and maintained in accordance with NFPA 13 (incorporated by reference, see § 1228.224).

\* \* \* \* \*

(i) Building columns in the records storage areas must be at least 1-hour fire resistant or protected in accordance with NFPA 13 (incorporated by reference, see § 1228.224).

\* \* \* \* \*

(l) Open flame (oil or gas) unit heaters or equipment, if used in records storage areas, must be installed or used in the records storage area in accordance with NFPA 54 (incorporated by reference, see § 1228.224), and the IAPMO/ANSI UMC 1-2003, Uniform Mechanical Code (incorporated by reference, see § 1228.224).

\* \* \* \* \*

(s) All record storage and adjoining areas must be protected by a professionally-designed fire-safety detection and suppression system that is designed to limit the maximum anticipated loss in any single fire event

involving a single ignition and no more than 8 ounces of accelerant to a maximum of 300 cubic feet of records destroyed by fire. Section 1228.242 specifies how to document compliance with this requirement.

■ 7. Amend § 1228.232 by revising the introductory text of paragraph (b) and paragraph (c) to read:

**§ 1228.232 What are the requirements for environmental controls for records storage facilities?**

\* \* \* \* \*

(b) *Nontextual temporary records.* Nontextual temporary records, including microforms and audiovisual and electronic records, must be stored in records storage space that is designed to preserve them for their full retention period. New records storage facilities that store nontextual temporary records must meet the requirements in this paragraph (b) beginning on September 28, 2005. Existing records storage facilities that store nontextual temporary records must meet the requirements in this paragraph (b) no later than October 1, 2009. At a minimum, nontextual temporary records must be stored in records storage space that meets the requirements for medium term storage set by the appropriate standard in this paragraph (b). In general, medium term conditions as defined by these standards are those that will ensure the preservation of the materials for at least 10 years with little information degradation or loss. Records may continue to be usable for longer than 10 years when stored under these conditions, but with an increasing risk of information loss or degradation with longer times. If temporary records require retention longer than 10 years, better storage conditions (cooler and drier) than those specified for medium term storage will be needed to maintain the usability of these records. The applicable standards are:

\* \* \* \* \*

(c) *Paper-based permanent, unscheduled and sample/select records.* Paper-based permanent, unscheduled, and sample/select records must be stored in records storage space that provides 24 hour/365 days per year air conditioning (temperature, humidity, and air exchange) equivalent to that required for office space. See ASHRAE Standard 55-1992, Thermal Environmental Conditions for Human Occupancy, and ASHRAE Standard 62-1989, Ventilation for Acceptable Indoor Air Quality, for specific requirements. New records storage facilities that store paper-based permanent, unscheduled, and/or sample/select records must meet

the requirement in this paragraph (c) beginning on September 28, 2005. Existing storage facilities that store paper-based permanent, unscheduled, and/or sample/select records must meet the requirement in this paragraph (c) no later than October 1, 2009.

\* \* \* \* \*

■ 8. Amend § 1228.236 by revising paragraph (a)(2) to read:

**§ 1228.236 How does an agency request a waiver from a requirement in this subpart?**

(a) \* \* \*  
(2) Existing agency records centers that met the NARA standards in effect prior to January 3, 2000, but do not meet a new standard required to be in place on September 28, 2005; and

\* \* \* \* \*

■ 9. Amend § 1228.240 by revising paragraph (c) to read as follows:

**§ 1228.240 How does an agency request authority to establish or relocate records storage facilities?**

\* \* \* \* \*

(c) *Contents of requests for agency records centers.* Requests for authority to establish or relocate an agency records center, or to use an agency records center operated by another agency, must be submitted in writing to the Director, Space and Security Management Division (NAS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. The request must identify the specific facility and, for requests to establish or relocate the agency's own records center, document compliance with the standards in this subpart. Documentation requirements for § 1228.230(s) are specified in § 1228.242.

\* \* \* \* \*

■ 10. Amend § 1228.242 by revising paragraphs (a)(2) and (a)(3) to read:

**§ 1228.242 What does an agency have to do to certify a fire-safety detection and suppression system?**

(a) \* \* \*  
(2) A report of the results of independent live fire testing (Factory Mutual, Underwriters Laboratories or Southwest Research Institute); or  
(3) A report under seal of a licensed fire protection engineer that:  
(i) Describes the design intent of the fire suppression system to limit the maximum anticipated loss in any single fire event involving a single ignition and no more than 8 fluid ounces of petroleum-type hydrocarbon accelerant (such as, for example, heptanes or gasoline) to a maximum of 300 cubic feet of Federal records destroyed by fire. The report need not predict a maximum

single event loss at any specific number, but rather should describe the design intent of the fire suppression system. The report may make reasonable engineering and other assumptions such as that the fire department responds within XX minutes (the local fire department's average response time) and promptly commences suppression actions. In addition, any report prepared under this paragraph should assume that the accelerant is saturated in a cotton wick that is 3 inches in diameter and 6 inches long and sealed in a plastic bag and that the fire is started in an aisle at the face of a carton at floor level. Assumptions must be noted in the report;

(ii) Details the characteristics of the system; and

(iii) Describes the specific measures beyond the minimum features required by the applicable building code that have been incorporated to limit destruction of records. The report should make specific references to industry standards used in the design, such as those issued by the National Fire Protection Association, and any testing or modeling or other sources used in the design.

\* \* \* \* \*

Dated: June 29, 2005.

**Allen Weinstein,**

*Archivist of the United States.*

[FR Doc. 05-17097 Filed 8-26-05; 8:45 am]

BILLING CODE 7515-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

[OAR-2003-0090; FRL-7959-2]

[RIN 2060-AN04]

**Extension of the Deferred Effective Date for 8-Hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final Rule.

**SUMMARY:** The EPA is finalizing the extension of the deferred effective date of air quality designations for 14 areas of the country that have entered into Early Action Compacts. Early Action Compact areas have agreed to reduce ground-level ozone pollution earlier than the Clean Air Act (CAA) requires. On April 30, 2004, EPA published an action designating all areas of the country for the 8-hour ozone National Ambient Air Quality Standards