

have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This proposed rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

#### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a temporary safety zone, as described in paragraph 34(g) of the Instruction, on the waters of the New River in Fort Lauderdale, Florida that will be enforced for less than three hours. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 165.T07-0589 to read as follows:

#### § 165.T07-0589 Safety Zone; Rotary Club of Fort Lauderdale New River Raft Race, New River, Fort Lauderdale, FL.

(a) *Regulated Area.* The following regulated area is a safety zone. All waters of the New River contained within an imaginary line connecting the following points: starting at Point 1 in

position 26°07'10" N, 80°08'52" W; thence southeast to Point 2 in position 26°07'05" N, 80°08'34" W; thence southwest to Point 3 in position 26°07'04" N, 80°08'35" W thence northwest to Point 4 in position 26°07'08" N, 80°08'52" W; thence north back to origin. All coordinates are North American Datum 1983.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Miami by telephone at 305-535-4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective Date.* This rule is effective from 11:59 a.m. until 2:30 p.m. on November 19, 2011.

Dated: July 8, 2011.

G.J. Depinet,

*Captain, U.S. Coast Guard, Acting Captain of the Port Miami.*

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#### NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

#### 36 CFR Part 1258

[NARA-11-0002]

RIN 3095-AB71

#### NARA Records Reproduction Fees

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

**ACTION:** Proposed rule.

**SUMMARY:** NARA is proposing to change its regulations to add the methodology for creating and changing records reproduction fees, to remove records reproduction fees found in its regulations, and to provide a notification process for the public of new or proposed fees. This proposed rule covers reproduction of Federal or Presidential records accessioned, donated, or transferred to NARA. This rule will affect members of the public.

**DATES:** Comments are due by September 20, 2011

**ADDRESSES:** NARA invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* Submit comments by facsimile transmission to 301-837-0319.

- *Mail:* Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Planning Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001.

- *Hand Delivery or Courier:* Deliver comments to 8601 Adelphi Road, College Park, MD.

**FOR FURTHER INFORMATION CONTACT:** Stuart Culy on (301) 837-0970.

**SUPPLEMENTARY INFORMATION:** The National Archives Trust Fund Board (NATF) supports the programs of NARA through a variety of activities, including the servicing of requests for the reproduction of records. Researchers may order electrostatic, digitized and microfilm copies of textual (paper) records, reproductions of still pictures, motion pictures, sound records, videotapes, maps, architectural drawings, computer data sets, and other records. NARA is proposing to remove from the Code of Federal Regulations (CFR) the fees for reproduction of Federal or Presidential records accessioned, donated, or transferred to NARA and maintain its fee schedule on NARA's Web site <http://www.archives.gov>. The proposed regulations will provide a notification process to advise the public on new fees or revisions to existing fees and it will also provide the methodology for creating and changing fees.

#### NARA's Reproduction Fee Methodology

The statutory authority for the NARA Trust Fund provides for the recovery of their costs plus 10 percent. Records reproduction fees are developed by the

process as contained in the proposed regulations. The current fees are based on the usual costs, such as salaries, equipment, travels, and supplies. However, NARA also has some unique circumstances in the development of its costs because of the unique characteristics of the records such as the fragility of the documents that necessitate additional manual handling or the varying degree of legibility of the original documents. If the information on the original document is faint or too dark, it requires additional time to obtain a readable image.

In TABLE 1 below, the National Archives Trust Fund (NATF) illustrates its baseline costs for records reproductions in DC-area and regional archives for fiscal year 2010.

TABLE 1—NATF RECORDS REPRODUCTION COSTS TO BE RECOVERED

Cost item	FY 2010
Salaries and benefits .....	\$1,848,646
Travel and transportation .....	69,559
Rent, communications and utilities .....	225,184
Printing and reproductions .....	11,779
Consulting and other services ..	733,736
Payments to other agencies/funds .....	2,961,849
Supplies and materials .....	243,475
Depreciation .....	0
System upgrades/replacement	400,000
<b>Total .....</b>	<b>6,494,228</b>

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small entities.

#### List of Subjects in 36 CFR Parts 1258

Archives and records.

For the reasons set forth in the preamble, NARA revises part 1258 of title 36, Code of Federal Regulations., to read as follows:

#### PART 1258—FEES

Sec.

1258.1 What are the authorities for this part?

1258.2 What definitions apply to the regulations in part 1258?

1258.4 What costs make up the NARA fees?

1258.6 How does NARA calculate fees for individual products?

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1258.10 How does NARA develop and publicize new records reproduction fees?

1258.12 When does NARA provide reproductions without charge?

1258.14 What is NARA's payment policy?

1258.16 What is NARA's refund policy?

1258.18 Where can I find NARA's current fees and order reproductions?

**Authority:** 44 U.S.C. 2116(c) and 44 U.S.C. 2307

#### § 1258.1 What are the authorities for this part?

The regulations in this part implement the provisions of 44 U.S.C. 2116(c) and 44 U.S.C. 2307.

#### § 1258.2 What definitions apply to the regulations in part 1258?

*Accession* means the method of acquiring archival records or donated materials from various Governmental bodies.

*Archival records* means records that have been accessioned into the legal custody of NARA, donated historical materials in the legal custody of NARA and its Presidential libraries, and Congressional, Supreme Court, and other historical materials in NARA's physical custody and for which NARA has a formal agreement for their permanent retention.

*Certification* means affixing a seal to copies certifying the copies are a valid reproduction of a file; this service is available for an additional fee.

*Cost* means the total amount of money spent by the NATF for providing services including, but not limited to, salaries; benefits; rent; communication and utilities; printing and reproductions; consulting and other services; payments to other agencies/funds; supplies and materials; depreciation; system upgrades/replacements; etc.

*Custodial units* mean NARA's Federal Records Centers, National Personnel Records Center, archival reference operations nationwide, and Presidential Libraries.

*Fee* means the price researchers pay for reproductions of records. Certification of records is also a reproduction fee.

*Records center records* means Federal records in the physical custody of NARA records centers, but still in the legal custody of the agencies that created and maintained them.

#### § 1258.4 What costs make up the NARA fees?

(a) 44 U.S.C. 2116(c) allows the NATF to recover all of its costs for providing records reproduction services to the public. The vast majority of materials that are reproduced are from the holdings of NARA, which require special handling, due to the age, condition and historical significance. Examples of special handling include the following:

(1) *The placement of each record by hand on the reproduction equipment.* Many of the records are fragile and have historical uniqueness; reproduction equipment operators must take great care in handling these records. For example, each page of a document must be carefully placed by hand on the reproduction equipment, a copy made, the page removed, and the process re-started.

(2) *Clarity and legibility of the reproduced records.* Older records may be handwritten and darkened from age, which requires extra time to make sure we produce copies that are as clear and legible as possible.

(3) *Inability to use automatic document feeders.* Because of the requirements in (1), automatic document feeders cannot be used for the duplication of paper materials. This adds time and cost to the price of copying these irreplaceable documents.

(b) The NATF costs, at a minimum, include:

(1) Salaries and benefits of the NATF staff involved in all aspects of the records reproduction process (includes, but is not limited to, compensation for full- and part-time employees, temporary appointments, overtime, awards, Civil Service Retirement Service and Federal Employees' Retirement System contributions, health benefits, life insurance benefits and Thrift Savings Plan contributions).

(2) Travel and transportation (includes, but is not limited to, travel and transportation of persons, transportation of things, and contract mail service).

(3) Rent, communications and utilities (includes, but is not limited to, telecommunications, equipment rental, and postage).

(4) Printing and reproductions (includes, but is not limited to, commercial printing, advertising, and printing of forms).

(5) Consulting and other services (includes, but is not limited to, management and professional services, contract labor, work performed in support of reproduction orders, and maintenance of equipment).

(6) Payments to other agencies/funds (includes, but is not limited to, reimbursements and payments to other agencies and other funds within NARA). Specifically, the NATF "hires" the NARA custodial units to do reproduction work. In return, the NATF reimburses the custodial units for the cost of salaries and benefits.

(7) Supplies and materials (includes, but is not limited to, general supplies, and materials and parts).

(8) Depreciation (spreading the cost of an asset over the span of several years).

(9) System upgrades/replacement (includes, but is not limited to, installation of operating equipment, software upgrades, and system changes).

#### **§ 1258.6 How does NARA calculate fees for individual products?**

NARA calculates the fees for individual products using the following:

(a) *Cost Summary.* A summary of all costs incurred by the NATF in providing records reproduction services.

(b) *Percent of Revenue.* The percentage of the total NATF revenue represented by sales of a product. This is determined and used where a more accurate percentage based upon actual usage is not available. To calculate this percentage, an analysis is made to determine the current percent of NATF sales revenue represented by each product line. The sales volume is then reviewed with the custodial units to determine if this represents anticipated sales.

(c) *Actual Cost Percent Calculation.* Using the information calculated in the Cost Summary, the actual revenue cost percentage is determined. In some cases, the actual percentage of cost can be calculated from available data or known constraints of the product line. For example, if the contractor responsible for providing copy support does not support the reproduction of a given product line then zero (0) percent of the contractor's costs would be allocated to that product line.

(d) *Forecasted Volume.* The prediction of a product's sales volume in future year(s). These estimates are made by working with the custodial units and taking into account historical sales volume. An annual percent change is then estimated.

(e) *Reimbursements to the Custodial Units.* The amount paid to the custodial units for records reproductive services in support of NATF customer orders. The NATF reimburses the custodial units for services rendered to the NATF for the reproduction of NARA holdings. To determine the reimbursement per copy for an item, past reimbursement fees are changed by the compounded annual Government salary changes as issued by the Office of Personnel Management for the fiscal years being projected. The new rates are reviewed with custodial unit personnel and adjustments are made as required.

(f) *Additional Cost Allocation.* The costs unique to a given product line. Each product line is evaluated to determine the costs that are unique to that product line, such as purchase and installation costs of specialty

equipment, replacement costs for aging equipment, copier leases and maintenance costs, etc. These costs are then allocated against those product lines that use the equipment. Where costs cross product lines, the allocations are apportioned based upon the percent of the estimated copy volume for each product line.

(g) *Fee Calculation.* The product fee is calculated by the following formula:  $\{[(\text{Percent of Revenue} * \text{NATF Overhead Costs}) + \text{Reimbursement} + \text{Additional Costs}] / \text{Projected Sales Volume}\}$

This calculation is completed for each product.

(h) *Final Review.* After the suggested new fees are calculated, NATF reviews them to establish the final fees. Fees may be adjusted across product lines to ensure that the NATF can succeed in total cost recovery.

#### **§ 1258.8 How does NARA change fees for existing records reproductions?**

(a) The NATF conducts periodic reviews of its fees to ensure that the costs of providing services to the public are properly recovered.

(b) Existing records reproduction fees may be adjusted annually based on the following factors:

(1) Inflation.

(2) The Office of Personnel Management (OPM) salary changes.

(3) Reallocation of shared costs across product lines using the methodology described in § 1258.6.

(4) The projected sales volume for the product.

(5) The actual sales volume for the product.

(6) The approval of the Archivist of the United States.

(c) NARA will place a notice on our Web site (<http://www.archives.gov>) annually when announcing that records reproduction fees will be adjusted in accordance with this regulation.

#### **§ 1258.10 How does NARA develop and publicize new records reproduction fees?**

(a) Custodial units prepare a justification proposal for a proposed records reproduction service and send the justification to the custodial unit office head, through appropriate channels, for concurrence and forwarding to NATF. The justification proposal includes, at a minimum, the following information:

(1) Estimated monthly volume of product orders based on available historical data;

(2) Identification of the equipment and supplies required to provide the product and service;

(3) Brief description of the process required to provide the product and

service, including the amount of time for each number and grade level of staff.

(4) Identification of any services or products that will be replaced by the proposed products and services;

(5) Identification of other NARA units that may have a demand for the proposed services; and

(6) Any other relevant information.

(b) After receiving the proposal, NATF staff:

(1) Assesses the potential customer base for the proposed products and services, consulting other NARA offices.

(2) If the potential demand does not warrant establishing fees for new records reproduction products and services, NATF notifies the proposing office that the new product and service are not approved and the reasons why.

(3) If the potential demand warrants, NATF prepares a cost analysis following the methodology in § 1258.6 and develops a proposed recommended fee for review by NARA's Financial Resources Division and approval by the Archivist of the United States.

(c) Notification of new records reproduction services and trial periods:

(1) The public will be notified of new records reproduction services, including the business case for determining initial fee, on-line at <http://www.archives.gov>, by press releases, and through NARA's social media outlets.

(2) New records reproduction services fees have an initial trial period of one year. During this time, the public is encouraged to provide feedback to NARA about the new records reproduction services and their fees as directed in the notification of the new services.

(3) Prior to the expiration of a trial period, NATF will assess the validity of the fees for the new records reproduction products and services, and make one of three determinations:

(i) Retain products, services and fees;  
(ii) Retain products or services but adjust fees up or down; or  
(iii) Discontinue products or services.

(d) The public will be notified of NATF determination, including business case for determination, in NARA research rooms nationwide, on-line at <http://www.archives.gov>, press releases, and through NARA's social media outlets.

#### § 1258.12 When does NARA provide records reproductions without charge?

At the discretion of the Secretary of the NATF, customers are not charged a fee for records reproductions or certifications in the instances described in this section.

(a) When NARA furnishes copies of records to other elements of the Federal

Government. However, a fee may be charged if the appropriate director determines that the service cannot be performed without reimbursement;

(b) When NARA wishes to disseminate information about its activities to the general public through press, radio, television, and newsreel representatives;

(c) When the reproduction is to furnish the donor of a document or other gift with a copy of the original;

(d) When the reproduction is for individuals or associations having official voluntary or cooperative relations with NARA in its work;

(e) When the reproduction is for a foreign, State, or local government or an international agency and furnishing it without charge is an appropriate courtesy; and

(f) For records of other Federal agencies in NARA Federal records centers only:

(1) When furnishing the service free conforms to generally established business custom, such as furnishing personal reference data to prospective employers of former Government employees;

(2) When the reproduction of not more than one copy of the document is required to obtain from the Government financial benefits to which the requesting person may be entitled (e.g., veterans or their dependents, employees with workmen's compensation claims, or persons insured by the Government);

(3) When the reproduction of not more than one copy of a hearing or other formal proceeding involving security requirements for Federal employment is requested by a person directly concerned in the hearing or proceeding; and

(4) When the reproduction of not more than one copy of a document is for a person who has been required to furnish a personal document to the Government (e.g., a birth certificate required to be given to an agency where the original cannot be returned to the individual).

#### § 1258.14 What is NARA's payment policy?

Fees may be paid:

(a) By check or money order made payable to the *National Archives Trust Fund*.

(b) By selected credit cards.

(c) Payments from outside the United States must be made by international money order payable in U.S. dollars or a check drawn on a U.S. bank.

(d) In cash (note that some locations do not accept cash).

#### § 1258.16 What is NARA's refund policy?

Due to the age, original media type, and general condition of many of the items in NARA's holdings, it is occasionally difficult to make a legible reproduction. NARA staff will notify customers if they anticipate that the original will result in a reproduction of questionable legibility before requesting the reproduction and after approval of the customer. After a records reproduction is completed, the product undergoes a review to determine if it is an accurate representation of the original item. Because of the preapproval process, NARA does not provide refunds except in special cases. If a customer requests a refund, a review is made of the order to determine if the customer was properly notified of the questionable nature of the original and if the product is a true representation of the original. If the customer authorized proceeding and the product is a true representation of the original, no refund will be issued.

#### § 1258.18 Where can I find NARA's current fees and information on how to order reproductions?

(a) NARA's fee schedule and ordering portal are located at <http://www.archives.gov>.

(b) Fee schedules for reproductions made from the holdings of Presidential libraries may differ because of regional cost variations. Presidential library fee schedules are available at <http://www.archives.gov/presidential-libraries/>. Some services may not be available at all NARA facilities.

(c) In order to preserve certain records which are in poor physical condition, NARA may restrict customers to photographic or other kinds of duplication instead of electrostatic copies.

Dated: July 15, 2011.

**David S. Ferriero,**

*Archivist of the United States.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 51

[EPA-R09-OAR-2011-0130; FRL-9442-3]

### Regional Haze State Implementation Plan; State of Nevada; Extension of Comment Period

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

**ACTION:** Proposed rule; Extension of public comment period.