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(f) You must turn off any lights used with the camera when the camera is not in actual operation.

(g) You may operate microfilm equipment only in the presence of the research room attendant or a designated NARA employee. If NARA places microfilm projects in a common research area with other researchers, the project will not be required to pay for monitoring that is ordinarily provided. If the microfilm project is performed in a research room set aside for copying and filming, we charge the project fees for these monitoring services and these fees will be based on direct salary costs (including benefits). When more than one project share the same space, monitoring costs will be divided equally among the projects. We specify the monitoring service fees in the written agreement required for project approval in § 1254.102(h).

(h) The equipment normally should be in use each working day that it is in a NARA facility. The director of the NARA facility (as defined in § 1252.2 of this chapter) decides when you must remove equipment because of lack of regular use. You must promptly remove equipment upon request of the facility director.

(i) We assume no responsibility for loss or damage to microfilm equipment or supplies you leave unattended.

(j) We inspect the microform output at scheduled intervals during the project to verify that the processed film meets the microfilm preparation and filming standards required by part 1230 of this chapter. To enable us to properly inspect the film, we must receive the film within 5 days after it has been processed. You must provide NARA with a silver halide duplicate negative of the filmed records (*see* § 1254.100(g)) according to the schedule shown in paragraph (k). If the processed film does not meet the standards, we may require that you refilm the records.

(k) When you film 10,000 or fewer images, you must provide NARA with a silver halide duplicate negative upon completion of the project. When the project involves more than 10,000 images, you must provide a silver halide duplicate negative of the first completed roll or segment of the project reproducing this image count to NARA for evaluation. You also must provide subsequent completed segments of the project, in quantities approximating 100,000 or fewer images, to NARA within 30 days after filming unless we approve other arrangements.

(l) If the microfilming process is causing visible damage to the documents, such as flaking, ripping, separation, fading, or other damage, filming must stop immediately and until the problems can be addressed.

§ 1254.110 Does NARA ever rescind permission to microfilm?

We may, at any time, rescind permission to microfilm records if:

(a) You fail to comply with the microfilming procedures in § 1254.108;

(b) Inspection of the processed microfilm reveals persistent problems with the quality of the filming or processing;

(c) You fail to proceed with the microfilming or project as indicated in the request, or

(d) The microfilming project has an unanticipated adverse effect on the condition of the documents or the space set aside in the NARA facility for microfilming.

(e) You fail to pay NARA fees in the agreed to amount or on the agreed to payment schedule.

PART 1256—ACCESS TO RECORDS AND DONATED HISTORICAL MATERIALS

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AUTHORITY: 44 U.S.C. 2101–2118; 22 U.S.C. 1461(b); 5 U.S.C. 552; E.O. 12958 (60 FR 19825, 3 CFR, 1995 Comp., p. 333; E.O. 13292, 68 FR 15315, 3 CFR, 2003 Comp., p. 196; E.O. 13233, 66 FR 56023, 3 CFR, 2001 Comp., p. 815.

SOURCE: 69 FR 39325, June 30, 2004, unless otherwise noted.

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, Supreme Court, Senate, House of Representatives, and Architect of the Capitol 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 FRCs receive requests that should have been sent to the agency, 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.

§ 1256.6 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 Subpart B.

§ 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.

§ 1256.28 Does NARA make any exceptions for access to records containing privacy-restricted information?

(a) *NARA policy*. Access to archival records containing information access to which would invade the privacy of an individual is restricted by § 1256.56.

(1) NARA may authorize access to such records for the purpose of research to qualified persons doing biomedical or social science research under the conditions outlined in this section as long as the records do not also contain information restricted by statute or national security-classified information.

(2) If NARA is able to make a copy of such records with all personal identifiers masked or deleted, NARA will make such a ''sanitized'' copy of the record available to all researchers in accordance with § 1256.24.

(3) NARA will not grant access to restricted census and survey records of the Bureau of the Census less than 72 years old containing data identifying individuals enumerated in population censuses in accordance with 44 U.S.C. 2108(b).

(b) *Request for access*. Researchers who wish to have access to records restricted by § 1256.56 to conduct biomedical or social science research must submit a written request to the NARA FOIA/Privacy Act Officer (NGC), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. OMB control number 3095–0002 has been assigned to this collection of information requirement. Researchers are encouraged to consult informally with NARA before submitting the formal request. The request must include the following information:

(1) Name and mailing address;

(2) Institutional affiliation and position, if applicable;

(3) List of published research, if applicable;

(4) References from two persons who have first-hand knowledge of the requester's qualifications to perform the research;

(5) A statement of the nature of the research to be conducted and any plans for publication or presentation of the research findings;

(6) A listing of all sources of grant funds supporting the research project or its publication;

(7) A statement of the methodology to be used;

(8) A statement of the administrative, technical, and physical safeguards to be employed by the researcher to prevent unauthorized use or disclosure of the records;

(9) A listing of the record groups and series titles to be used; and

(10) A statement that the researcher will abide by the conditions of access to be prescribed by NARA and that the researcher will assume responsibility for the action of all persons working with the researcher on the project.

(c) *Access Review Committee*. Requests made under paragraph (b) of this section will be reviewed by NARA's Access Review Committee, which is composed of the Deputy Archivist of the United States, the Assistant Archivist for the Office of Records Services—Washington, DC, the Assistant Archivist for the Official of Regional Records Services, and the director(s) of the NARA division(s) that has custody of the requested records. The Committee may consult other persons within and outside the Federal Government who are knowledgeable in the research field for assistance in evaluating a request.

(1) The Committee will examine the request to determine whether:

(i) The requested information is of such a highly sensitive personal nature that disclosure must not be permitted even for biomedical or social science research;

(ii) The methodology proposed by the requester will permit the researcher to obtain the projected research results without revealing personally identifying information;

(iii) The research results are intended to be published or presented at an academic or research conference;

(iv) The requester is a biomedical or social science researcher who has previous research experience and has submitted or intends to submit articles or books on such research for publication;

(v) The safeguards proposed by the requester will adequately protect the personal information; and

(vi) NARA has sufficient staff and space available to safeguard privacy interests necessary to accommodate the research project.

(2) The decision of the Committee will be made in writing to the requester within 15 workdays after receipt of a completed request. At the discretion of the Committee, the researcher may meet with the Committee to discuss the project or to discuss revising the research proposal to meet possible objections of the Committee.

(d) *Conditions of access.* Researchers who are granted access to restricted records, all others associated with the research project who will have access to personally identifiable information from the records, and the manager of any facility handling the records containing personal identifiers must agree in writing to maintain the confidentiality of the information and to adhere to the conditions of access imposed by NARA. NARA will impose the following conditions of access on any project; additional conditions may be imposed on the use of specific records or on specific projects:

(1) The records may be used only for the purpose of the research and for the reporting of research findings as described in the approved research project. The records may not be used for any other purpose;

(2) The records and any authorized copies of records may not be transferred to any person or institution not directly involved with the approved research project and subject to a written agreement to maintain confidentiality specified in § 1256.28(d);

(3) Reasonable administrative, technical, and physical safeguards, as approved by NARA, to prevent unauthorized use or disclosure of the records must be established by the researcher and followed by all persons associated with the project;

(4) When required by NARA, the records must be consulted at the NARA facility where the records are located;

(5) The researcher's notes must not contain any individually identifiable information. The researcher must use an alternate code system to render personally identifiable information as anonymous in all research notes;

(6) Persons who are identified in the records may not be contacted by or on behalf of the researcher;

(7) Before publication or public presentation of the data, the final research product(s) must be provided to the Deputy Archivist of the United States for review. NARA's review is limited to ensuring that there is no possible identification of individuals in the research findings. NARA will not evaluate the validity of the research findings.

(e) *Noncompliance with conditions of access.* If we discover that a researcher has violated any of the conditions of access, we will take steps to revoke the NARA research privileges of that person and will consult with NARA's General Counsel or his or her designee to determine any other steps to be taken to prevent any further disclosure of the personal information concerned. NARA may also inform the following persons and organizations of the researcher's failure to follow the conditions of use:

(1) The institution with which the researcher is affiliated, if applicable;

(2) Persons who served as references in the application for access;

(3) Organizations that provided grant funds for the project;

(4) The sponsor of the publication or public presentation; and

(5) Appropriate professional organizations.

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 to:

(a) NARA employees for work purposes;

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

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

(d) The subject of the records in some cases or the subject's authorized agent.

§ 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. 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. See 36 CFR 1250.82 for additional regulatory guidance.

§ 1256.54 Inter- and intra-agency memoranda (subject to privilege).

(a) In accordance with 5 U.S.C. 552(b)(5), NARA may withhold information found in inter-agency or intra-agency records if that information is subject to a legally recognized privilege, including the:

(1) Deliberative process privilege;

(2) Attorney work product privilege; and

(3) Attorney-client privilege.

(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 the harm that the privilege was intended to protect or confidential attorney-client communications.

§ 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. 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:

(1) Specific records because enough time has passed that the privacy of living individuals is not compromised; or

(2) Researchers for the purpose of biomedical and social science research when such researchers have provided NARA with adequate written assurance that the record(s) will be used solely as a research or reporting record and that no individually identifiable information will be disclosed.

§ 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 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, 3 CFR, 2003 Comp. 196), 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 agency 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, 3 CFR, 2003 Comp., p. 196).

(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
(1) Presidential records and donated historical materials at a Presidential library.	The appropriate library cited in 36 CFR part 1253.
(2) Nixon Presidential materials.	Director, Nixon Presidential Materials Staff (NLNS), 8601 Adelphi Road, College Park, MD 20740–6001.
(3) Presidential materials maintained in the Washington, DC, area.	Director, Presidential Materials Staff (NLMS), 700 Pennsylvania Avenue, NW., Washington, DC 20408.
(4) 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 Adelphi Road, College Park, MD 20740–6001.
(5) 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 provide declassification guidance and delegate declassification authority 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 requesters 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 section 4.4 of E.O. 12958, as amended, 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 of E.O. 12958, 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 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 § 1228.266(e) of this chapter, will also transfer any production or title files bearing on the ownership of rights in the productions in connection with USIA's official overseas programming.

§ 1256.98 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 copyright 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 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.

PART 1258—FEES

Sec.

1258.1 [Reserved]
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AUTHORITY: 44 U.S.C. 2116(c) and 44 U.S.C. 2307.

SOURCE: 76 FR 62632, October 11, 2011, unless otherwise noted.

§ 1258.1 [Reserved]

§ 1258.2 What definitions apply to the regulations in this part?

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.