

the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

#### Environmental Assessment

The Coast Guard has considered the environmental impact of this action consistent with section 2.B.2. of Commandant Instruction M16475.1B. In accordance with that section, this action has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An environmental assessment and a finding of no significant impact have been prepared and are available in the docket for inspection or copying.

#### List of Subjects in 33 CFR Part 100

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

#### Temporary Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

#### **PART 100—[AMENDED]**

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T96–028 is added to read as follows:

#### **§ 100.35–T96–028 River Race Augusta; Savannah River, Augusta GA.**

##### (a) *Definitions:*

(1) *Regulated Area.* The regulated area is formed by a line drawn directly across the Savannah River at the U.S. Highway 1 (Fifth Street) Bridge at mile marker 199.45 and directly across the Savannah River at Eliot's Fish Camp at mile marker 197. The regulated area encompasses the width of the Savannah River between these two lines.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Charleston, South Carolina.

##### (b) *Special Local Regulations.*

(1) Entry into the regulated area is prohibited to all non participants.

(2) After termination of the River Race Augusta each day, and during intervals between scheduled events, at the discretion of the Coast Guard Patrol Commander, all vessels may resume normal operations.

(c) *Effective Dates:* This section is effective at 7 a.m. and terminates at 5 p.m. EST on May 17, 18 and 19, 1996, unless otherwise specified in the

Seventh Coast Guard District Local Notice to Mariners.

Dated: April 10, 1996.

P.J. Cardaci,

*Captain U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.*

[FR Doc. 96–9880 Filed 4–22–96; 8:45 am]

BILLING CODE 4910–14–M

## **NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

### **36 CFR Part 1275**

RIN 3095–AA59

#### **Preservation and Protection of and Access to the Presidential Historical Materials of the Nixon Administration; Amendment of Public Access Regulations**

**AGENCY:** National Archives and Records Administration.

**ACTION:** Final rule and interim final rule.

**SUMMARY:** This rule revises the procedures to be followed by the National Archives and Records Administration (“NARA”) for preserving and protecting the Presidential historical materials of the Nixon Administration, for providing public access to these materials, and for providing for the reproduction of the Nixon White House tape recordings, based on a Settlement Agreement reached through mediation among Public Citizen and Stanley I. Kutler, the National Archives and Records Administration, and William E. Griffin and John H. Taylor, co-executors of the Estate of Richard M. Nixon, parties to *Stanley I. Kutler and Public Citizen v. John W. Carlin, Archivist of the United States, and William E. Griffin and John H. Taylor, Co-executors of Richard M. Nixon's Estate*, Civ. A. No. 92–0662–NHJ (D.D.C.) (Johnson, J.). Furthermore, the final rule clarifies various terms that appear in 36 CFR Part 1275. This final rule and interim final rule will affect the heirs of former President Nixon and other individuals whose names appear in the materials, as well as members of the general public interested in conducting research regarding those materials.

**DATES:** The effective date for this final rule and interim final rule is May 23, 1996.

Comments on the amendments to §§ 1275.42, 1275.48, and 1275.64 must be received by close of business June 24, 1996. NARA will issue a final rule confirming or further amending these amendments after this comment period closes.

**ADDRESSES:** All comments must be submitted in writing to the Regulation Comment Desk, Policy and Planning Division (PIRM-POL), Room 3200, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

**FOR FURTHER INFORMATION CONTACT:** Nancy Allard at (301) 713–6730.

**SUPPLEMENTARY INFORMATION:** Professor Stanley Kutler and Public Citizen commenced an action against the Archivist of the United States on March 19, 1992, by filing a complaint under the Administrative Procedure Act, 5 U.S.C. 701, *et seq.* The complaint alleged that the Archivist had failed to carry out his obligations under the Presidential Recordings and Materials Preservation Act of 1974 (“PRMPA”), 44 U.S.C. 2111 note, concerning the release of approximately 3,700 hours of tape recordings made during the Presidency of Richard M. Nixon. Thereafter, former President Nixon intervened and filed cross-claims; after his death in 1994, his co-executors were substituted in his place.

During the course of the litigation, which entailed substantial discovery and motions, the principal disputes revolved around the issue of how to reconcile the disclosure requirements of the PRMPA and the privacy interests of Mr. Nixon and his family, as well as the other interests legally protected by the PRMPA. A major portion of the controversy centered on the issue of the timing of releases of the tapes (all at once or in segments), and whether the releases could be made before some or all of the tape segments found to be private or personal were returned to Mr. Nixon or his estate as required by law.

Following the release of approximately 60 hours of tape recordings subpoenaed by the Watergate Special Prosecution Force (“WSPF”) during its investigation, NARA had decided that the best way to proceed with the release of the body of the approximately 3,700 hours of Nixon White House tape recordings was to release Watergate-related segments of the tape recordings in small monthly groupings on an ongoing basis. The first of these releases was noticed in the Federal Register on April 2, 1993, 58 FR 17433, and took place on May 17, 1993, without any objections from affected parties.

The second and third releases were noticed in the Federal Register on June 3, 1993, and July 2, 1993, to take place on July 15, 1993 (later extended to August 13, 1993), and August 26, 1993, respectively. 58 FR 31548 (June 3, 1993); 58 FR 35983 (July 2, 1993).

Former President Nixon raised certain objections to these proposed releases. When NARA rejected former President Nixon's contention that those releases should not go forward, he sought relief in the district court. On August 9, 1993, Judge Royce Lamberth of the United States District Court for the District of Columbia issued an order in the *Kutler* case preliminarily enjoining NARA from carrying out the releases of Watergate-related tape segments scheduled for release on August 13 and 26, 1993, pending (1) segregation and return to former President Nixon of all private or personal conversations on the tape recordings; and (2) processing of the tape recordings as a single "integral file segment" before release to the public.

On March 25, 1994, the proposed amendments to the current PRMPA regulations were published for public comment at 59 FR 14128. At that time, NARA believed that the proposed amendments were required to clarify various terms that appear in 36 CFR Part 1275; clarify the nature of the archival processing being conducted on the Nixon Presidential historical materials; and provide for the reproduction of the available Nixon White House tape recordings.

During the comment period, originally 60 days but extended by an additional 30 days, 59 FR 27257 (May 26, 1994), NARA received comments from eight individuals and organizations in response to these proposed regulations. The comments consisted of both objections to and support for the proposed amendments, although many of the comments were generally supportive of the proposed regulatory changes. The Nixon estate submitted extensive comments objecting to the proposed amendments.

The *Kutler* case was referred to a court-appointed mediator, and most of the issues were resolved by the parties in a Settlement Agreement, which is attached hereto as Appendix A to 36 CFR Part 1275. As a result of the mediation, NARA is amending certain of its regulations as set forth below. Other comments have been incorporated into this final and interim final rule. Although NARA does not take a position as to whether it is necessary to resubmit the proposed changes to the regulations as a result of the Settlement Agreement, NARA nevertheless is publishing as an interim final rule for a 60-day comment period those sections of Part 1275 which have been revised in accordance with the provisions of the Settlement Agreement reached among the parties. Those sections of the proposed rule published on March 25, 1994, that have not been further revised

due to the Settlement Agreement are issued as a final rule. No additional comments will be considered on these sections, which include 36 CFR 1275.16(e) and (g), 1275.20, 1275.46, 1275.56, 1275.66 and 1275.70. NARA had previously proposed to amend § 1275.16(b), but now has decided that an amendment to this section is not necessary. NARA is amending the current regulations in accordance with the terms of the Settlement Agreement.

#### Interim Final Rule Provisions (Sections Affected by the Settlement Agreement)

The following amended sections of 36 CFR Part 1275 are being issued as an interim final rule to allow public comment.

NARA had previously proposed to amend § 1275.42(a) to clarify the manner in which NARA intends to proceed with the archival processing and release of the tape recordings and all other textual Nixon Presidential historical materials. To address these concerns, the proposed amendments to § 1275.42(a) would have allowed the release of the tape recordings in groupings that would not necessarily have constituted "integral file segments," but which would have permitted the opening of portions of the tape recordings without the need for the approximately 3,700 hours to be released at once. The current regulations provide that Nixon White House materials will be disclosed to the public in "integral file segments."

As a result of the Settlement Agreement in the *Kutler* case, NARA is now amending § 1275.42(a) to describe specifically the schedule for the opening of the approximately 3,700 hours of tape recordings, as well as the procedures for allowing interested and affected parties—including the Nixon estate—the opportunity to review (and object as appropriate to) a particular segment of tape recordings being proposed for opening. The Settlement Agreement also takes into account the fact that due to the extensive nature of the tape recordings collection, it would be impossible for the Nixon estate to review all portions of the tape recordings proposed for opening within the allotted 30-day period. As a result, the current revised amendments to § 1275.42(a) incorporate a procedure whereby the Nixon estate will be given sufficient lead time to review each segment of tape recordings NARA proposes for opening.

In addition, the previously proposed amendments to § 1275.42(a) provided that the Archivist was free to release segments of the tape recordings prior to transferring private or personal material

in accordance with current § 1275.48, thereby allowing NARA to continue processing and opening Watergate-related segments of the tape recordings at the earliest reasonable date, in accordance with its statutory and regulatory responsibility. Based on the Settlement Agreement in the *Kutler* case, however, NARA is now amending § 1275.42(a)(2) to allow for identification of additional private or personal materials located during the review of the tape recordings and return to the Nixon estate at approximately the time that NARA proposes each segment for public release.

In accordance with the Settlement Agreement in the *Kutler* case, NARA is amending § 1275.44 by adding a new subsection (e) which sets forth the precise procedures for the Nixon estate to raise any objections to those tape recordings that NARA has designated as relating to abuses of governmental power, as well as the standard to be applied by the specially appointed review panel in reviewing those objections. For those segments designated abuses of governmental power, the Nixon estate has agreed to accept the review panel's decisions as binding, thereby foregoing its right to appeal decisions regarding its objections in the normal course pursuant to § 1275.46. In addition, although the Nixon estate has not waived its appeal rights available for any objections with respect to the remaining tape segments, subsection (e) provides that the Nixon estate may, at any time, elect to use the procedures used for raising objections to the abuses of governmental power tape segments. Subsection (e) also specifies the standard that will be applied by the specially appointed review panel in reviewing the objections to the remaining tape recordings should the Nixon estate elect to use the alternative procedure.

NARA is amending § 1275.48(a) to make clear that no portion of the original tape recordings or master preservation copy is to be returned to the heirs of former President Nixon. NARA's position is that it is complying with the PRMPA by retaining the entire original tape recordings and a master preservation copy containing these materials. This is one of the issues in the *Kutler* case and the parties to the Settlement Agreement have agreed to resolve this issue, including the validity of this particular section and of § 1275.64(e), in the courts. NARA is also amending this section to make clear that it restricts access to all private or personal material on the original tape

recordings and master preservation copy that NARA maintains.

NARA had previously proposed to amend § 1275.64 to include a provision allowing for the reproduction of tape recordings opened to the public. The issue of whether to provide copies of tape recordings has been considered by NARA on several occasions. At the time the current regulations were written, NARA decided to maintain its prior position of not allowing copies of tape recordings, although it specifically stated that this position would be reviewed periodically. 51 FR 7228 (Feb. 28, 1986). In accordance with the Settlement Agreement in the *Kutler* case, § 1275.64 is being amended to state that copies of the tapes will be made available following the public release of the last of the tape segments contemplated in § 1275.42(a). However, if the last tape segment is not released by December 31, 1999, NARA will allow members of the public to obtain copies only of the abuses of governmental power tapes, together with any other tapes publicly released as of the effective date of the Settlement Agreement, beginning January 1, 2000. If the releases contemplated in § 1275.42(a) are not completed by December 31, 2002, NARA will, beginning January 1, 2003, allow members of the public to obtain copies of all tapes that have been made available to the public by that date and tapes that subsequently become available, as they are released. NARA is also adding § 1275.64(e) to make clear that the Archivist will produce and maintain a master preservation copy of the original tape recordings for preservation purposes.

#### Final Rule Provisions

The following amendments to 36 CFR Part 1275 are being adopted as a final rule. No comments will be accepted on these provisions.

Section 1275.16(e) clarifies the nomenclature used throughout the regulations and distinguishes between "Archivist," defined as the Archivist of the United States or his or her designated agent, and "archivist," as defined in the current subsection, *i.e.*, as an employee of NARA, who, by education or experience, is specially trained in archival science.

Section 1275.16(g) clarifies the definition of "archival processing" to ensure that nothing in the subsection creates any obligation on the part of the Archivist to perform any one particular archival processing task listed in the subsection. In so doing, NARA intends to make clear that transcripts of the tape recordings need not be made. Although

the current regulations indicate that the processing of the Nixon White House materials may undergo one or more of several archival processing phases, including the preparation of transcripts, NARA does not believe that the regulations intended to obligate the processing archivists to transcribe all of the approximately 3,700 hours of tape recordings before releasing them to the public. NARA does not believe this is an obligation because the tapes are the original record. NARA has created tape logs to serve as a subject guide to the tape recordings. NARA chose to create tape logs instead of transcriptions because NARA has estimated that it would take at least 400,000 hours of staff time to accomplish such transcriptions. In addition, because of the sound quality of the tape recordings, NARA could not guarantee the accuracy of the transcriptions. Furthermore, the definition of "archival processing" in § 1275.16(g) has been expanded to reflect the archival processing of the Nixon Presidential historical materials that actually has been taking place.

Section 1275.20 is amended to be consistent with the amended definition of "Archivist" set forth in amended § 1275.16(e).

Sections 1275.46(d) and 1275.46(f) are amended to be consistent with the amended definition of "Archivist" set forth in amended § 1275.16(e).

Section 1275.64(b) is also amended to be consistent with the nomenclature distinction between "Archivist" and "archivist" as set forth in § 1275.16(e).

Section 1275.66(a) is amended to accommodate two different possibilities with respect to the reproduction of released Nixon materials other than tape recordings: copying by researchers on self-service government copiers; and copying by contract vendors at the request of NARA. This change reflects not only current practice at the Nixon Presidential Materials Staff, but common practice at other Presidential libraries within the NARA system as well as NARA regulations regarding copying of archival documents.

Sections 1275.70(a) and 1275.70(b) are amended to be consistent with the nomenclature distinction between "Archivist" and "archivist" as set forth in § 1275.16(e).

Typographical corrections are made to § 1275.46(i) and § 1275.56.

#### Other

NARA has issued these regulations as an interim final rule under the good cause exception to the Administrative Procedures Act. NARA believes that the proper execution of the agency's function—in this case, the release of the

Nixon Presidential historical materials at the earliest reasonable date—requires prompt implementation of the amendments to Part 1275, including the provisions that have been modified by the Settlement Agreement. Therefore, NARA finds it in the public interest to issue these regulations as an interim final rule.

The amendments to 36 CFR Part 1275 are not a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993. As required by the Regulatory Flexibility Act, it is hereby certified that these regulatory amendments will not have a significant impact on small business entities. For purposes of Title II, Subtitle E of Public Law 104–121, this rule is not a major rule as defined in section 804 of the act.

#### List of Subjects in 36 CFR Part 1275

##### *Archives and Records*

For the reasons set forth in the preamble above, Part 1275 of Title 36 of the Code of Federal Regulations is amended as follows:

#### **PART 1275—PRESERVATION AND PROTECTION OF AND ACCESS TO THE PRESIDENTIAL HISTORICAL MATERIALS OF THE NIXON ADMINISTRATION**

1. The authority citation for part 1275 continues to read as follows:

Authority: Sec. 102(a) of the National Archives and Records Administration Act of 1984, Pub. L. 98–497; 44 U.S.C. 2104; and sections 103 and 104 of the Presidential Recordings and Materials Preservation Act, 88 Stat. 1695; 44 U.S.C. 2111 note.

2. Section 1275.16 is amended by revising paragraphs (e) and (g) to read as follows:

#### **§ 1275.16 Definitions.**

\* \* \* \* \*

(e) *Archivist*. The term "Archivist" shall mean the Archivist of the United States or his designated agent. The term "archivist" shall mean an employee of the National Archives and Records Administration who, by education or experience, is specially trained in archival science.

\* \* \* \* \*

(g) *Archival processing*. The term "archival processing" may include the following general acts performed by archivists with respect to the Presidential historical materials: Shelving boxes of documents in chronological, alphabetical, numerical or other sequence; surveying and developing a location register and cross-index of the boxes; arranging materials; refoldering and reboxing the documents and affixing labels; producing finding

aids such as folder title lists, scope and content notes, biographical data, and series descriptions; rewinding, duplicating and preserving the original tape recordings; enhancing the tape recordings on which the conversations are wholly or partially unintelligible so that extraneous noises may be filtered out; producing general subject matter logs of the tape recordings; reproducing and transcribing tape recordings; reviewing the materials to identify items that appear subject to restriction; identifying items in poor physical condition and assuring their preservation; identifying materials requiring further processing; and preparation for public access of all materials which are not subject to restriction.

\* \* \* \* \*

3. Section 1275.20 is revised to read as follows:

**§ 1275.20 Responsibility.**

The Archivist is responsible for the preservation and protection of the Nixon Presidential historical materials.

4. Section 1275.42 is amended by revising paragraph (a) to read as follows:

**§ 1275.42 Processing period; notice of proposed opening.**

(a) (1) The archivists will conduct archival processing of those materials other than tape recordings to prepare them for public access. In processing the materials, the archivists will give priority to segregating private or personal materials and transferring them to their proprietary or commemorative owner in accordance with § 1275.48. In conducting such archival processing, the archivists will restrict portions of the materials pursuant to §§ 1275.50 and 1275.52. All materials other than tape recordings to which reference is made in § 1275.64 will be prepared for public access and released subject to restrictions or outstanding claims or petitions seeking such restrictions. The Archivist will open for public access each integral file segment of materials upon completion of archival processing of that segment.

(2) The archivists will conduct archival processing of the tape recordings to prepare them for public access in accordance with the provisions set forth in the Settlement Agreement (see Appendix A to this part). In conducting the archival processing of the tape recordings, the archivists will restrict segments of the tape recordings pursuant to §§ 1275.50 and 1275.52. The tape segments which consist of abuses of governmental power information, as defined in § 1275.16(c), will be given priority processing by the

archivists and will be prepared for public access and released following review and resolution of objections from the Nixon estate and other interested parties as set forth in the Settlement Agreement (see Appendix A to this Part). After the tape segments which consist of abuses of governmental power information have been released, the archivists will conduct archival processing of those tape recordings which were taped in the Cabinet Room, as set forth in the Settlement Agreement, Appendix A to this Part. Following release of the Cabinet Room tape recordings, the remaining tape recordings will be prepared for public access and released in five segments in accordance with the schedule set forth in the Settlement Agreement. In addition, NARA will identify and return any additional private or personal segments to the Nixon estate, at approximately the time that NARA proposes each segment for public release.

\* \* \* \* \*

5. Section 1275.44 is amended by adding new paragraph (e) to read as follows:

**§ 1275.44 Rights and privileges; right to a fair trial.**

\* \* \* \* \*

(e)(1) In place of the right to make all other objections with respect to the tape segments that NARA has designated as abuses of governmental power materials, the Nixon estate may object to their release only on the ground that such designation by NARA is clearly inconsistent with the term "abuses of governmental power" as used in § 104(a)(1) of the Presidential Recordings and Materials Preservation Act (PRMPA) and defined in § 1275.16(c), as qualified by § 1275.50(b). Any such objection may not be based on isolated instances of alleged failure by NARA to apply the appropriate review standard, but only on a pattern of misapplication of the requirements of the PRMPA and its implementing regulations. Further, any such objection must be accompanied by specific examples of alleged review errors and contain sufficient information to enable the review panel of three Presidential Library archivists appointed by the Archivist, as described in the Settlement Agreement, Appendix A to this Part, to locate those examples readily.

(2) If an objection is made by the Nixon estate to the abuses of governmental power tape segments, the matter shall be immediately referred to a panel of three Presidential Library archivists appointed by the Archivist as

set forth in the Settlement Agreement, Appendix A to this Part. The decision of the panel shall be either that the Nixon estate's objection is sustained or that it is rejected. The decision shall include a brief statement of the panel's reasons, but it need not include an item-by-item determination. In deciding whether the designation by NARA of the material proposed to be released is clearly inconsistent with the definition of "abuses of governmental power", the panel shall consider whether the release would seriously injure legitimate interests of identifiable individuals, whether the errors suggest a pattern of misinterpretation, and any other factor that bears on the issue of whether NARA's designation of material as relating to "abuses of governmental power" was reasonable, considered as a whole. The panel's decision shall be final and binding on all parties to the *Kutler* litigation, and no party may exercise any right to appeal to any person, board, or court that might otherwise be available.

(3) The Nixon estate may, at any time, elect to use the procedures outlined in paragraphs (e)(1) and (e)(2) of this section for the tape recordings other than the abuses of governmental power segments, except that the standard under which objections shall be made by the Nixon estate, and under which the review panel shall decide their merits, is whether the release taken as a whole is plainly inconsistent with the requirements of the Presidential Recordings and Materials Preservation Act of 1974 and these regulations. If the Nixon estate elects to use the procedures in paragraph 1 of the Settlement Agreement (Appendix A to this Part) in place of the provisions in paragraphs 4 (b) and (d) and 5(c) of the Settlement Agreement for a tape segment, the estate cannot subsequently revert back to the formal objection process set forth in this section for that tape segment.

**§ 1275.46 [Amended]**

6. Section 1275.46 is amended by removing in paragraph (d) and paragraph (f), wherever it appears, the term "Archivist of the United States" and adding in its place the term "Archivist," and by removing in paragraph (i)(2) the term "reasonably" and adding in its place the term "reasonably."

7. Section 1275.48 is amended by revising paragraph (a) to read as follows:

**§ 1275.48 Transfer of materials.**

(a) The Archivist will transfer sole custody and use of those materials determined to be private or personal, or

to be neither related to abuses of governmental power nor otherwise of general historical significance, to former President Nixon's estate, or, when appropriate and after notifying the Nixon estate, to the former staff member having primary proprietary or commemorative interest in the materials; however, no physical part of any original tape recording or a master preservation copy to which reference is made in § 1275.64 shall be transferred to the heirs of former President. NARA will maintain the original tape recordings and a master preservation copy, including the private and personal segments, in a manner consistent with the PRMPA and these regulations and will restrict access to all private or personal material on the originals and the master preservation copy.

\* \* \* \* \*

**§ 1275.56 [Amended]**

8. Section 1275.56 is amended by removing the term "administrative" and replacing it with the term "administrative."

9. Section 1275.64 is amended by removing in paragraph (b) the term "Archivists" and replacing it with the term "archivists" and adding new paragraphs (d) and (e) to read as follows:

**§ 1275.64 Reproductions of tape recordings of Presidential conversations.**

\* \* \* \* \*

(d) The reproduction for members of the public of the reference copies of the available tape recordings described in paragraph (a) of this section will be permitted as follows: Copies of tape recordings will be made available following the public release of the last of the tape segments contemplated in § 1275.42(a). If the releases contemplated in § 1275.42(a) are not completed by December 31, 1999, NARA will, beginning January 1, 2000, allow members of the public to obtain copies only of the abuses of governmental power tapes, together with any other tapes publicly released as of the effective date of the Settlement Agreement. If the releases contemplated in § 1275.42(a) are not completed by December 31, 2002, NARA will, beginning January 1, 2003, allow members of the public to obtain copies of all tapes that have been made available to the public by that date and tapes that subsequently become available as they are released. Such copying will be controlled by NARA or its designated contractor. The fees for the reproduction of the tape recordings under this section shall be those prescribed in the schedule set forth in part 1258 of this chapter or pertinent

successor regulation, as that schedule is amended from time to time.

(e) The Archivist shall produce and maintain a master preservation copy of the original tape recordings for preservation purposes.

10. Section 1275.66 is amended by revising paragraph (a) to read as follows:

**§ 1275.66 Reproduction and authentication of other materials.**

(a) Copying of materials other than tape recordings described in § 1275.64 may be done by NARA, by a contractor designated by NARA, or by researchers using self-service copiers. Such self-service copying shall be done in accordance with the NARA policy on self-service copying set forth at 36 CFR 1254.71, to ensure that such copying will not harm the materials or disrupt reference activities.

\* \* \* \* \*

**§ 1275.70 [Amended]**

11. Section 1275.70 is amended by removing in paragraph (a) the term "an Archivist" and adding in its place the term "an archivist" and by removing in paragraph (b) the term "NARA Archivists" and adding in its place the term "NARA archivists."

\* \* \* \* \*

12. Appendix A to Part 1275 is added to read as follows:

**Appendix A—Settlement Agreement**

Settlement Agreement filed April 12, 1996, in *Stanley I. Kutler and Public Citizen v. John W. Carlin, Archivist of the United States, and William E. Griffin and John H. Taylor, Co-executors of Richard M. Nixon's Estate*, Civil Action No. 92-0662-NHJ (D.D.C.) (Johnson, J.)

**Settlement Agreement**

This Settlement Agreement ("Agreement") is made by and entered into among plaintiffs Stanley I. Kutler and Public Citizen; defendant/cross-claim defendant John W. Carlin, in his official capacity as Archivist of the United States; and defendant-intervenors/cross-claimants John H. Taylor and William E. Griffin, co-executors of the estate of Richard M. Nixon ("the Nixon estate"), in the above-entitled action by and through the parties' undersigned attorneys.

It is hereby agreed, by and among the parties, appearing through their undersigned attorneys, that this action is partially settled on the following terms:

**Terms of Agreement**

1(a). As soon as practicable, the National Archives and Records Administration ("the Archives") will publicly release the segments of tape recordings made during the Presidency of Richard M. Nixon ("tape recordings" or "tapes") identified by the Archives as relating to "abuses of governmental power," as defined by 36 C.F.R. Part 1275, along with the corresponding portions of the tape log and

any other finding aid. The date of that release, which is expected to be on or about November 15, 1996, shall be determined in the following manner.

(b). No later than April 15, 1996, the Archives shall deliver to an agent of the Nixon estate a copy of the approximately 201 hours of abuses of governmental power tape segments that it proposes to release, together with the corresponding portions of the tape log and any other finding aid, for review by the Nixon estate to determine whether it intends to object to the release. The Archives agrees to provide a period of orientation to the designated Nixon estate agent with respect to the review of the abuses of governmental power tape segments and to be available to respond to questions thereafter.

(c). In place of the right to make all other objections with respect to the tape recordings that the Archives has designated as abuses of governmental power materials, the Nixon estate agrees that it may object to their release only on the ground that such designation by the Archives is clearly inconsistent with the term "abuses of governmental power" as used in section 104(a)(1) of the Presidential Recordings and Materials Preservation Act of 1974 ("the Act"), 44 U.S.C. § 2111 note, and defined in 36 C.F.R. 1275.16(c), as qualified by 36 C.F.R. 1275.50(b). Any such objection shall be in writing and may not be based on isolated instances of alleged failure by the Archives to apply the appropriate review standard, but only on a pattern of misapplication of the requirements of the Act and its implementing regulations. Further, any such objection must be accompanied by specific examples of alleged review errors and contain sufficient information to enable the review panel described in subparagraph 1(e) below to locate those examples readily. Nothing in this paragraph shall preclude the Nixon estate and the Archives from having informal discussions regarding the appropriate treatment of any of the abuses of governmental power tape segments.

(d). The Nixon estate shall have until October 1, 1996, to submit any objection in accordance with subparagraph 1(c) above. If no such objection is filed, the Archives shall proceed to issue a notice of proposed release pursuant to 36 C.F.R. 1275.42 as soon as possible, but no later than October 15, 1996.

(e). If an objection is made, the matter shall be immediately referred to a panel of the following three Presidential Library archivists: David Alsbrook, Frances Seeber, and Claudia Anderson. If any of these three persons is unable to serve, the Archivist shall appoint a substitute who is acceptable to the other parties.

(f). The panel shall have such access to the tapes as it deems necessary to make its decision. The decision of the panel shall be either that the Nixon estate's objection is sustained or that it is rejected. The decision shall include a brief statement of the panel's reasons, but it need not include an item-by-item determination. In deciding whether the designation by the Archives of the material proposed to be released is clearly inconsistent with the definition of "abuses of governmental power," the panel shall consider whether the release would seriously injure legitimate interests of identifiable

individuals, whether the errors suggest a pattern of misinterpretation, and any other factor that bears on the issue of whether the Archives' designation of material as relating to abuses of governmental power was reasonable, considered as a whole. The decision of the panel shall be made within sixty (60) days of the date of the objection. However, if the panel determines that exceptional circumstances interfere with its ability to meet this deadline, the panel shall have up to an additional sixty (60) days to make its decision. The Archives shall notify the other parties of the need for an extension and briefly describe the reasons therefor. The panel's decision shall be final and binding on all parties, and no party may exercise any right to appeal to any person, board, or court that might otherwise be available. Nothing contained in this Agreement shall preclude the panel from advising the Archives of any particular processing errors that it believes may have been made, but the Archivist shall make the final determination as to whether to accept such advice.

(g). If the objection of the Nixon estate is sustained, the Archives shall re-review the tapes sufficiently to address the concerns raised by whatever aspect of the objection is sustained. At the conclusion of such re-review, the same process of review, first by the Nixon estate and then by the panel in the event of further objection, shall be repeated for those tape segments concerning the subject matter of the sustained objection prior to any release of tape recordings designated as relating to abuses of governmental power.

(h). The Nixon estate agrees to inform the Archives and plaintiffs whether it intends to file objections as soon as it has made its decision. If there is an objection by the Nixon estate and it is overruled, the Federal Register notice shall be published within ten (10) days of the date of the panel's decision.

(i). If, following the Federal Register notice, no objection by other individuals to a release is received within the time provided by law, the Archives shall release the tape recordings within ten (10) days after such time has expired. If objections are received, they shall be promptly considered by the Archives and shall be decided as soon thereafter as practical. Any materials as to which an objection to release has been timely filed shall not be released until such objection has been resolved pursuant to 36 C.F.R. 1275.44. All materials not objected to shall be released no later than thirty (30) days after the time for objections has expired, provided that the Archives may withhold any additional conversation to which no objection has been made, pending final resolution of an objection to another conversation, if (i) such additional conversation is in close proximity on the tapes to the objected-to conversation and it would be burdensome for the Archives to separate out the releasable and objected-to portions, or (ii) the subjects of the releasable and the objected-to conversations are closely related to one another and the Archives determines that it might be misleading or might unfairly prejudice a living individual to release only one conversation. Any release under this Agreement shall include the

corresponding portions of the tape log and any other finding aid.

(j). The Archives shall send to plaintiff Kutler, to arrive no later than the day that the release of the tapes occurs, a copy of the portions of the tape log and any other finding aid that correspond to the tapes being released. The Archives shall also make suitable arrangements for plaintiff Kutler to listen to such tapes on the date of their release, and/or on such other subsequent business days as plaintiff Kutler shall designate.

2(a). Although the Agreement provides that the Archives will identify and return to the Nixon estate a copy of any private or personal materials identified on the tapes, the parties have been unable to reach agreement regarding the Archivist's retention and maintenance of the original tape recordings in their entirety, including those segments deemed to be private or personal, along with a master preservation copy. The government's position is that it is complying with the Act by retaining the original tapes and a master preservation copy, including those portions containing private or personal conversations. The Nixon estate's position, with which plaintiffs agree, is that the family has statutory, constitutional, and other rights that prevent the Archives from retaining private or personal materials, on both the original tapes and all copies.

(b). The parties have agreed to litigate the issue described in subparagraph 2(a) above, including the validity of 36 C.F.R. 1275.48(a) and 1275.64(e) as proposed for amendment. The parties further agree that the Court shall retain jurisdiction of that issue, as provided in paragraph 14 below, and that the right to litigate this issue includes the right to seek review in the United States Court of Appeals for the District of Columbia Circuit and the United States Supreme Court. If there is litigation between the Nixon estate and the Archivist over the issue described in subparagraph 2(a) above, the plaintiffs shall support the Nixon estate in any such litigation by filing a brief supporting the estate's position in District Court. The parties agree to make all reasonable efforts to expedite resolution of this issue.

(c). This Agreement and all discussions, negotiations and exchanges of information leading to it shall be entirely without prejudice to any positions the parties may take in the event of such litigation. Nothing in this Agreement, in any discussions leading to it, or in any information or materials exchanged by the parties as part of the mediation may be relied on or disclosed by any party to support or rebut the position of any party with respect to the treatment of private or personal materials on the original tapes. Nothing in this subparagraph prevents any party from expressing its understanding as to the meaning and effect of the legal position of another party.

3. The Archives will provide to the Nixon estate any additional private or personal materials at approximately the time that the Archives proposes each segment identified in paragraphs 4 and 5 below for public release. Any additional copies of that material (other than on a master preservation copy, the status of which will be determined in

accordance with the resolution of the issue as described in subparagraph 2(a) above), will be destroyed by appropriate method, with appropriate means of verification.

4(a). The second group of tapes to be processed for release is the approximately 278 hours recorded in the Cabinet Room. The projected date for publishing a notice of proposed opening of tapes in that group is August 1, 1997. The Archives will make the Cabinet Room tapes proposed for release available to the Nixon estate in no fewer than four (4) segments. The process by which those tapes will be reviewed by the Nixon estate, and the objections handled by the Archives, is set forth in the following subparagraphs of this paragraph 4.

(b). The Nixon estate agrees to review each segment as it is received and promptly to call to the attention of the Archives any concerns that it may have. The Archives and the Nixon estate agree to attempt to work out their differences informally in order to minimize any objections to a proposed release. To facilitate informal consultation between the Nixon estate and the Archives concerning the tape review, the Archivist shall designate a panel member identified in subparagraph 1(e) above who will serve as a contact with the Nixon estate and assure access to information relating to Presidential libraries practices and procedures that may arise in the course of the tape review. The designated individual will be responsible for assuring that the Nixon estate has access to the appropriate person to answer its concerns. The Nixon estate may communicate with the designated individual orally or in writing. If the Archives agrees with the Nixon estate that any portion of a segment that has been sent to the Nixon estate as a proposed release should not be released, the Archives shall assure that there is appropriate documentation to reflect that change.

(c). The Nixon estate will have a period of at least six (6) months in which to review all of the Cabinet Room tapes, beginning on the date the Archives makes the first installment of such tapes available to the estate for review (but in no event will the six (6) months begin earlier than November 15, 1996). During the review of the Cabinet Room tapes, the Nixon estate will employ an agent or agents who will spend an average of at least thirty two (32) hours a week (total) in actual review of the tapes. The Nixon estate may request from the Archives an extension of the six-month review period, which the Archives shall grant if good cause is shown.

(d). If, during its review, the Nixon estate becomes aware that there are materials proposed for release that it believes should not be heard even by individuals on the registry list, it will promptly advise the Archives of any such materials so that they can be reviewed and/or segregated by the Archives before any other individual is permitted to listen to them. The Nixon estate will cooperate with the Archives so that the required Federal Register notice is published as soon as possible, but in no event shall such notice be provided later than ten (10) days after the time the Nixon estate completes its review. Final objections from the Nixon estate to the release of portions of the tapes shall be filed in accordance with 36

C.F.R. Part 1275 no later than the date for filing objections by other persons. Thereafter, subject to paragraph 7 below, the provisions of subparagraphs 1(i) and 1(j) above will apply.

5(a). The remaining tapes, consisting of approximately 2338 hours, shall be processed for release in five (5) segments. Because the precise number of hours of tapes for each month cannot readily be determined, the parties have agreed to divide the releases into the segments set forth below. The Archives will begin processing (which includes, but is not limited to, tape review, preparing tapes for declassification review, tape editing and production of finding aids) each segment before processing of the preceding segment is concluded. Processing of the tapes in each segment is projected to take from about fifteen (15) to about twenty three (23) months. The approximate number of hours of tapes to be reviewed in each segment is set forth in parentheses in the following listing of the segments. The projected number of months between the completion of the Archives' processing of the immediately preceding segment and the completion of the Archives' processing of each listed segment is set forth in brackets.

1. February 1971–July 1971 (437 hours) [8 months]
2. August 1971–December 1971 (405 hours) [7 months]
3. January 1972–June 1972 (440 hours) [7 months]
4. July 1972–October 1972 (410 hours) [6 months]
5. November 1972–July 1973 (646 hours) [10 months]

(b). The time estimates in this Agreement are not enforceable as such, but the parties agree to have the Court retain jurisdiction to consider requests that it enter a binding order setting a schedule for the Archives to complete the processing of the tapes. No party may seek such an order unless that party first provides twenty (20) days' written notice to the other parties of that party's intention to seek such an order. Further, no party may seek such an order except on the ground that the Archives has unreasonably failed to meet the estimates contained herein by a substantial amount. The type of proof that will demonstrate reasonableness on the part of the Archives in this regard may include, but will not necessarily be limited to, a showing that the Archives is reasonably allocating its resources among its various programs and activities in the event that it experiences a shortage of resources, including any occasioned by court order.

(c). Portions of each segment processed by the Archives shall be provided to the Nixon estate when the processing of each month of tape recorded material is completed, unless there are a very few hours for two (2) or more months, which may then be combined into a single unit. During its review of the chronological tape segments, the Nixon estate will employ an agent or agents who will spend an average of at least thirty two (32) hours a week (total) in actual review of the tapes, forty eight (48) weeks of the year. As its review of the tapes proceeds, the Nixon estate shall provide a written report of its progress to the Archives and the plaintiffs on

a bimonthly basis. The report shall include the number of hours worked in each week, the number of hours of tapes reviewed in each week, and the Nixon estate's projected completion date for review of the segment currently under review. The provisions of subparagraphs 4(b) and 4(d) above shall apply to the review, objections, and releases with respect to the chronological tape segments, subject to paragraph 7 below.

(d). If one of the other parties to this Agreement determines that the Nixon estate's review is not being conducted diligently or in good faith, or that the estate's estimated completion date(s) of one or more segments is unreasonable, that party may petition the Archivist to establish an earlier date(s) for the completion of the review of that segment and/or of future segments. Any such date(s) established by the Archivist shall provide the Nixon estate with a reasonable opportunity to protect and assert its interests without unduly delaying the release of the tapes, and shall be based upon consideration of the progress of the Archives' review and its scheduled completion date(s); the progress to date of the estate's review; and the time reasonably necessary to complete the estate's review and to formulate and present any objections. The Archives may also propose earlier dates for the completion of the review by the Nixon estate on the basis provided for in this subparagraph. If a proposal for an earlier date is made, the Nixon estate will have a reasonable opportunity to respond.

6. Once the Archives has completed processing the approximately 2338 hours of tapes discussed in paragraph 5 above, and has made corresponding releases, the Archives shall identify any additional copies of partial tape segments in its possession. If the Archives determines that some or all of such additional partial tape segments are duplicative of any tape recordings that it has already processed, the Archives may dispose of the duplicative tape segments, following notification to the parties, subject to paragraph 3 above. To the extent that such partial tape segments are not duplicative of the tape recordings already processed, the Archives shall promptly process such non-duplicative portions and shall treat any portions determined to be private or personal consistently with the resolution of the issue to be litigated as described in paragraph 2 above.

7(a). After completion of the procedures described in paragraph 4 above, the Cabinet Room tapes that are found to be releasable under paragraph 4 above may be released if either there has been a final decision by the district court on the issue to be litigated as described in subparagraph 2(a) above, or the release is scheduled after April 1, 1998, whichever of these two events happens sooner.

(b). After completion of the procedures described in paragraph 5 above, the tapes described in paragraph 5(a) above that are found to be releasable may be released if either there has been a final judgment by the district court, which is not subject to further review by appeal or certiorari, with regard to the issue to be litigated as described in subparagraph 2(a) above, or there has been a final decision by the United States Court of

Appeals for the District of Columbia Circuit on this issue, or the release is scheduled to take place after November 1, 1999, whichever of these three events happens sooner.

(c). As used in subparagraphs 7(a) and (b) above, the term "final decision" means a decision not subject to reconsideration under Rule 59 of the Federal Rules of Civil Procedure, or Rules 35 or 40 of the Federal Rules of Appellate Procedure, respectively.

8. The Nixon estate may, at any time, elect to use the procedures in paragraph 1 above with respect to any tape segment in place of the provisions of paragraphs 4(b) and (d) and 5(c) above, with the following substitution: The standard under which objections shall be made, and under which the panel shall decide their merits, is whether the release taken as a whole is plainly inconsistent with the requirements of the Act and its implementing regulations. Provided, however, that once the Nixon estate elects to use the procedures in paragraph 1 above in place of the provisions in paragraphs 4(b) and (d) and 5(c) above, it cannot subsequently revert back to the formal objection process set forth in 36 C.F.R. Part 1275 for that tape segment.

9. Within thirty (30) days of the Court's entry of an order as described in paragraph 14 below, the Archivist shall designate a particular person who shall be responsible for responding to reasonable inquiries from the plaintiffs on the status of the releases and objections. Such designation may be changed at any time at the Archivist's discretion by a notice to plaintiffs through their counsel.

10. If the Archives appoints a Senior Archival Panel as defined in 36 C.F.R. 1275.46(d) and (e), no party to the Agreement may object to the appointment of such a panel on the ground that the suggestion to appoint such a panel was originated by an individual other than the processing archivists assigned to the Archives' Nixon Presidential Materials Staff.

11. The Archives will allow members of the public to obtain copies of publicly accessible portions of the tapes after the releases described in paragraph 5 above, are completed; provided, however, that if the releases described in paragraph 5 above are not completed by December 31, 1999, the Archives will allow members of the public to obtain copies only of the abuses of governmental power tapes, together with any other tapes publicly released as of the date of the filing of this Agreement with the Court, beginning January 1, 2000. Further provided, that if the releases described in paragraph 5 above are not completed by December 31, 2002, the Archives will, beginning January 1, 2003, allow members of the public to obtain copies of all tapes that have been made available to the public by that date and tapes that subsequently become available, as they are released.

12(a). Promptly after the Court enters the Order provided for in paragraph 14 below, plaintiff Kutler will withdraw his request under the Freedom of Information Act, 5 U.S.C. 552, for any and all tape logs and other finding aids, which is pending in *Kutler v. Carlin, et al.*, Civ. A. No. 92-0661-NHJ (D.D.C.). In all other respects, plaintiff Kutler's request in that action shall be unaffected by this Agreement.



(b). Nothing in this Agreement shall affect the processing by the Archives of any dictabelts, which are a collection of recordings of former President Nixon and other White House staff members dictating memoranda, correspondence and speech drafts, that are included in the materials that are subject to the Act.

13. Pursuant to Rule 315 of this Court, the plaintiffs and the defendant shall attempt to resolve the plaintiffs' claim for attorneys' fees and expenses and shall advise the Court no later than forty-five (45) days after this Court has entered the Order provided for in paragraph 14 below on whether they have been able to resolve the issue of attorneys' fees and expenses. If no resolution has been reached, they will, at that time, recommend a schedule to the Court to resolve such claim.

14. The parties agree to the dissolution of the preliminary injunction entered on August 9, 1993, and dismissal with prejudice of this action, including all claims and cross-claims, except for the issue to be litigated as described in subparagraph 2(a) above, and any fees and expenses claimed pursuant to paragraph 13 above, by filing the attached Joint Motion to Vacate Preliminary Injunction and to Dismiss Claims, and the attached Consent Order. The parties agree that the Court shall retain jurisdiction to: (a) Consider the entry of an order in accordance with the terms of paragraph 5 above; (b) resolve the issue to be litigated as described in subparagraph 2(a) above; (c) determine any fees and expenses claimed pursuant to paragraph 13 above; and (d) for the purpose of enforcing the terms of this Agreement. The parties further agree that such jurisdiction, except with respect to the issue described in paragraph 2 above, will be retained only until the later of the implementation of paragraph 11 above or the completion of the releases called for in paragraph 5 above. Plaintiffs and the Nixon estate further agree that they will not challenge any regulations issued by the Archives which implement and are consistent with this Agreement.

15. The terms of this Agreement may not be altered except with the written consent of the parties. Nothing in this Agreement constitutes an admission of liability or wrongdoing on the part of any party.

Executed this 12th day of April, 1996.

For Plaintiffs Stanley I. Kutler and Public Citizen:

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Dated: April 18, 1996.

John W. Carlin,

Archivist of the United States.

[FR Doc. 96-9974 Filed 4-22-96; 8:45 am]

BILLING CODE 7515-01-P

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## FEDERAL MARITIME COMMISSION

### 46 CFR Part 572

[Docket No. 94-31]

#### Information Form and Post-Effective Reporting Requirements for Agreements Among Ocean Common Carriers Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Final Rule; Extension of time for filing Petition for Reconsideration.

SUMMARY: On March 21, 1996, (61 FR 11564), the Federal Maritime Commission published a final rule amending its regulations governing the information submission requirements for agreements among ocean carriers subject to the Shipping Act of 1984. Extension of time for filing a petition for reconsideration has been requested by the Asia North America Eastbound Rate Agreement, Japan-United States Eastbound Freight Conference, Transpacific Westbound Rate Agreement and their members. The request is granted; this extension does not affect the effective date of the final rule.

DATES: Petition for Reconsideration due May 19, 1996.

FOR FURTHER INFORMATION CONTACT:

Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North

Capitol St., NW., Washington, D.C. 20573, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 96-9872 Filed 4-22-96; 8:45 am]

BILLING CODE 6730-01-M

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 675

[Docket No. 960129019-6019-01; I.D. 041796A]

#### Groundfish of the Bering Sea and Aleutian Islands Area; Pacific Ocean Perch in the Western Aleutian District

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific ocean perch in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the total allowable catch of Pacific ocean perch in this area. EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), April 18, 1996, until 12 midnight, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the initial total allowable catch of Pacific ocean perch for the Western Aleutian District was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) for the BSAI as 5,143 metric tons (mt). As of March 30, 1996, 1,465 mt remains. The directed fishery for Pacific ocean perch in the Western Aleutian District was closed under § 675.20(a)(8) on March 20, 1996 (58 FR 12041, March 25, 1996) and reopened on April 15, 1996 (Action filed by the Office of the Federal Register on April 15, 1996, and scheduled for publication in the Federal Register on April 19, 1996.).