

respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. IN-146-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Indianapolis Field Office at (317) 226-6700.

#### *Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on September 30, 1999. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodations to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The hearing will not be held if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We

will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

#### *Public Meeting*

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We also make a written summary of each meeting a part of the Administrative Record.

#### **IV. Procedural Determinations**

##### *Executive Order 12866*

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

##### *Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

##### *National Environmental Policy Act*

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

##### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the

Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

##### *Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

##### *Unfunded Mandates*

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, state, or tribal governments or private entities.

##### **List of Subjects in 30 CFR Part 914**

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 8, 1999.

##### **Brent Wahlquist,**

*Regional Director, Mid-Continent Regional Coordinating Center.*

[FR Doc. 99-24061 Filed 9-14-99; 8:45 am]

BILLING CODE 4310-05-P

## **NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

### **36 CFR Part 1228**

#### **Agency Records Center Rule**

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

**ACTION:** Initial Regulatory Flexibility Analysis.

**SUMMARY:** The National Archives and Records Administration (NARA) is publishing this initial regulatory flexibility analysis to aid the public in commenting upon the small business impact of its proposed rule revising and updating the standards that records center storage facilities must meet to store Federal records.

**DATES:** Written comments must be received at the address shown in the

**ADDRESSES** section on or before October 15, 1999. Comments received after this date will not be considered.

**ADDRESSES:** Submit comments to Regulation Comment Desk (NPOL), Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. Alternatively, comments may be faxed to 301-713-7270.

**FOR FURTHER INFORMATION CONTACT:** Nancy Allard at (301) 713-7360, ext. 226.

**SUPPLEMENTARY INFORMATION:** This notice supplements NARA's initial notice of proposed rulemaking published on April 30, 1999, at 64 FR 23504, to revise and update records storage facility standards in 36 CFR part 1228, subpart K. NARA's notice of proposed rulemaking did not include an initial regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (5 U.S.C. 603), based on a certification that the proposed rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605). See 64 FR at 23505. The certification statement in the proposed rule inadvertently omitted the phrase "a substantial number of", although NARA intended that phrase to be part of the statement.

### Background

The proposed rule would apply to all records storage facilities Federal agencies use to store, service, and dispose of their records, including records centers operated by NARA and other Federal agencies and those commercial records storage facilities that Federal agencies use to store Federal records. NARA based its certification statement on the following unstated assumptions:

- The proposed rule relies on voluntary industry standards and industry recommended practices as the basis for most of the requirements. NARA made a reasonable assumption that most commercial facilities that would be likely to store Federal records would already conform to the industry standards and recommended practices. Thus, there would not be a significant cost to existing small businesses to upgrade their facilities to meet the proposed general facility standards.

- Environmental control requirements for storage of microfilm, audiovisual, and/or electronic permanent and unscheduled records have been in force elsewhere in NARA regulations for three or more years. Thus re-stating them in this proposed rule was not changing the existing burden on storage facilities. Moreover, at the time

the proposed rule was developed, permanent records comprise only about five to six percent of the NARA's total records center holdings. Because only the specific records storage areas that contain permanent or unscheduled Federal records will require the NARA environmental controls, we assumed that it was unlikely that a significant number of commercial centers, small or large, would need to add air-conditioning equivalent to that required for office space to more than one storage module.

- Certain proposed requirements are imposed by authorities outside NARA: The building security requirements are those established by the Department of Justice for Level III Federal facilities. Seismic safety provisions are required by Executive orders and an integrated pest management program is mandated for Federal agencies by the Food Protection Act of 1996. Any economic burden for complying with these requirements would exist independently of NARA's proposed rule.

- NARA would continue to store Federal records for some agencies, although other agencies might choose private sector or other Federal agency centers to store their records after NARA's records center program becomes fully reimbursable in Fiscal Year 2000. Security classified records and IRS records containing restricted taxpayer information would continue to be stored in NARA or agency records centers, not commercial records storage facilities. As of the end of FY 1998, NARA centers held more than 6 million c.f. in these categories. NARA also expected that the National Personnel Records Center in St. Louis would retain 2.02 million c.f. of military personnel files and 1.4 million c.f. of civilian files, as evidenced in a related proposed rule published the same day (64 FR 23510), Storage of Federal Records.

- Two commercial records storage companies, Iron Mountain and Pierce Leahy, are currently the predominant private sector providers of records storage services to Federal agencies. NARA had no evidence that a substantial number of records centers that qualify as small businesses store Federal records for agencies, or that storage of Federal records comprises a significant percentage of their business receipts.

Accordingly, NARA believed that its certification statement in the proposed rule was appropriate. In response to a request from PRISM International, a not-for-profit trade association that includes off-site storage company members, NARA published a June 7, 1999, notice

of a public meeting on the proposed rule, and extended the comment period to July 7, 1999 (64 FR 30276). At that public meeting on June 18, 1999, several attendees questioned NARA's certification statement. NARA staff stated that NARA had not done any formal cost analysis to support this certification and invited attendees to provide comments on the adequacy of that statement. In response to this invitation, NARA received several comments that the regulation would have a significant impact on small business. Additionally, some records storage facilities wrote to their members of Congress stating that the proposed rule would have a significant impact on them, and those letters were forwarded to NARA for consideration.

The comments on the economic impact appear to be based on two provisions of the proposed rule: A requirement in proposed § 1228.230(b) that records storage areas not exceed 250,000 c.f. of records to protect against catastrophic files and a misinterpretation of § 1228.234(a) that NARA would not allow commercial facilities to store records higher than 15 feet. (Section 1228.234 describes one optional alternative for an acceptable fire detection and suppression system, and is the alternative NARA uses in its own records centers. It is not a mandatory requirement. NARA intends to clarify this further in the final rule by moving the description of this alternative to an appendix and reiterating that other alternatives are acceptable.)

NARA has decided to publish this notice, which includes the following initial regulatory flexibility analysis, to provide further information and opportunity for public comment on the small business impact, if any, of the proposed rule.

### Initial Regulatory Flexibility Analysis

*Description of the reasons that action by the agency is being considered.* Current records center standards were last issued in 1982. Based upon advancements in technical knowledge and experience gained over the past two decades, NARA believes it is time to update the standards for the storage of Federal records in the legal custody of Federal agencies. Moreover, as more agencies are turning to the private sector for off-site storage, NARA believes that it is necessary to require agencies to ensure that records in their legal custody are stored in appropriate space wherever the records are stored.

*Succinct statement of the objectives of, and legal basis for, the proposed rule.* Federal records provide essential

documentation of the Federal Government's policies and transactions and protect rights of individuals. These records must be stored in appropriate space to ensure that they remain available for their scheduled life.

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

*Description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.* The proposed rule will apply to NARA, to Federal agencies that operate their own records centers, and to any individual commercial records center facilities that a Federal agency uses to store its records. The proposed rule will apply to both aboveground and underground facilities. NARA is unable to estimate the number of small entities to which the proposed rule will apply for the following reasons:

- Under current regulations, agencies do not report to NARA or obtain NARA approval to store their records in commercial records storage facilities. Therefore, NARA has no information on the number of current or past agency contracts with small business records centers. We specifically invite comments from agencies that have such contracts and from records centers that are small businesses on this point.

- At present, the General Services Administration's Multiple Award Schedule (MAS) for Records Center Services (FSS-36-IV sin 51 504) has listed only two qualified companies, both of which are large businesses. The procurement process that an agency must follow when using an MAS or when entering into an interagency agreement with NARA or another Federal agency to provide records center services is much simpler than the process it must use when seeking open market services. For this reason, NARA cannot estimate the volume of records center contracts that agencies may consider awarding to small businesses. We specifically invite comments from agencies on any plans that they have to contract with small businesses for records center services in the next 2 years.

Although we are unable to provide an estimate of the number of small entities to which the proposed rule will apply, we do have estimates of the universe of

small entities. NARA considered records center vendors to be small entities if they met the Small Business Administration (SBA) definition of a small business under Standard Industrial Code (SIC) 4226, Special Warehousing and Storage, Not Elsewhere Classified. For SIC 4226, an SBA small business must have annual gross receipts of \$18.5 million or less. According to census figures furnished to NARA by SBA, there are 1,230 firms in SIC 4226. Most of these firms do not have multiple establishments (the number of SIC 4226 establishments is 1,547).

*Description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

*Reporting/recordkeeping requirements:* The proposed rule does not directly mandate reporting or recordkeeping within the meaning of the Paperwork Reduction Act. All reporting requirements are placed on Federal agencies, which must secure NARA approval before moving Federal records to a commercial records center. NARA anticipates that the Federal agencies would include 36 CFR part 1228, subpart K (the facility standards) in their contracts with commercial records centers. Proposed § 1228.240(e) states that agency may submit to NARA "a copy of the agency's contract that incorporates this subpart in its provisions or a statement from the agency records officer that certifies that the facility meets the standards in this subpart."

*Other compliance requirements:* All records centers that store Federal records, including commercial records centers operated by small businesses, must comply with the facility requirements in the proposed rule. Certain specific requirements differ for newly constructed facilities and existing facilities. Also, existing facilities are allowed a 10-year period to become compliant with some of these requirements. The facility compliance requirements are found in the proposed §§ 1228.228, 1228.230, and 1228.236. (See 64 FR 23506-23510.)

*Professional skills necessary for preparation of report or record:* If the records center owner has maintained the facility design records, no special professional skills would be necessary to provide documentation to the contracting agency that the facility meets the NARA standards. If the design records are not available, the center

would have need for the services of a licensed Fire Protection Engineer to inspect the facility and prepare a report on a one-time basis. We estimate that the inspection and preparation of a report would take no more than 8 hours total.

*An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.* At the June 18, 1999, public meeting, attendees pointed out that underground storage facilities are subject to regulations issued by the Mine Safety and Health Administration in 30 CFR Chapter I for any working mine. We intend to add a provision to our final rule that if any of the provisions of NARA's regulation conflict with mandatory life safety or ventilation requirements imposed on underground storage facilities by 30 CFR chapter I, 30 CFR chapter I applies.

Also at the public meeting, attendees pointed out that the proposed NARA regulations might conflict with local or regional building codes with which commercial facilities must comply. We stated at the meeting that we intend to add a provision to our final rule that resolves such conflicts by specifying that, following normal rules of precedence, the more stringent fire protection and life-safety provision will apply. If a mandatory NARA requirement cannot be reconciled with a mandatory local or regional requirement, the local or regional code will apply.

*Description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.* Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; (4) any exemption from coverage of the rule, or any part thereof, for such small entities. To the extent possible, the proposed rule specifies performance standards and incorporates by reference industry consensus standards. NARA chose this alternative over the other possible regulatory approach—extending the coverage of the existing regulation that governed agency records centers—to provide as much flexibility as possible to all

commercial and agency records centers, including small businesses.

We did not believe that we could adopt any of the other alternatives [(1), (2) or (4)] for minimizing the impact of the proposed rule on small entities, given the objective of ensuring appropriate protection for Federal records when they leave agency office space. We believe that the 10-year period we will provide for complying with certain requirements will moderate the impact on small businesses since they will be able to plan for the necessary modifications and implement them during normal maintenance, e.g., removing roof-mounted equipment when roof repairs or replacement is done. However, we do not believe that it is appropriate to exempt or delay small businesses' compliance with basic fire detection and suppression requirements. It is also not feasible to exempt or delay small businesses' compliance with requirements imposed by other authorities, e.g., DOJ building security requirements.

#### Questions for Comment To Assist Regulatory Flexibility Analysis

1. Please provide comment on any or all of the provisions in the proposed rule with regard to

- The impact of the provision(s) including the benefits and costs, if any, on small entities, and
- Other alternatives, if any, NARA should consider, as well as the costs and benefits of those alternatives to small entities.

2. Please identify any Federal rules, other than the MSHA regulations discussed in this notice, that may duplicate, overlap, or conflict with the proposed rule. In addition, please identify any industry standards not cited in NARA's proposed rule that would be more appropriate. Please identify such industry standards by name of the organization establishing the standard, formal title, and edition date, and state how the public can get copies of the standard.

3. Please discuss the extent to which existing commercial records centers, especially those that qualify as a small business, have incorporated either the requirements of National Fire Protection Association (NFPA) 232, Standard for the Protection of Records (1995 Edition) for facilities smaller than 50,000 c.f. or the guidance in NFPA 232A, Guide for Fire Protection of Archives and Records Centers (1995 Edition) for larger facilities.

4. How many records centers that are small businesses presently store records for Federal agencies or would be interested in such future business

opportunity? Please include the basis for your response to this question (e.g., industry survey).

Dated: September 10, 1999.

**John W. Carlin,**

*Archivist of the United States.*

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## POSTAL RATE COMMISSION

### 39 CFR Part 3001, 3002, and 3004

[Docket No. RM99-2; Order No. 1253]

#### Freedom of Information Act Administrative Rulemaking

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission proposes changes to its rules of practice to implement the Electronic Freedom of Information Act and to reflect improved methods of information management. The proposed changes will establish consistency with current law. They also will improve the Commission's administration of related responsibilities and the public's ability to exercise rights to obtain or review certain information.

**DATES:** Comments will be accepted until September 30, 1999.

**ADDRESSES:** Send comments regarding this document to the attention of Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street NW., Washington, DC 20268-0001.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street NW, Washington, DC 20268-0001, 202-789-6824.

**SUPPLEMENTARY INFORMATION:** The Commission's rules implementing the requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552, have not been amended since 1993. Consequently, they do not incorporate changes in applicable law since that time, most notably the requirements added by the Electronic FOIA, Pub. L. 104-231. Additionally, the current rules do not reflect recent changes in the Commission's methods of information management, which have become increasingly computer-based, as well as other administrative changes affecting access to information at the Commission. The proposed rules are intended to address and accommodate these interim changes. They also incorporate a major structural change—transfer of all provisions describing FOIA access and processes at the

Commission to a new part 3004—for the convenience of persons interested in obtaining information by various means.

#### A. Compliance With Public Inspection and Copying Requirements as Modified by the Electronic FOIA Amendments

Subsection (a)(2) of the FOIA [5 U.S.C. 552(a)(2)] requires an agency to make available for public inspection and copying its final opinions in adjudicated cases, policy statements and interpretations not published in the **Federal Register**, and administrative staff manuals and instructions to staff that affect members of the public. The 1996 Electronic FOIA amendments extended this requirement by directing agencies to make such records created on or after November 1, 1996 available by computer telecommunications or other electronic means.

The proposed rules reflect the actions the Commission has taken to achieve compliance with the amended public inspection and copying requirements. Beginning in 1996, the Commission has operated a website linked to the Internet for the purpose of telecommunication and publication of official information. Recently, the Commission has expanded the material available on its website to include all its decisions issued on or after January 1, 1996; orders, notices and other documents issued in proceedings pending before the Commission; the domestic mail classification schedule, which is a compilation of all provisions that define the categories of mail and postal services available in the national postal system; and the rules of practices which govern the conduct of proceedings before the Commission. All these materials are now available for viewing and downloading from the Commission's website at [www.prc.gov](http://www.prc.gov). Accordingly, proposed 3004.2(c) identifies that domain as the location of the Commission's electronic reading room, and describes generally the categories of information available from the website.

#### B. Transfer of FOIA Procedural Rules to New Part 3004

Currently, the rules describing public information available at the Commission and procedures for obtaining access are contained in 39 CFR 3001.42 and 3001.42a, within the rules of general applicability included in part 3001, which is a compilation of all the Commission's rules of practice and procedure. For the convenience of persons interested primarily in obtaining access to public information, the Commission proposes rules which incorporate a major structural change.