

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**36 CFR Part 1228****[3095-AB31]****Records Center Facility Standards****AGENCY:** National Archives and Records Administration (NARA).**ACTION:** Proposed rule.

SUMMARY: NARA proposes to modify its facility standards for records storage facilities that house Federal records to clarify requirements relating to design or certification of multiple story facilities and fire detection and protection systems; to revise certain requirements relating to fire-ratings of roofs, building columns, and fire barrier walls; and to clarify the application of other requirements. We are proposing these changes to address records center industry concerns identified in the 2003 Report to Congress on Costs and Benefits of Federal Regulations. The proposed rule will affect commercial records storage facilities that store Federal records and applies to all agencies, including NARA, that establish and operate records centers, and to agencies that contract for the services of commercial records storage facilities.

DATES: Comments are due by November 8, 2004.

ADDRESSES: You may submit comments, identified by RIN 3095-AB31, by any of the following methods:

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

- E-mail: comments@nara.gov.

Include RIN 3095-AB31 in the subject line of the message.

- Fax: 301-837-0319.

- Mail: Regulation Comment Desk, Room 4100, 8601 Adelphi Rd., College Park, MD 20740-6001.

- Hand Delivery/Courier: NPOL, Room 4100, 8601 Adelphi Rd., College Park, MD 20740-6001.

FOR FURTHER INFORMATION CONTACT:

Nancy Allard at telephone number 301-837-1477, or fax number 301-837-0319.

SUPPLEMENTARY INFORMATION:**A. Background to This Proposed Rule**

NARA conducted a rulemaking in 1999 that culminated with publishing a final rule "Agency Records Centers" (RIN 3095-AA81) on December 2, 1999, with an effective date of January 3, 2000 (see 64 FR 67634). The regulation was codified as 36 CFR part 1228, subpart K. This regulation was nominated as a possible candidate for reform in the

2003 Report to Congress on Costs and Benefits of Federal Regulations. The nominations identified six provisions of subpart K that were of particular concern: §§ 1228.228(b), 1228.230(b), 1228.230(e), 1228.230(i), 1228.230(l) and 1228.230(s). With the assistance of Congressional staff, NARA engaged in extensive discussions with the Professional Records and Information Services Management (PRISM) International, the records center industry association to which many of the 497 nominators belong, identified specific concerns with those six provisions. The changes reflected in this proposed rule represent a joint agreement between NARA and PRISM to mitigate most of those concerns, as well as additional provisions that were identified during the follow-up discussion with PRISM to clarify those provisions.

As we discussed extensively in the 1999 rulemaking, Federal records provide essential documentation of the Federal Government's policies and transactions and protect rights of individuals. The Government has an obligation to protect and preserve these records for their entire retention period, even if that retention period is only a few years, as is the case with IRS income tax returns or invoice payments. NARA believes that records storage facilities should be structurally sound, protect against unauthorized access, and protect against fire and water damage to the records, whether the records are temporary or permanent. This rulemaking continues to reflect that belief.

B. Discussion of Proposed Changes

Following is a section-by-section discussion of the substantive proposed changes and the supporting reasons for these changes.

Section 1228.226 (Definitions)

- *Proposed change:* Existing records storage facility and new records storage facility were updated to reflect the date of the final rule resulting from this rulemaking. Records storage area was modified to clarify that the walls are fire barrier walls, not fire walls.

Section 1228.228(a) (Roof Requirement)

- *Proposed change:* The existing provision requires that roofs (and other building elements) be constructed with non-combustible materials and building elements. Existing records storage facilities may obtain a waiver until October 1, 2009, if the facility has a fire suppression system specifically designed to mitigate this hazard. The proposed rule would allow roof

elements to be constructed with combustible materials if installed in accordance with local building codes and if roof elements are protected by a properly installed, properly maintained automatic sprinkler system. The waiver process for other building elements remains in place.

- *Discussion of proposed change:* In identifying this as one of the six problematic provisions, PRISM stated that the requirement that roof elements be constructed with non-combustible materials would disqualify many, if not most, commercial storage facilities from competing fairly for contracts to store Federal records. PRISM noted a properly installed and maintained automatic sprinkler system designed to protect roof elements provides ample protection. PRISM further noted such construction is recognized by all of the major consensus-based building codes. We independently note that wood framed roofs are frequently used in new construction in high seismic risk zones. We are making the recommended change for these reasons.

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

- *Proposed change:* The existing paragraph requires that a multi-story facility be designed or "certified" by a licensed fire protection engineer and a civil/structural engineer. We propose to restate the certification requirement to state more accurately what is required, i.e., reviews documented by professional opinions under seal that the fire resistance of separating floors is at least 4 hours and that there are no obvious structural weaknesses that would indicate a high potential for structural catastrophic collapse under fire conditions.

- *Discussion of proposed change:* Industry concerns centered on the word "certify," and whether any professional engineer would be willing to provide a certification. We recognize that "certified" may be read as requiring more than we intended, which is that the engineer(s) provide a professional opinion under seal. For new construction, NARA can accept the seals on the construction drawings as adequate proof because current model building codes address structural integrity under fire conditions. For buildings constructed more than 10 years ago, code compliance at time of construction would not guarantee that the building complies with the current codes. Therefore, the proposed rule specifies what must be addressed in the professional letter of opinion. In reviewing and commenting on this provision, please note that catwalks are

not considered to create a “multi-storied” building.

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

- *Proposed change:* The existing provision requires that the facility be designed in accordance with regional building codes to provide protection from building collapse or failure of essential equipment from natural disasters. We are modifying the provision to include also applicable state or local building codes.

- *Discussion of proposed change:* PRISM suggested the change as a clarification. Although § 1228.234 provides a procedure for applying conflicting provisions which would address state and local building codes, we note that local or state building codes may address a specific local common natural disaster that the regional code does not. We believe that it is helpful to add these other codes for this reason.

Section 1228.228(i) (Storage Shelving)

- *Proposed change:* We propose to add racking systems in the standard for records storage shelving and to add state and local building code requirements for seismic bracing. The existing provision refers to “storage shelving” and “steel shelving” and states that they must provide seismic bracing that meets the requirements of the applicable regional building codes.

- *Discussion of proposed change:* PRISM recommended the clarifications, noting that in industry terminology, “shelving systems” are used in low-density environments, while “racking systems” are used in high-density environments. The existing NARA standard is intended to ensure that the shelving equipment has proper seismic bracing as required by code and that the weight of the records on the equipment does not cause its collapse. We view this change as a clarification of terminology that will not increase costs for records centers that use racking systems. As we stated in our discussion of the proposed change to § 1228.228(d), it is appropriate to add the clarification on use of state and local codes relating to seismic bracing.

Section 1228.228(n)(1) (Mechanical Equipment in Records Storage Areas)

- *Proposed change:* We propose to modify this provision, which applies only to new facilities, to allow installation of material handling and conveyance equipment that use thermal breakers on the motor.

- *Discussion of proposed change:* Some material handling and conveyance

equipment used in high density storage areas operate with motors in excess of 1 horsepower (HP). These machines are needed to lift pallet loads to higher catwalk levels. In the existing regulation, NARA prohibits equipment that has motors rated in excess of 1 HP for new facilities because such motors can overheat to the point of causing a fire. We propose to modify this prohibition to allow material handling and conveyance equipment that use thermal breakers. Thermal breakers are readily available, low cost, options for such equipment, and adding this exception will benefit commercial records centers. We note again that this provision applies only to new facilities (*i.e.*, facilities that become records centers on or after the effective date of any final rule resulting from this rulemaking). There is no prohibition on such equipment in existing facilities.

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

- *Proposed change:* We propose to limit the requirement to new facilities that store permanent Federal records. The existing regulation applies the requirement to all new facilities.

- *Discussion of proposed change:* The purpose of the original provision was to limit degradation of long-term records because of exposure to exhaust fumes. We agree with PRISM that the requirement should be limited to permanent records.

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

- *Proposed change:* The paragraph has been substantively revised to clarify the requirement to “certify” a fire detection and protection system. The existing requirement simply states that the system must be designed or certified by a licensed fire protection engineer (FPE). The proposed paragraph (a) specifies that the FPE must furnish a report under professional seal that provides specific information.

- *Discussion of proposed change:* Industry concerns centered on the word “certify,” and what the FPE was being asked to do. The original wording of this paragraph intended that the fire detection and protection system be designed specifically for the records storage space by a licensed fire protection engineer or, if the system was designed and installed by a NICET technician or other sprinkler contractor, that the system be reviewed by a licensed fire protection engineer to ensure that the installation would provide appropriate protection to the contents (*i.e.*, the records stored). The proposed language clarifies this intent.

Section 1228.230(b) (Interior Walls)

- *Proposed change:* We propose to require that interior walls separating records storage areas from each other and from other storage areas in the building be at least 3-hour fire resistant. In the existing rule, the requirement is for 4-hour fire barrier walls. We have also restated in a clearer manner the requirement that no more than 250,000 cubic feet of Federal records may be stored in a single records storage area.

- *Discussion of proposed change:* While we continue to support the National Fire Protection Association (NFPA) 232–2000 standard, which specifies 4-hour fire barrier walls to separate records storage areas from each other and from other storage areas in the building, PRISM identified this requirement as a major cost issue for commercial records centers, particularly for centers that are built higher than 24 feet because it is necessary to go into the foundation if the wall is 25 feet tall or taller. After a careful review of the data provided by PRISM, we conclude that changing the requirement from a 4-hour fire barrier wall to a 3-hour fire barrier wall will retain our primary goal of resisting the spread of fire between storage areas at a substantial cost savings for records center operators.

We have not modified the requirement that no more than 250,000 cubic feet of Federal records be stored in a single records storage area. Our language attempts to clarify that we are not setting a NARA limit on the number of non-Federal records than can be stored in a single records storage area. Although this is one of the six provisions with which industry had significant concern, we continue to believe this is an appropriate limit for minimizing the loss of Federal records to an uncontrolled fire. We discuss this issue further in the Initial Regulatory Flexibility Analysis.

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

- *Proposed change:* We propose to delete the requirement that new facilities must have a roof with a maximum fire-resistive rating of one hour. We also propose to allow protection of the roof by an automatic sprinkler system designed, installed, and maintained in accordance with NFPA 13, Standard for the Installation of Sprinkler Systems, as an alternative to the requirement for a minimum fire resistive rating of ½ hour.

- *Discussion of proposed change:* This change is in keeping with our proposed change to § 1228.228(a).

Section 1228.230(i) (Building Columns)

• **Proposed change:** We propose to revise the fire resistance requirement for building columns in records storage areas from 2 hours for existing facilities and 4 hours for new facilities to 1 hour or protected in accordance with NFPA 13 for all facilities.

• **Discussion of proposed change:** According to PRISM, the existing provision would impose insurmountable costs on most commercial storage facilities, which, in general, use columns (including exposed steel) that are not fire rated. The proposed modification of this provision would bring it in line with NFPA 13, the standard for the installation of automatic sprinkler systems, which requires a one-hour fire rating or sprinkler construction for columns within racking systems. Our fundamental concern remains the protection of the fire suppression sprinkler system itself from collapse, but recognize that the latest versions of NFPA 13 adequately address that issue.

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

• **Proposed change:** We propose to allow open flame oil and gas unit heaters or equipment in storage areas if they are installed and used in accordance with NFPA 54, National Fuel Gas Code and IAMPO Uniform Mechanical Code. The existing regulation bans such heaters and equipment.

• **Discussion of proposed change:** A ban on the use of open flame oil and gas unit heaters or equipment would require records centers to install prohibitively expensive central or electric heating systems. The proposed modification would ensure that any open flame units comply with the rigorous standards set forth in NFPA 54, National Fuel Gas Code, and the International Association of Plumbing and Mechanical Officials Uniform Mechanical Code. Under these standards, for example, the heating unit must be at least three feet from any surface and must be equipped with a flame monitor that will shut down the flow of fuel if the flame fails. For other preservation-related reasons, we continue to believe that open flame heaters are inappropriate in archival facilities.

Section 1228.230(s) (Design Intent of Fire Safety Detection and Suppression Systems)

• **Proposed change:** We propose to clarify the intent of this paragraph that the fire-safety detection and suppression system be designed to protect against a

single ignition and no more than 8 ounces of accelerant.

• **Discussion of proposed change:** The proposed change provides necessary details for design of a fire detection and suppression system, and is based on the procedure used for Underwriter Laboratories (UL) tests.

Section 1228.240(c) (Agency Records Centers)

• **Proposed change:** We propose to remove a provision relating to approval of existing records centers that did not comply with the requirements of the regulations in effect before the January 3, 2000, effective date of the current regulation.

• **Discussion of proposed change:** The provision required agencies to submit their requests by July 1, 2000. We propose to remove the provision as it is no longer needed.

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

• **Proposed change:** We propose to add Southwest Research Institute as a provider of independent live fire testing; remove a requirement for computer modeling as part of the report furnished by a licensed FPE in lieu of live fire testing or use of a NARA-certified system; and to provide the specific details required in such a report.

• **Discussion of proposed change:** The original wording of § 1228.242(a)(3) required a certification by a licensed FPE that the fire suppression system meets the design intent of § 1228.230(s). “Certification” may be read as requiring more than we intended, which is that the engineer(s) provide a professional opinion under seal. While we continue to see the value of computer modeling as a supplement to live fire testing, we acknowledge that the costs of such modeling may not always be justified in the records center environment. We will continue to use modeling in the archival and Presidential records environments. As proposed by PRISM, we have also added clarifications of the assumptions that may be made in providing the report under professional seal. The detailed assumptions relating to the accelerant reflect the test procedure for live fire testing.

Other Changes

We propose to update the effective date for all provisions that the existing regulation states are effective on January 3, 2000. We believe that the regulation will be easier to apply if there are only two applicable effective dates: the effective date of the final rule resulting from this rulemaking and October 1,

2009, the date by which existing facilities must meet certain provisions.

We also propose to change “may” to “will” in § 1228.236(a) to reflect NARA’s intent to always grant a waiver when the conditions in subparagraphs (a)(1) through (a)(3) are met.

C. Initial Regulatory Flexibility Analysis

NARA believes that this proposed rule will affect small businesses that are records storage providers. Therefore we are publishing as an appendix to this proposed rule an initial regulatory flexibility analysis (IRFA) in accordance with the Regulatory Flexibility Act and Executive Order 13272. We specifically invite comments on the IRFA in addition to comments on the proposed rule.

This proposed rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1228

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend Part 1228 of Title 36 of the CFR as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

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

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

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

§ 1228.222 What does this subpart cover?

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(b) Except where specifically noted, this subpart applies to all records storage facilities. Certain noted provisions apply only to new records storage facilities established or placed in service on or after [the effective date of the final rule].

3. Amend § 1228.224 by inserting “NFPA 54, National Fuel Gas Code (2002 Edition)” in numerical order in paragraph (c) and adding paragraph (g) to read:

§ 1228.224 Publications incorporated by reference.

* * * * *

(c) * * *

NFPA 54, National Fuel Gas Code (2002 Edition)

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(g) *International Association of Plumbing and Mechanical Officials (IAPMO) standards.* The following

IAPMO standard is available from the International Association of Plumbing and Mechanical Officials, 5001 E. Philadelphia Street, Ontario, CA 91761: IAPMO, Uniform Mechanical Code (2003 Edition).

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

§ 1228.226 Definitions.

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Existing records storage facility means any records center or commercial records storage facility used to store records on [the day before the effective date of the final rule] and that has stored records continuously since that date.

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New records storage facility means any records center or commercial records storage facility established or converted for use as a records center or commercial records storage facility on or after [the effective date of the final rule].

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

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

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

(a) The facility must be constructed with non-combustible materials and building elements, including walls, columns and floors. Roof elements may be constructed with combustible materials if installed in accordance with local building codes and if roof elements are protected by a properly installed, properly maintained wet-pipe automatic sprinkler system. An agency may request a waiver of this requirement from NARA for an existing records storage facility with combustible building elements to continue to operate until October 1, 2009. In its request for a waiver, the agency must provide documentation that the facility has a fire suppression system specifically designed to mitigate this hazard and that the system meets the requirements of § 1228.230(s). Requests must be submitted to the Director, Space and Security Management Division (NAS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

(b) A facility with two or more stories must be designed or reviewed by a

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

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(d) The facility must be designed in accordance with the applicable state, regional or local building codes (whichever is most stringent) to provide protection from building collapse or failure of essential equipment from earthquake hazards, tornadoes, hurricanes and other potential natural disasters.

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(g) * * *

(1) New records storage facilities must meet the requirements in this paragraph (g) [the effective date of the final rule].

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(h) * * *

(1) New records storage facilities must meet the requirements in this paragraph (h) [the effective date of the final rule].

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

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

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

* * * * *

(n) * * *

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

* * * * *

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

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

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

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

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

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

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(i) Building columns in the records storage areas must be at least 1-hour fire resistant or protected in accordance with NFPA 13.

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(l) Open flame (oil or gas) unit heaters or equipment, if used in records storage areas, must be installed or used in the records storage area in accordance with NFPA 54 (2002 Edition), National Fuel Gas Code, and the IAPMO Uniform Mechanical Code (2003 Edition).

* * * * *

(s) All record storage and adjoining areas must be protected by a professionally-designed fire-safety detection and suppression system that is designed to limit the maximum anticipated loss in any single fire event involving a single ignition and no more than 8 ounces of accelerant to a maximum of 300 cubic feet of records destroyed by fire. Section 1228.242 specifies how to document compliance with this requirement.

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

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

* * * * *

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

* * * * *

(c) *Paper-based permanent, unscheduled and sample/select records.* Paper-based permanent, unscheduled,

and sample/select records must be stored in records storage space that provides 24 hour/365 days per year air conditioning (temperature, humidity, and air exchange) equivalent to that required for office space. See ASHRAE Standard 55–1992, Thermal Environmental Conditions for Human Occupancy, and ASHRAE Standard 62–1989, Ventilation for Acceptable Indoor Air Quality, for specific requirements. New records storage facilities that store paper-based permanent, unscheduled, and/or sample/select records must meet the requirement in this paragraph (c) [the effective date of the final rule]. Existing storage facilities that store paper-based permanent, unscheduled, and/or sample/select records must meet the requirement in this paragraph (c) no later than October 1, 2009.

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8. Amend § 1228.236 by revising the introductory text of paragraph (a) and paragraph (a)(2) to read:

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

(a) *Types of waivers that will be approved.* NARA will approve exceptions to one or more of the standards in this subpart for:

* * * * *

(2) Existing agency records centers that met the NARA standards in effect prior to January 3, 2000, but do not meet a new standard required to be in place on [the effective date of the final rule].

* * * * *

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

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

* * * * *

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

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

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

(a) * * *

(2) A report of the results of independent live fire testing (Factory Mutual, Underwriters Laboratories, Southwest Research Institute, or equivalent); or

(3) A report under seal of a licensed fire protection engineer that:

(i) Describes the design intent of the fire suppression system to limit the maximum anticipated loss in any single fire event involving a single ignition and no more than 8 fluid ounces of petroleum-type hydrocarbon accelerant (such as, for example, heptanes or gasoline) to a maximum of 300 cubic feet of Federal records destroyed by fire. The report need not predict a maximum single event loss at any specific number, but rather should describe the design intent of the fire suppression system. The report may make reasonable engineering and other assumptions such as that the fire department responds within XX minutes (the local fire department's average response time) and promptly commences suppression actions. In addition, any report prepared under this paragraph should assume that the accelerant is saturated in a cotton wick that is 3 inches in diameter and 6 inches long and sealed in a plastic bag and that the fire is started in an aisle at the face of a carton at floor level. Assumptions must be noted in the report;

(ii) Details the characteristics of the system; and

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

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Dated: June 1, 2004.

John W. Carlin,
Archivist of the United States.

Appendix to the Preamble of Proposed Rule, 3095–AB31

Records Center Facility Standards

This appendix contains NARA's initial regulatory flexibility analysis for the above cited proposed rule, as required by the Regulatory Flexibility Act.

Description of the Reasons That Action by the Agency is Being Considered

NARA proposes to modify its records center facility standards for the following reasons:

1. One of the reasons cited in the nomination of the regulation as a candidate for reform was that the regulation had an adverse impact on small businesses. The Office of Advocacy of the Small Business Administration (SBA), in reviewing the nominations, also identified the regulation as a high priority for reform.

2. Our discussions with PRISM International, the trade association for the commercial information management industry which includes commercial records centers, identified areas where the existing regulation was unclear or misinterpreted. PRISM, in the absence of a specific small-business association representing the records center industry, is the organization that best represents the interests of small business records center operators. PRISM International also identified other areas where modification of the NARA requirement would not substantively increase the risk to the records but would accommodate commercial records centers. NARA believes that the clarifications and changes in the proposed rule will enable more commercial records centers to be eligible to store Federal records.

Objectives of, and Legal Basis for, the Proposed Rule

NARA's records center regulations specify the minimum structural, environmental, property, security, and fire safety standards that a records storage facility must meet when the facility is used for the storage of Federal records. Because Federal records provide essential documentation of the Federal Government's policies and transactions and protect rights of individuals, they must be stored in appropriate space to ensure that they remain available for their scheduled life.

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

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. Commercial records centers that meet the appropriate Small Business Administration (SBA) size standard are considered small entities. The size standard covering commercial records centers is North American Industry Classification (NAIC) 493190, \$21.5 million in average annual receipts. NARA is unable to provide a reliable estimate of the number of small entities to which the proposed rule will apply for the following reasons:

1. There are 829 small firms in NAIC 493190 according to the SBA. However, NAIC 493190 contains more than records centers. The categories of covered businesses includes automobile dead storage, bulk petroleum storage, lumber storage terminals, and whiskey warehousing, in addition to public and private warehousing and storage businesses. Moreover, not all public and private warehousing and storage businesses are records centers. At present, the General Services Administration's Federal Supply Schedule for Records Management Services (Schedule 36, SIN 51 504) lists 7 small businesses that offer paper records and/or data storage services. Additionally, at least one large records center business is on that schedule. Under Schedule 36, storage facilities must conform to NARA standards.

2. PRISM International, was consulted in an attempt to obtain more precise information on the universe of commercial records centers in the U.S. and the number of such centers that would be classified as small businesses. PRISM noted that the universe of commercial records centers in the U.S. is a difficult question to answer with any degree of accuracy. Using an independent source (Info USA) and querying against SIC Codes 4225-10 and 4226-9902 (which cover records storage businesses and track to NAIC 493190), PRISM received a total count of 907 companies who are identified with these SIC codes. PRISM's own membership of approximately 1,580 businesses, includes 351 commercial records center businesses of which 99 percent appear to meet the SBA small business threshold.

3. We note that there is one dominant large records storage business with 445 record centers worldwide and a presence in all major U.S. markets. We believe that it is reasonable to expect that this firm also has a dominant share of the total commercial records center capacity in the U.S.

Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

All reporting requirements are placed on Federal agencies, which must secure NARA approval before moving Federal records to a commercial records center. However, we expect that a substantial portion of the reporting requirements would "flow down" to commercial records center operators. To demonstrate compliance with requirements in §§ 1228.228(b) and 1228.230(a) relating to design of facilities with two or more stories and the fire detection and protection system, respectively, the proposed rule offers the records centers an option of obtaining a report under professional seal by a licensed fire protection engineer (both sections) and a

licensed civil/structural engineer (§ 1228.228(b)). We believe that the documentation requirements relating to multi-story facilities would apply to a relatively small percentage of small business records centers; we invite comment on this point.

If the records center owner has maintained the facility design records, no special professional skills would be necessary to provide documentation to the contracting agency that the facility meets the NARA standards. If the design records are not available, the center would have need for the services of a licensed Fire Protection Engineer to inspect the facility and prepare a report on a one-time basis. We estimate that the inspection and preparation of a report would take no more than 16 hours total.

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

Other Federal rules which may duplicate, overlap or conflict with the proposed rule. We are not aware of any relevant Federal rules that duplicate, overlap, or conflict with the proposed rule. The Legislative Branch has voluntarily adopted the NARA standards for facilities constructed by the Architect of the Capitol and maintained by the Library of Congress.

Alternatives to the Proposed Rule

As discussed earlier in this appendix, the objective of the NARA regulation is to ensure that Federal records are stored in appropriate space. NARA considered, but did not adopt the following alternatives to this proposed rule:

1. *No regulation.* One alternative would be to replace the existing regulation with a single requirement that agencies must use a records center that complies with NFPA/ANSI 232-2000, *Standard for the Protection of Records*. This is the voluntary consensus standard that applies to records storage facilities (we note that other NFPA standards apply to other types of warehousing). Office of Management and Budget (OMB) Circular A-119 Circular directs agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical. We did not adopt this alternative as it would be more stringent with regard to fire protection issues than the existing NARA records center facility standards (which incorporate most but not all of the NFPA 232 provisions), while not including the environmental and pest control portions of our existing regulation. Based on the industry comments made on the draft *2003 Report to Congress on Costs and Benefits of Federal Regulations* and subsequent dialog with PRISM International, we believe that this alternative would not minimize the economic impact on small business records centers that

want to provide records storage services for Federal agencies. We are unable to quantify the economic impact of this alternative on small business.

2. *Relax the waiver process for small businesses.* The proposed rule addresses the provisions that industry identified in their comments as major obstacles for small businesses. The alternative considered here would be to allow records centers that qualify as small businesses to apply for a waiver from § 1228.228(a)'s requirement for noncombustible roofs, and to have two tiers of requirements in § 1228.230 relating to the fire-resistive rating of building elements. The proposed requirements specified in this proposed rule would apply to small businesses; the existing (January 2000) requirements would be retained for NARA records centers, agency records centers, and commercial records centers that are other than small businesses. We would still make the proposed changes to the sections that are being modified to clarify language (*e.g.*, relating to "FPE certifications," racking systems, and 300 cubic foot limit in § 1228.230(s)), which would apply to all facilities. Because many commercial records centers are small businesses, we felt that this approach would merely add an additional step and paperwork for small businesses. Moreover, the two-tier approach may be confusing to them.

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 business, and
- Other alternatives, if any, NARA should consider, as well as the costs and benefits of those alternatives to small business.

2. We are particularly interested in hearing from existing small business-owned records centers that currently have more than 250,000 cubic feet of existing, unused capacity within a single facility that are interested in providing records storage services to the Federal government.

[FR Doc. 04-20274 Filed 9-3-04; 8:45 am]

BILLING CODE 7515-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME Docket Number R08-OAR-2004-CO-0002; FRL-7809-3]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Colorado Springs Revised Carbon Monoxide Maintenance Plan and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to take direct final action approving a State Implementation Plan (SIP) revision submitted by the State of Colorado. On April 12, 2004, the Governor of Colorado submitted a revised maintenance plan for the Colorado Springs carbon monoxide (CO) maintenance area for the CO National Ambient Air Quality Standard (NAAQS). The revised maintenance plan contains a revised transportation conformity budget for the year 2010 and beyond. In addition, the Governor submitted revisions to Colorado's Regulation No. 11 "Motor Vehicle Emissions Inspection Program." EPA is proposing approval of the Colorado Springs CO revised maintenance plan, revised transportation conformity budget, and the revisions to Regulation No. 11. This action is being taken under section 110 of the Clean Air Act. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Written comments must be received on or before October 7, 2004.

ADDRESSES: Submit your comments, identified by RME Docket Number R08-OAR-2004-CO-0002, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Agency Website: <http://docket.epa.gov/rmepub/index.jsp> Regional Materials in EDOCKET (RME), EPA's electronic public docket and comment system for regional actions, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- E-mail: long.richard@epa.gov and russ.tim@epa.gov.

- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 300, Denver, Colorado 80202-2466.

- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, phone (303) 312-6479, and e-mail at: russ.tim@epa.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 26, 2004.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 04-20135 Filed 9-3-04; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[SFUND-2004-0001; FRL-7809-9]

RIN 2050-AF04

Notice of Public Meeting To Discuss Standards and Practices for All Appropriate Inquiries

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) will hold a public meeting to discuss EPA's proposed rule that would set federal standards and practices for conducting all appropriate inquiries, as required under Sections