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To Chris
Date 10/13 Time _____

WHILE YOU WERE OUT

M _____

of _____

Phone _____

Area Code

Number

Extension

TELEPHONED		PLEASE CALL	
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		URGENT	

RETURNED YOUR CALL

Message

Anne & Dean are
coming to my place at
2:00 p.m. to discuss
what to do about Pres. Records
Regs. Do you want to join us?

Operator

Pat



AMPAD
EFFICIENCY®

23-020



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF ADMINISTRATION
Washington, D.C. 20503

August 10, 1987

MEMORANDUM FOR PATRICIA M. BRYAN

FROM: ARNOLD INTRATER *AI*

SUBJECT: Draft Regulations Implementing Provisions
of the Presidential Records Act

The draft regulations appear to flow directly from the statute.

I have at least a mild objection to the five working day notice to a former President under § 1270 46 (b), that his request for nondisclosure of a record has been denied. The notice is there to give the former President an opportunity to take further legal action and I think at least 10 working days would be a more reasonable standard. At the very least the regulation should clearly state that the five days notice is from date of receipt and not from the date of the letter.

SUGGESTED CHANGES TO DRAFT REGULATIONS IMPLEMENTING THE
PRESIDENTIAL RECORDS ACT

Insert to preamble:

These regulations implement only the statutory scheme established by the Presidential Records Act, and do not establish policies or procedures governing the assertion of or response to any constitutionally based privilege that may be asserted by an incumbent or former President. [Because the right to assert such privileges flows from the President's inherent constitutional authority, rather than from the statutory scheme set up by the PRA, it is more appropriate that such policies and procedures be established through presidential directive.]

Suggested revisions to language of regulations:

1270.10 Scope of part

These regulations implement the provisions of the Presidential Records Act of 1978, Pub. L. No. 95-591, 92 Stat. 2523-27, as amended by Pub. L. No. 98-497, sec. 107(b)(7), 98 Stat. 2287 (1984) (codified at 44 U.S.C. 2201-07), by setting forth the policies and procedures required by that Act governing preservation, protection, and disposal of, and access to Presidential and Vice-Presidential records created during a term of office of the President or Vice President beginning on or after January 20, 1981. Nothing in these regulations is intended to govern procedures for assertion of, or response to, any constitutionally-based privilege which may be available to an incumbent or former President.

* * * * *

1270.40 Identification of Restricted Records

(a) Once-an-incumbent-President-has If a President, prior to the conclusion of his last consecutive term of office, placed places restrictions on access to certain information contained in

Presidential records in accordance with 44 U.S.C. section 2204, the Archivist or his designee shall identify the Presidential records affected, or any reasonably segregable portion thereof, in consultation with that President or his designated representative.

(b) and The Archivist shall restrict public access to the information contained in these records until --

(1)(a) {a}{1} The date on which the former President waives the restriction on disclosure of the record or information contained within; or

(b) {2} The expiration of the period of restriction specified under 44 U.S.C. 2204(a) for the category of information under which a certain record, or a portion thereof, was restricted;

whichever date is earlier; or

(2) {b} The date on which a determination is made by the Archivist that the former President or an agent of the former President has placed in the public domain a restricted record or a reasonably segregable portion thereof, or any significant element or aspect of the information contained in a restricted record or a reasonably segregable portion thereof, if this date is earlier than either of the dates specified in (1) (a).

* * * * *

1270.46. Notice of Intent to Disclose Certain Presidential Records [entirely new language]

(a) The Archivist or his designee shall notify a former President or his designated representative whenever:

(1) The Archivist determines to make available for public release particular records or classes of records which the former President has specifically requested be placed within a designated restricted category;

(2) Records or portions of records that the Archivist has previously determined to be restricted are to be released as a result of --

(i) an administrative appeal under section 1270.42;

(ii) a determination by the Archivist under section 1270.40(b)(2) that the former President or an agent of the former President has placed in the public record a restricted record or a reasonably segregable portion thereof, or any significant element or aspect of the information contained in a restricted record or a reasonably segregable portion thereof;

(3) The Archivist has determined to disclose records under section 1270.44; or

(4) The disclosure of particular records otherwise might adversely affect any rights and privileges the former President may possess.

(b) The notice shall be in writing, and shall identify the records with reasonable specificity. In the case of records to be disclosed in accordance with section 1270.44, the notice shall also:

(1) identify the requestor and the nature of the request;

(2) state whether the requested records contain materials to which access would otherwise be restricted pursuant to 44 U.S.C. 2204(a) and identify the category or restriction within which the records to be disclosed falls; and

(3) list the date of the request.

(c) The Archivist shall not disclose any records covered by any such notice for a minimum period of 30 days from receipt of the notice by the former President.

(d) A copy of any notice provided to a former President under this section shall be provided at the same time to the incumbent President.

National Archives



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Washington, DC 20408

JUL 20 1987

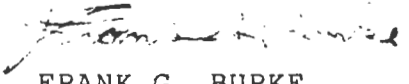
Honorable Arthur B. Culvahouse, Jr.
Counsel to the President
The White House
Washington, DC 20500

Dear Mr. Culvahouse:

As you know, by the time President Reagan leaves office the National Archives must have in place regulations implementing certain provisions of the Presidential Records Act. David Van Tassel of our staff provided you with a draft of the regulations in connection with the group which is working on implementing the Tower Board recommendations. The enclosed draft regulations are substantially the same, except for a few technical changes and a "preamble" which has been added. Within a short time, we will send the draft to OMB for clearance prior to publishing them as a proposed rule. We hope to publish them in early August.

On another matter, thank you for your kind words about the two "talented" archivists who are on detail to your office. I guess it is nice to be appreciated so much it hurts. Seriously, we are happy to be of assistance.

Sincerely,


FRANK G. BURKE
Acting Archivist
of the United States

Enclosure

pg

ID # 517607 CU

FEDIC-01

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- ☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Frank G. Burke

☐ MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Draft Regulations implementing provisions of the Presidential Records Act

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>cu hall</u>	ORIGINATOR	<u>87107 23</u>			<u>1 1</u>
<u>cuat 35</u>	Referral Note: <u>D</u>	<u>87107 13</u>			<u>1 1</u>
	Referral Note:				
		<u>1 1</u>			<u>1 1</u>
	Referral Note:				
		<u>1 1</u>			<u>1 1</u>
	Referral Note:				
		<u>1 1</u>			<u>1 1</u>
	Referral Note:				

ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:

A - Answered C - Completed
B - Non-Special Referral S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1270

Regulations Implementing the Presidential Records Act

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule implements the provisions of the Presidential Records Act of 1978 (Pub. L. No. 95-591, 92 Stat. 2523-27, as amended by Pub. L. No. 98-497, 98 Stat. 2287), codified at 44 U.S.C. 2201-07. As required by the Act, this rule contains:

1. Provisions for advance public notice and description of any Presidential records determined by the Archivist of the United States to have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation.
2. Provisions for notice to a former President when materials to which access would otherwise be restricted are to be provided in response to judicial process, to an incumbent President under certain conditions, or to Congress.
3. Provisions for notice to a former President when disclosure of a document may adversely affect the former President's rights or privileges.
4. Provisions for establishing procedures for consultation between the Archivist and certain Federal agencies concerning the administration of records containing information compiled for law enforcement purposes.

DATE: Comments must be received by [insert date 30 days after date of publication].

ADDRESS: Comments should be sent to Director, Program Policy and Evaluation Division, National Archives and Records Administration (NAA), Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Gary L. Brooks or Christopher Runkel, Legal Services Staff, 202/523-3618.

SUPPLEMENTARY INFORMATION:

In 1978, Congress passed and the President signed into law the Presidential Records Act (44 U.S.C. 2201 et. seq.).

This statute represents a departure from the way in which the Federal Government has traditionally treated Presidential materials when a President leaves office. Until recent times, Presidents have taken their papers with them at the end of their terms. Modern Presidents, recognizing the historical value of these materials, have donated them to the United States for use in a Presidential library in accordance with the Presidential Libraries Act of 1955 (44 U.S.C. 2112). The Presidential papers of Presidents Hoover through Johnson, Ford, and Carter are administered by the National Archives and Records Administration (NARA) according to each President's deed of gift. President Nixon's historical materials are administered by NARA under the Presidential Recordings and Materials Preservation Act of 1974 (44 U.S.C. 2111 note).

The Presidential Records Act provides that the United States, acting through NARA, "shall reserve and retain complete ownership, possession, and control of Presidential records." 44 U.S.C. 2202. The Act also provides for NARA to administer Presidential records in accordance with the provisions of the Act, and to promulgate regulations implementing those provisions. The stated purposes of the Act, as set forth in House of Representatives Report number 95-1487, are twofold: (1) "to establish the public ownership of records created by . . . Presidents and their staffs in the course of discharging their official duties;"

and (2) "to establish procedures governing the preservation and public availability of these records at the end of a Presidential administration." H.R. Rep. No. 1487, 95th Cong., 2d Sess.2, quoted in 1978 U.S. Code Cong. & Ad. News 5733.

The Presidential Records Act took effect with President Ronald Reagan's inauguration on January 20, 1981. The Act's provisions affect not only Presidential records, but Vice-Presidential records as well. The proposed regulations which accompany this notice will govern the administration of the Presidential records accumulated by President Reagan once he leaves office; they will also govern the administration of all Presidential records accumulated by succeeding Presidents.

REGULATIONS IMPLEMENTING THE PRESIDENTIAL RECORDS ACT

Part 1270 -- PRESIDENTIAL RECORDS

Subpart A -- General Provisions

1270.10 Scope of part

These regulations implement the provisions of the Presidential Records Act of 1978, Pub. L. No. 95-591, 92 Stat. 2523-27, as amended by Pub. L. No. 98-497, sec. 107(b)(7), 98 Stat. 2287 (1984) (codified at 44 U.S.C. 2201-07), by setting forth the policies and procedures governing preservation, protection, and disposal of, and access to Presidential and Vice-Presidential records created during a term of office of the President or Vice President beginning on or after January 20, 1981.

1270.12 Application

(a) These regulations apply to all Presidential records created during a term of office of the President beginning on or after January 20, 1981.

(b) Vice-Presidential records shall be subject to the provisions of this part in the same manner as Presidential

records. The Vice President's duties and responsibilities, with respect to Vice-Presidential records, shall be the same as the President's duties and responsibilities with respect to Presidential records. The Archivist's authority with respect to Vice-Presidential records shall be the same as the Archivist's authority with respect to Presidential records, except that the Archivist may, when he determines it to be in the public interest, enter into an agreement with a non-Federal archival repository for the deposit of Vice-Presidential records.

1270.14 Definitions

For the purposes of this Part --

(a) The terms "documentary material", "Presidential records", "personal records", "Archivist", and "former President" have the meanings given them by 44 U.S.C. 2201(1)-(5), respectively.

(b) The term "agency" has the meaning given it by 5 U.S.C. 551(1)(a)-(d) and 552(e).

(c) The term "Presidential archival depository" has the meaning given it by 44 U.S.C. 2101(1).

(d) The term "Vice-Presidential records" means documentary materials, or any reasonably segregable portion thereof, created

or received by the Vice President, his immediate staff, or a unit or individual of the Office of the Vice President whose function is to advise and assist the Vice President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the Vice President. The term includes documentary materials of the kind included under the term "Presidential records."

(e) The term "filed" means the date something is received in the office of the official to whom it is addressed.

Subpart B -- Actions Taken on Behalf
of Former President

1270.20 Designation of Person or Persons to Act for Former
President

(a) A President or former President may designate some person or persons to exercise, upon the death or disability of the President or former President, any or all of the discretion or authority granted to the President or former President by chapter 22 of title 44, United States Code.

(b) When a President or former President designates a person or persons to act for him pursuant to (a), this designation

shall be effective only if the Archivist has received notice of the designation before the President or former President dies or is disabled.

(c) The notice required by (b) shall be in writing, and shall include the following information:

(1) The name(s) of the person or persons designated to act for the President or former President;

(2) The current addresses of the person or persons designated; and

(3) The records, identified with reasonable specificity, over which the designee(s) will exercise discretion or authority.

1270.22 When Archivist May Act for Former President

In those instances where a President has specified, in accordance with 44 U.S.C. 2204, restrictions on access to Presidential records, but has not made a designation under section 1270.20 of this subpart, the Archivist shall, upon the death or disability of a President or former President, exercise the discretion or authority granted to a President or former President by 44 U.S.C. 2204.

Subpart C -- Disposal of Presidential Records

1270.30 Disposal of Presidential Records by Incumbent President

A President may, while in office, dispose of any Presidential records which in his opinion lack administrative, historical, informational, or evidentiary value if one of the following two sets of requirements is satisfied:

(a)(1) The President has obtained the written views of the Archivist concerning the proposed disposal; and

(2) The Archivist states in his communication with the President that he does not intend to request, with respect to the President's proposed disposal of Presidential records, the advice of the Committees on Rules and Administration and Governmental Affairs of the Senate, and the Committees on House Administration and Government Operations of the House of Representatives because he does not consider --

(A) the records proposed for disposal to be of special interest to the Congress; or

(B) consultation with the Congress concerning the proposed disposal to be in the public interest; or

(b)(1) The President has obtained the written views of the Archivist concerning the proposed disposal;

(2) The Archivist states either --

(A) that the records proposed for disposal may be of special interest to the Congress; or

(B) that consultation with the Congress concerning the proposed disposal is in the public interest; and

(3) The President submits copies of the proposed disposal schedule to the Committees on Rules and Administration and Governmental Affairs of the Senate and the Committees on House Administration and

Government Operations of the House of Representatives
at least sixty calendar days of continuous session of
Congress in advance of the proposed disposal date.

For the purpose of this section, continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the days in which Congress is in continuous session.

1270.32 Disposal of Presidential Records in the Custody of the
Archivist

(a) The Archivist may dispose of Presidential records which he has appraised and determined to have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation.

(b) When Presidential records are scheduled for disposal pursuant to (a), the Archivist shall publish a notice of this disposal in the Federal Register at least sixty days before the proposed disposal date.

(c) The notice required by (b) shall include the following:

(1) A reasonably specific description of the records scheduled for disposal; and

(2) A concise statement of the reason why the Archivist believes the records can be disposed of.

(d) Publication in the Federal Register of the notice required by (b) shall be a final agency action for purposes of review under chapter 7 of title 5, United States Code (5 U.S.C. 701-06).

Subpart D -- Access to Presidential Records

1270.40 Identification of Restricted Records

Once an incumbent President has placed restrictions on access to certain information contained in Presidential records, the Archivist or his designee shall identify the Presidential records affected, or any reasonably segregable portion thereof, and shall restrict public access to the information contained in these records until --

(a)(1) The date on which the former President waives the restriction on disclosure of the record or information contained within; or

(2) The expiration of the period of restriction specified under 44 U.S.C. 2204(a) for the category of information under which a certain record, or a portion thereof, was restricted;

whichever date is earlier; or

(b) The date on which a determination is made by the Archivist that the former President or an agent of the former President has placed in the public domain a restricted record or a reasonably segregable portion thereof, or any significant element or aspect of the information contained in a restricted record or a reasonably segregable portion thereof, if this date is earlier than either of the dates specified in (a).

1270.42 Denial of Access to Public; Right to Appeal

(a) Any person denied access to a Presidential record (hereinafter "the requestor") because of a determination that the record or a reasonably segregable portion thereof was (1) properly restricted under 44 U.S.C. 2204(a), and (2) not placed in the public domain by the former President or his agent, may file an administrative appeal with the Assistant Archivist for Presidential Libraries (NL), Washington, DC 20408.

(b) Appeals shall be filed no later than ten working days after the requestor receives written notification that access to Presidential records has been denied.

(c) Appeals shall be in writing and shall set forth the reason why the requestor believes access to the records sought should be allowed. The requestor shall identify the specific records sought.

(d) Upon receipt of an appeal, the Assistant Archivist for Presidential Libraries shall have thirty working days from the date an appeal is filed to consider the appeal and to respond in

writing to the requestor. The Assistant Archivist's response shall state whether the Presidential records requested are to be released and the basis for this determination. The decision of the Assistant Archivist is final.

1270.44 Exceptions to Restricted Access

(a) Notwithstanding any restrictions on access imposed pursuant to section 2204 or these regulations, and subject to any rights, defenses, or privileges which the United States or any agency or person may invoke, Presidential records shall be made available in the following instances:

(1) Pursuant to subpoena or other judicial process properly issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;

(2) To an incumbent President if the records sought (A) contain information which is needed for the conduct of current business of his office and (B) are not otherwise available;

(3) To either House of Congress, or, to the extent of matter within its jurisdiction, to a Congressional committee or subcommittee if the records sought (A) contain information which is needed for the conduct of business within its jurisdiction and (B) are not otherwise available.

(b) Requests by an incumbent President, a House of Congress, or a Congressional committee or subcommittee pursuant to paragraph (a) of this section should be addressed to the Archivist. All requests should be in writing and should, where practicable, identify the records sought with reasonable

specificity.

(c) Presidential records of a former President shall be available to the former President or his designated representative upon request.

1270.46 Notice of Intent to Disclose Certain Presidential Records

(a) The Archivist or his designee shall notify a former President or his designated representative whenever a Presidential record, the disclosure of which might adversely affect any rights and privileges the former President may possess, may be disclosed. The notice given shall identify the records with reasonable specificity. In the case of records to be disclosed in accordance with section 1270.44, the notice shall also:

- (i) Identify the requestor and the nature of the request;
- (ii) State whether the requested records contain materials to which access would otherwise be restricted pursuant to 44 U.S.C. 2204(a) and identify the category of restriction within which the record to be disclosed falls; and
- (iii) List the date of the request.

(b) If, after receiving the notice required by subsection (a) of this section, an affected former President raises rights or privileges which he believes should preclude the disclosure of a Presidential record, and it is nevertheless determined, in whole or in part, that the record in question will be disclosed, the

Archivist shall notify the former President or his representative of this determination. This notice shall be similar in form to the notice required by subsection (a) of this section, except that the notice required by this subsection shall also:

- (i) Be in writing;
- (ii) State the basis upon which the record is being disclosed; and
- (iii) Specify the date on which the record will be disclosed.

Notice under this subsection shall be given to the affected former President or his representative at least five working days prior to the release of the records requested.

Subpart E -- Presidential Records Compiled for Law Enforcement
Purposes

1270.50 Consultative Procedures to be Established

The Archivist shall, no later than January 21, 1989, establish procedures for consultation between NARA and appropriate Federal agencies regarding information compiled for law enforcement purposes which may be subject to section 552(b)(7) of title 5, United States Code.

DRAFT

1270.52 Notification

(a) The procedures established under this subpart for consultation shall provide for the notification, in writing, of appropriate Federal agencies. This notice shall include the following:

- (1) A description of the records in question;
- (2) Statements that the records described contain information compiled for law enforcement purposes and may be subject to the exemption provided by section 552(b)(7) of the FOIA for records of this type; and,
- (3) A contact person at NARA.

(b) The notice described in (a) shall also include an invitation to the head of the Federal agency being notified to consult with NARA about the records described in the notice. This consultation may include review of the records for information which may affect the agency's activities or operations.

THE WHITE HOUSE
WASHINGTON

November 16, 1987

MEMORANDUM FOR C. CHRISTOPHER COX
PATTY ARONSSON

FROM: PATRICIA MACK BRYAN *PMB*
SUBJECT: Presidential Records Act

Pursuant to our discussion of this afternoon, I am forwarding to you a copy of the following materials:

1. the Presidential Records Act;
2. the Acting Archivist's proposed draft regulations implementing the Presidential Records Act; and
3. a memorandum from me to A.B. on those proposed regulations, along with talking points I used in a discussion with Gary Brooks, the General Counsel of the National Archives, on November 2, 1987.

Attachments

see section 301 of Pub. L. 98-497 set out as a note under section 2102 of this title.

Legislative History. For legislative history and purpose of Pub.L. 94-575, see 1976 U.S.Code Cong. and Adm.News, p. 6150. See, also, Pub. L. 98-497, 1984 U.S. Code Cong. and Adm. News, p. 3685.

Notes of Decisions

Authentication of evidence 1
Fees 2

1. Authentication of evidence

In action alleging that automobile manufacturer negligently designed and placed fuel system, transcript of taped conversation between the then president of the United States and officials of manufacturer which was authenticated by official seal of the National Archives of the United States was adequately authenticated pursuant to subsec. (b) of this section. *Ford Motor Co. v. Stubblefield*, Ga.App.1984, 319 S.E.2d 470.

2. Fees

National Archives and Records Administration may properly charge fees of all agencies, for cost of reproducing documents on their behalf, since this action is most equitable way of allocating costs, in absence of appropriation. 1985, 64 Op. Comp.Gen. 724.

reproductions (exclusive of patented material, section, and unpublished works for which come into the custody or possession of the are not liable for infringement of copyright e of the materials for display, inspection, 38.

§ 2113; Pub.L. 94-553, § 105(b), Oct. 19, 1976, 90 Stat. 2849; Pub.L. 98-497, Title I, §§ 102(a)(1), 107(a)(7), Oct. 19, 1984,

Effective Date of 1984 Amendment. Amendment by Pub.L. 98-497 effective on April 1, 1985, see section 301 of Pub.L. 98-497 set out as a note under section 2102 of Title 44, Public Printing and Documents.

Effective Date of 1976 Amendment. Amendment by Pub. L. 94-553 effective Jan. 1, 1978, see section 102 of Pub. L. 94-553, set out as an Effective Date note preceding section 101 of Title 17, Copyrights.

Legislative History. For legislative history and purpose of Pub.L. 94-553, see 1976 U.S.Code Cong. and Adm.News, p. 5659. See, also, Pub.L. 98-497, 1984 U.S. Code Cong. and Adm. News, p. 3865.

Clerk of the House of Representatives, acting Congress all the noncurrent records of the committee and transfer them to the National or preservation, subject to the orders of the, respectively.

§ 2114; renumbered and amended Pub.L. 98-497, 98 Stat. 2280, 2286.)

1984 Amendment. Pub.L. 98-497 substituted "National Archives and Records Administration" for "General Services Administration".

Effective Date of 1984 Amendment. Amendment by Pub.L. 98-497 effective on April 1, 1985,

see section 301 of Pub.L. 98-497 set out as a note under section 2102 of this title.

Legislative History. For legislative history and purpose of Pub.L. 98-497, see 1984 U.S. Code Cong. and Adm. News, p. 3865.

CHAPTER 22—PRESIDENTIAL RECORDS

Sec.
2201. Definitions.
2202. Ownership of Presidential records.
2203. Management and custody of Presidential records.

Sec.
2204. Restrictions on access to Presidential records.
2205. Exceptions to restriction on access.¹
2206. Regulations.
2207. Vice-Presidential records.

¹ So in original. Does not conform to section catchline.

§ 2201. Definitions

As used in this chapter—

(1) The term "documentary material" means all books, correspondence, memorandums, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, and motion pictures, including, but not limited to, audio, audiovisual, or other electronic or mechanical recordings.

(2) The term "Presidential records" means documentary materials, or any reasonably segregable portion thereof, created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term—

(A) includes any documentary materials relating to the political activities of the President or members of his staff, but only if such activities relate to or have a direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; but

(B) does not include any documentary materials that are (i) official records of an agency (as defined in section 552(e) of title 5, United States Code); (ii) personal records; (iii) stocks of publications and stationery; or (iv) extra copies of documents produced only for convenience of reference, when such copies are clearly so identified.

(3) The term "personal records" means all documentary materials, or any reasonably segregable portion thereof,¹ of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term includes—

(A) diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal which are not prepared or utilized for, or circulated or communicated in the course of, transacting Government business;

(B) materials relating to private political associations, and having no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; and

(C) materials relating exclusively to the President's own election to the office of the Presidency, and materials directly relating to the election of a particular individual or individuals to Federal, State, or local office, which have no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President.

(4) The term "Archivist" means the Archivist of the United States.

(5) The term "former President", when used with respect to Presidential records, means the former President during whose term or terms of office such Presidential records were created.

(Added Pub.L. 95-591, § 2(a), Nov. 4, 1978, 92 Stat. 2523.)

¹ So in original. Probably should be "thereof."

Effective Date. Section 3 of Pub.L. 95-591 provided that: "The amendments made by this Act [enacting this chapter, amending sections 2107 and 2108 of this title and enacting provisions set out as notes under this section] shall be effective with respect to any Presidential records (as defined in section 2201(2) of title 44, as amended by section 2 of this Act [this section]) created during a term of office of the President beginning on or after January 20, 1981."

Short Title. For Short Title of this chapter as the "Presidential Records Act of 1978", see sec-

tion 1 of Pub.L. 95-591, set out as a note under section 101 of this title.

Separability of Provisions. Section 4 of Pub.L. 95-591 provided that: "If any provision of this Act [enacting this chapter, amending sections 2107 and 2108 of this title and enacting provisions set out as notes under this section] is held invalid for any reason by any court, the validity and legal effect of the remaining provisions shall not be affected thereby."

Legislative History. For legislative history and purpose of Pub.L. 95-591, see 1978 U.S.Code Cong. and Adm.News, p. 5732.

§ 2202. Ownership of Presidential records

The United States shall reserve and retain complete ownership, possession, and control of Presidential records; and such records shall be administered in accordance with the provisions of this chapter.

(Added Pub.L. 95-591, § 2(a), Nov. 4, 1978, 92 Stat. 2524.)

Legislative History. For legislative history and purpose of Pub.L. 95-591, see 1978 U.S.Code Cong. and Adm.News, p. 5732.

Library References
Records ④13.
C.J.S. Records §§ 34, 40.

§ 2203. Management and custody of Presidential records

(a) Through the implementation of records management controls and other necessary actions, the President shall take all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of his constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are maintained as Presidential records pursuant to the requirements of this section and other provisions of law.

(b) Documentary materials produced or received by the President, his staff, or units or individuals in the Executive Office of the President the function of which is to advise and assist the President, shall, to the extent practicable, be categorized as Presidential records or personal records upon their creation or receipt and be filed separately.

(c) During his term of office, the President may dispose of those of his Presidential records that no longer have administrative, historical, informational, or evidentiary value if—

- (1) the President obtains the views, in writing, of the Archivist concerning the proposed disposal of such Presidential records; and
- (2) the Archivist states that he does not intend to take any action under subsection (e) of this section.

(d) In the event the Archivist notifies the President under subsection (c) that he does intend to take action under subsection (e), the President may dispose of such Presidential records if copies of the disposal schedule are submitted to the appropriate Congressional Committees at least 60 calendar days of continuous session of Congress in advance of the proposed disposal date. For the purpose of this section, continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the days in which Congress is in continuous session.

(e) The Archivist shall request the advice of the Committee on Rules and Administration and the Committee on Governmental Affairs of the Senate and the Committee on House Administration and the Committee on Government Operations of the House of Representatives with respect to any proposed disposal of Presidential records whenever he considers that—

- (1) these particular records may be of special interest to the Congress; or
- (2) consultation with the Congress regarding the disposal of these particular records is in the public interest.

Pub.L. 95-591, set out as a note under of this title.

Validity of Provisions. Section 4 of Pub.L. provided that: "If any provision of this chapter, amending sections 108 of this title and enacting provisions notes under this section] is held invalid on by any court, the validity and legal the remaining provisions shall not be hereby."

Legislative History. For legislative history and of Pub.L. 95-591, see 1978 U.S.Code Adm.News, p. 5732.

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References

Records §§ 34, 40.

Records

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(f)(1) Upon the conclusion of a President's term of office, or if a President serves consecutive terms upon the conclusion of the last term, the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President. The Archivist shall have an affirmative duty to make such records available to the public as rapidly and completely as possible consistent with the provisions of this Act.

(2) The Archivist shall deposit all such Presidential records in a Presidential archival depository or another archival facility operated by the United States. The Archivist is authorized to designate, after consultation with the former President, a director at each depository or facility, who shall be responsible for the care and preservation of such records.

(3) The Archivist is authorized to dispose of such Presidential records which he has appraised and determined to have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation. Notice of such disposal shall be published in the Federal Register at least 60 days in advance of the proposed disposal date. Publication of such notice shall constitute a final agency action for purposes of review under chapter 7 of title 5, United States Code.

(Added Pub.L. 95-591, § 2(a), Nov. 4, 1978, 92 Stat. 2524.)

References in Text. This Act, referred to in subsec. (f)(1), means Pub. L. 95-591, Nov. 4, 1978, 92 Stat. 2523, as amended, known as the Presidential Records Act of 1978, which enacted this chapter, amended sections 2107 and 2108 of this title, and enacted provisions set out as notes under section 2201 of this title. For complete classification of this Act to the Code, see Short

Title of 1978 Amendment note set out under section 101 of this title and Tables volume.

Legislative History. For legislative history and purpose of Pub.L. 95-591, see 1978 U.S.Code Cong. and Adm.News, p. 5732.

Library References

Records §§ 34, 40.

§ 2204. Restrictions on access to Presidential records

(a) Prior to the conclusion of his term of office or last consecutive term of office, as the case may be, the President shall specify durations, not to exceed 12 years, for which access shall be restricted with respect to information, in a Presidential record, within one or more of the following categories:

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

(2) relating to appointments to Federal office;

(3) specifically exempted from disclosure by statute (other than sections 552 and 552b of title 5, United States Code), provided that such statute (A) requires that the material be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of material to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) confidential communications requesting or submitting advice, between the President and his advisers, or between such advisers; or

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(b)(1) Any Presidential record or reasonably segregable portion thereof containing information within a category restricted by the President under subsection (a) shall be so designated by the Archivist and access thereto shall be restricted until the earlier of—

(A)(i) the date on which the former President waives the restriction on disclosure of such record, or

(ii) the expiration of the duration specified under subsection (a) for the category of information on the basis of which access to such record has been restricted; or

(B) upon a determination by the Archivist that such record or reasonably segregable portion thereof, or of any significant element or aspect of the information contained in such record or reasonably segregable portion thereof,

has been placed in the public domain through publication by the former President, or his agents.

(2) Any such record which does not contain information within a category restricted by the President under subsection (a), or contains information within such a category for which the duration of restricted access has expired, shall be exempt from the provisions of subsection (c) until the earlier of—

(A) the date which is 5 years after the date on which the Archivist obtains custody of such record pursuant to section 2203(d)(1); or

(B) the date on which the Archivist completes the processing and organization of such records or integral file segment thereof.

(3) During the period of restricted access specified pursuant to subsection (b)(1), the determination whether access to a Presidential record or reasonably segregable portion thereof shall be restricted shall be made by the Archivist, in his discretion, after consultation with the former President, and, during such period, such determinations shall not be subject to judicial review, except as provided in subsection (e) of this section. The Archivist shall establish procedures whereby any person denied access to a Presidential record because such record is restricted pursuant to a determination made under this paragraph, may file an administrative appeal of such determination. Such procedures shall provide for a written determination by the Archivist or his designee, within 30 working days after receipt of such an appeal, setting forth the basis for such determination.

(c)(1) Subject to the limitations on access imposed pursuant to subsections (a) and (b), Presidential records shall be administered in accordance with section 552 of title 5, United States Code, except that paragraph (b)(5) of that section shall not be available for purposes of withholding any Presidential record, and for the purposes of such section such records shall be deemed to be records of the National Archives and Records Administration. Access to such records shall be granted on nondiscriminatory terms.

(2) Nothing in this Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former President.

(d) Upon the death or disability of a President or former President, any discretion or authority the President or former President may have had under this chapter shall be exercised by the Archivist unless otherwise previously provided by the President or former President in a written notice to the Archivist.

(e) The United States District Court for the District of Columbia shall have jurisdiction over any action initiated by the former President asserting that a determination made by the Archivist violates the former President's rights or privileges.

(Added Pub.L. 95-591, § 2(a), Nov. 4, 1978, 92 Stat. 2525, and amended Pub.L. 98-497, Title I, § 107(b)(7), Oct. 19, 1984, 98 Stat. 2287.)

References in Text. This Act, referred to in subsec. (c)(2), means Pub.L. 95-591, Nov. 4, 1978, 92 Stat. 2523, as amended, known as the Presidential Records Act of 1978, which enacted this chapter, amended sections 2107 and 2108 of this title, and enacted provisions set out as notes under section 2201 of this title. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 101 of this title and Tables volume.

1984 Amendment. Subsec. (c)(1). Pub.L. 98-497 substituted "National Archives and Records Administration" for "National Archives

and Records Service of the General Services Administration".

Effective Date of 1984 Amendment. Amendment by Pub.L. 98-497 effective on April 1, 1985, see section 301 of Pub.L. 98-497 set out as a note under section 2102 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-591, see 1978 U.S. Code Cong. and Adm. News, p. 5732. See, also, Pub.L. 98-497, 1984 U.S. Code Cong. and Adm. News, p. 3865.

Library References

Records ⊕31.

C.J.S. Records §§ 34, 40.

§ 2205. Exceptions to restricted access

Notwithstanding any restrictions on access imposed pursuant to section 2204—

(1) the Archivist and persons employed by the National Archives and Records Administration who are engaged in the performance of normal archival work shall be permitted access to Presidential records in the custody of the Archivist;

ugh publication by the former Presi-

information within a category restrict-
contains information within such a
access has expired, shall be exempt
earlier of—

date on which the Archivist obtains
2203(d)(1); or

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hereof.

pecified pursuant to subsection (b)(1),
ntial record or reasonably segregable
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and, during such period, such determi-
except as provided in subsection (e) of
cedures whereby any person denied
n record is restricted pursuant to a
y file an administrative appeal of such
e for a written determination by the
days after receipt of such an appeal,

posed pursuant to subsections (a) and
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. 2525, and amended Pub.L. 98-497, Title I,

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ministration".

Effective Date of 1984 Amendment. Amend-
ment by Pub.L. 98-497 effective on April 1, 1985,
e section 301 of Pub.L. 98-497 set out as a note
nder section 2102 of this title.

Legislative History. For legislative history and
urpose of Pub.L. 95-591, see 1978 U.S.Code
ong. and Adm.News, p. 5732. See, also, Pub.L.
B-497, 1984 U.S. Code Cong. and Adm. News,
3865.

Library References

Records 31.
C.J.S. Records §§ 34, 40.

ss imposed pursuant to section 2204—
d by the National Archives and Records
performance of normal archival work
records in the custody of the Archivist;

(2) subject to any rights, defenses, or privileges which the United States or
any agency or person may invoke, Presidential records shall be made available—

(A) pursuant to subpoena or other judicial process issued by a court of
competent jurisdiction for the purposes of any civil or criminal investigation
or proceeding;

(B) to an incumbent President if such records contain information that is
needed for the conduct of current business of his office and that is not
otherwise available; and

(C) to either House of Congress, or, to the extent of matter within its
jurisdiction, to any committee or subcommittee thereof if such records
contain information that is needed for the conduct of its business and that is
not otherwise available; and

(3) the Presidential records of a former President shall be available to such
former President or his designated representative.

(Added Pub.L. 95-591, § 2(a), Nov. 4, 1978, 92 Stat. 2527, and amended Pub.L. 98-497, Title I,
§ 107(b)(7), Oct. 19, 1984, 98 Stat. 2287.)

1984 Amendment. Subsec. (a)(1). Pub. L.
98-497 substituted "National Archives and
Records Administration" for "National Archives
and Records Service of the General Services Ad-
ministration".

Effective Date of 1984 Amendment. Amend-
ment by Pub.L. 98-497 effective on April 1, 1985,
see section 301 of Pub.L. 98-497 set out as a note
under section 2102 of this title.

Legislative History. For legislative history and
purpose of Pub.L. 95-591, see 1978 U.S.Code
Cong. and Adm.News, p. 5732. See, also, Pub.L.
98-497, 1984 U.S. Code Cong. and Adm. News,
p. 3865.

Library References

Records 33, 34.
C.J.S. Records §§ 37, 41.

§ 2206. Regulations

The Archivist shall promulgate in accordance with section 553 of title 5, United
States Code, regulations necessary to carry out the provisions of this chapter. Such
regulations shall include—

(1) provisions for advance public notice and description of any Presidential
records scheduled for disposal pursuant to section 2203(f)(3);

(2) provisions for providing notice to the former President when materials to
which access would otherwise be restricted pursuant to section 2204(a) are to be
made available in accordance with section 2205(2);

(3) provisions for notice by the Archivist to the former President when the
disclosure of particular documents may adversely affect any rights and privi-
leges which the former President may have; and

(4) provisions for establishing procedures for consultation between the Archi-
vist and appropriate Federal agencies regarding materials which may be subject
to section 552(b)(7) of title 5, United States Code.

(Added Pub.L. 95-591, § 2(a), Nov. 4, 1978, 92 Stat. 2527.)

Legislative History. For legislative history and
purpose of Pub.L. 95-591, see 1978 U.S.Code
Cong. and Adm.News, p. 5732.

Library References

Records 13.
United States 40.

C.J.S. Records §§ 34, 40.
C.J.S. United States §§ 38 to 40.

§ 2207. Vice-Presidential records

Vice-Presidential records shall be subject to the provisions of this chapter in the
same manner as Presidential records. The duties and responsibilities of the Vice
President, with respect to Vice-Presidential records, shall be the same as the duties
and responsibilities of the President under this chapter with respect to Presidential
records. The authority of the Archivist with respect to Vice-Presidential records
shall be the same as the authority of the Archivist under this chapter with respect to
Presidential records, except that the Archivist may, when the Archivist determines
that it is in the public interest, enter into an agreement for the deposit of Vice-Presi-
dential records in a non-Federal archival depository. Nothing in this chapter shall be

construed to authorize the establishment of separate archival depositories for such Vice-Presidential records.

(Added Pub.L. 95-591, § 2(a), Nov. 4, 1978, 92 Stat. 2527.)

Legislative History. For legislative history and purpose of Pub.L. 95-591, see 1978 U.S. Code Cong. and Adm. News, p. 5732.

C.J.S. Records §§ 34, 40.
C.J.S. United States §§ 38 to 40.

Library References

Records Ⓒ13.
United States Ⓒ40.

CHAPTER 23—NATIONAL ARCHIVES TRUST FUND BOARD

Sec.

2302. Authority of the Board; seal; services; bylaws; rules; regulations; employees.

1984 Amendment. Pub.L. 98-497, Title II, § 202(c), Oct. 19, 1984, 98 Stat. 2294 added "employees" in item 2302.

§ 2301. Establishment of Board; membership

The National Archives Trust Fund Board shall consist of the Archivist of the United States, as Chairman, and the Secretary of the Treasury and the Chairman of the National Endowment for the Humanities. Membership on the Board is not an office within the meaning of the statutes of the United States.

(As amended Pub.L. 94-391, Aug. 19, 1976, 90 Stat. 1192; Pub.L. 95-379, Sept. 22, 1978, 92 Stat. 724; Pub.L. 98-497, Title I, § 107(b)(8), Oct. 19, 1984, 98 Stat. 2287.)

1984 Amendment. Pub.L. 98-497 struck out "The authority of the Administrator of General Services under section 754 of Title 40 to regroup, transfer, and distribute functions within the General Services Administration does not extend to the Board or its functions."

1978 Amendment. Pub.L. 95-379 substituted references to the Secretary of the Treasury and the Chairman of the National Endowment for the Humanities, for references to the chairman of the House Committee on Government Operations and the Senate Committee on Post Office and Civil Service.

1976 Amendment. Pub.L. 94-391 substituted reference to House Committee on Government

Operations for reference to House Committee on Post Office and Civil Service.

Effective Date of 1984 Amendment. Amendment by Pub.L. 98-497 effective on April 1, 1985, see section 301 of Pub.L. 98-497 set out as a note under section 2102 of this title.

Legislative History. For legislative history and purpose of Pub.L. 94-391, see 1976 U.S. Code Cong. and Adm. News, p. 2096. See, also, Pub.L. 95-379, 1978 U.S. Code Cong. and Adm. News, p. 1810; Pub.L. 98-497, 1984 U.S. Code Cong. and Adm. News, p. 3865.

Code of Federal Regulations

Archives and records, see 41 CFR 101-11.000 et seq.

§ 2302. Authority of the Board; seal; services; bylaws; rules; regulations; employees

In carrying out the purposes of this chapter, the Board—

(1) may adopt an official seal, which shall be judicially noticed;

(2) may utilize on a reimbursable basis the services and personnel of the National Archives and Records Administration necessary (as determined by the Archivist) to assist the Board in the administration of the trust fund, and in the preparation and publication of special works and collections of sources and preparation, duplication, editing, and release of historical photographic materials and sound recordings, and may utilize on a reimbursable basis the services and personnel of other Federal agencies for such purposes;

(3) may adopt bylaws, rules, and regulations necessary for the administration of its functions under this chapter; and

(4) may, subject to the laws and regulations governing appointments in the civil service, appoint and fix the compensation of such personnel as may be necessary to carry out its functions.

(Added Pub.L. 98-497, Title II, § 202(a), Oct. 19, 1984, 98 Stat. 2293.)

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Washington, DC 20408

JUL 20 1987

Honorable Arthur B. Culvahouse, Jr.
Counsel to the President
The White House
Washington, DC 20500

Dear Mr. Culvahouse:

As you know, by the time President Reagan leaves office the National Archives must have in place regulations implementing certain provisions of the Presidential Records Act. David Van Tassel of our staff provided you with a draft of the regulations in connection with the group which is working on implementing the Tower Board recommendations. The enclosed draft regulations are substantially the same, except for a few technical changes and a "preamble" which has been added. Within a short time, we will send the draft to OMB for clearance prior to publishing them as a proposed rule. We hope to publish them in early August.

On another matter, thank you for your kind words about the two "talented" archivists who are on detail to your office. I guess it is nice to be appreciated so much it hurts. Seriously, we are happy to be of assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "Frank G. Burke".

FRANK G. BURKE
Acting Archivist
of the United States

Enclosure

pg

ID # 01700 CU

FEB 10-81

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- ☐ O - OUTGOING
- ☐ H - INTERNAL
- ☐ I - INCOMING

Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Frank G. Burke

☐ MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Draft Regulations implementing provisions of the Presidential Records Act

ROUTE TO:		ACTION		DISPOSITION	
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response Code	Completion Date YY/MM/DD
<u>cu hill</u>		ORIGINATOR	<u>87107 23</u>		<u>1 1</u>
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		Referral Note:			

ACTION CODES:

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure

- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

DISPOSITION CODES:

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

FOR OUTGOING CORRESPONDENCE:

- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1270

Regulations Implementing the Presidential Records Act

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule implements the provisions of the Presidential Records Act of 1978 (Pub. L. No. 95-591, 92 Stat. 2523-27, as amended by Pub. L. No. 98-497, 98 Stat. 2287), codified at 44 U.S.C. 2201-07. As required by the Act, this rule contains:

1. Provisions for advance public notice and description of any Presidential records determined by the Archivist of the United States to have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation.
2. Provisions for notice to a former President when materials to which access would otherwise be restricted are to be provided in response to judicial process, to an incumbent President under certain conditions, or to Congress.
3. Provisions for notice to a former President when disclosure of a document may adversely affect the former President's rights or privileges.
4. Provisions for establishing procedures for consultation between the Archivist and certain Federal agencies concerning the administration of records containing information compiled for law enforcement purposes.

DATE: Comments must be received by [insert date 30 days after date of publication].

ADDRESS: Comments should be sent to Director, Program Policy and Evaluation Division, National Archives and Records Administration (NAA), Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Gary L. Brooks or Christopher Runkel, Legal Services Staff, 202/523-3618.

SUPPLEMENTARY INFORMATION:

In 1978, Congress passed and the President signed into law the Presidential Records Act (44 U.S.C. 2201 et. seq.).

This statute represents a departure from the way in which the Federal Government has traditionally treated Presidential materials when a President leaves office. Until recent times, Presidents have taken their papers with them at the end of their terms. Modern Presidents, recognizing the historical value of these materials, have donated them to the United States for use in a Presidential library in accordance with the Presidential Libraries Act of 1955 (44 U.S.C. 2112). The Presidential papers of Presidents Hoover through Johnson, Ford, and Carter are administered by the National Archives and Records Administration (NARA) according to each President's deed of gift. President Nixon's historical materials are administered by NARA under the Presidential Recordings and Materials Preservation Act of 1974 (44 U.S.C. 2111 note).

The Presidential Records Act provides that the United States, acting through NARA, "shall reserve and retain complete ownership, possession, and control of Presidential records." 44 U.S.C. 2202. The Act also provides for NARA to administer Presidential records in accordance with the provisions of the Act, and to promulgate regulations implementing those provisions. The stated purposes of the Act, as set forth in House of Representatives Report number 95-1487, are twofold: (1) "to establish the public ownership of records created by . . . Presidents and their staffs in the course of discharging their official duties;"

and (2) "to establish procedures governing the preservation and public availability of these records at the end of a Presidential administration." H.R. Rep. No. 1487, 95th Cong., 2d Sess.2, quoted in 1978 U.S. Code Cong. & Ad. News 5733.

The Presidential Records Act took effect with President Ronald Reagan's inauguration on January 20, 1981. The Act's provisions affect not only Presidential records, but Vice-Presidential records as well. The proposed regulations which accompany this notice will govern the administration of the Presidential records accumulated by President Reagan once he leaves office; they will also govern the administration of all Presidential records accumulated by succeeding Presidents.

REGULATIONS IMPLEMENTING THE PRESIDENTIAL RECORDS ACT

Part 1270 -- PRESIDENTIAL RECORDS

Subpart A -- General Provisions

1270.10 Scope of part

These regulations implement the provisions of the Presidential Records Act of 1978, Pub. L. No. 95-591, 92 Stat. 2523-27, as amended by Pub. L. No. 98-497, sec. 107(b)(7), 98 Stat. 2287 (1984) (codified at 44 U.S.C. 2201-07), by setting forth the policies and procedures governing preservation, protection, and disposal of, and access to Presidential and Vice-Presidential records created during a term of office of the President or Vice President beginning on or after January 20, 1981.

1270.12 Application

(a) These regulations apply to all Presidential records created during a term of office of the President beginning on or after January 20, 1981.

(b) Vice-Presidential records shall be subject to the provisions of this part in the same manner as Presidential

records. The Vice President's duties and responsibilities, with respect to Vice-Presidential records, shall be the same as the President's duties and responsibilities with respect to Presidential records. The Archivist's authority with respect to Vice-Presidential records shall be the same as the Archivist's authority with respect to Presidential records, except that the Archivist may, when he determines it to be in the public interest, enter into an agreement with a non-Federal archival repository for the deposit of Vice-Presidential records.

1270.14 Definitions

For the purposes of this Part --

(a) The terms "documentary material", "Presidential records", "personal records", "Archivist", and "former President" have the meanings given them by 44 U.S.C. 2201(1)-(5), respectively.

(b) The term "agency" has the meaning given it by 5 U.S.C. 551(1)(a)-(d) and 552(e).

(c) The term "Presidential archival depository" has the meaning given it by 44 U.S.C. 2101(1).

(d) The term "Vice-Presidential records" means documentary materials, or any reasonably segregable portion thereof, created

or received by the Vice President, his immediate staff, or a unit or individual of the Office of the Vice President whose function is to advise and assist the Vice President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the Vice President. The term includes documentary materials of the kind included under the term "Presidential records."

(e) The term "filed" means the date something is received in the office of the official to whom it is addressed.

Subpart B -- Actions Taken on Behalf
of Former President

1270.20 Designation of Person or Persons to Act for Former
President

(a) A President or former President may designate some person or persons to exercise, upon the death or disability of the President or former President, any or all of the discretion or authority granted to the President or former President by chapter 22 of title 44, United States Code.

(b) When a President or former President designates a person or persons to act for him pursuant to (a), this designation

shall be effective only if the Archivist has received notice of the designation before the President or former President dies or is disabled.

(c) The notice required by (b) shall be in writing, and shall include the following information:

(1) The name(s) of the person or persons designated to act for the President or former President;

(2) The current addresses of the person or persons designated; and

(3) The records, identified with reasonable specificity, over which the designee(s) will exercise discretion or authority. /?

1270.22 When Archivist May Act for Former President

In those instances where a President has specified, in accordance with 44 U.S.C. 2204, restrictions on access to Presidential records, but has not made a designation under section 1270.20 of this subpart, the Archivist shall, upon the death or disability of a President or former President, exercise the discretion or authority granted to a President or former President by 44 U.S.C. 2204.

Subpart C -- Disposal of Presidential Records

1270.30 Disposal of Presidential Records by Incumbent President

A President may, while in office, dispose of any Presidential records which in his opinion lack administrative, historical, informational, or evidentiary value if one of the following two sets of requirements is satisfied:

(a)(1) The President has obtained the written views of the Archivist concerning the proposed disposal; and

(2) The Archivist states in his communication with the President that he does not intend to request, with respect to the President's proposed disposal of Presidential records, the advice of the Committees on Rules and Administration and Governmental Affairs of the Senate, and the Committees on House Administration and Government Operations of the House of Representatives because he does not consider --

(A) the records proposed for disposal to be of special interest to the Congress; or

(B) consultation with the Congress concerning the proposed disposal to be in the public interest; or

(b)(1) The President has obtained the written views of the Archivist concerning the proposed disposal;

(2) The Archivist states either --

(A) that the records proposed for disposal may be of special interest to the Congress; or

(B) that consultation with the Congress concerning the proposed disposal is in the public interest; and

(3) The President submits copies of the proposed disposal schedule to the Committees on Rules and Administration and Governmental Affairs of the Senate and the Committees on House Administration and

Government Operations of the House of Representatives
at least sixty calendar days of continuous session of
Congress in advance of the proposed disposal date.

For the purpose of this section, continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the days in which Congress is in continuous session.

1270.32 Disposal of Presidential Records in the Custody of the
Archivist

(a) The Archivist may dispose of Presidential records which he has appraised and determined to have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation.

(b) When Presidential records are scheduled for disposal pursuant to (a), the Archivist shall publish a notice of this disposal in the Federal Register at least sixty days before the proposed disposal date.

(c) The notice required by (b) shall include the following:

(1) A reasonably specific description of the records scheduled for disposal; and

(2) A concise statement of the reason why the Archivist believes the records can be disposed of.

(d) Publication in the Federal Register of the notice required by (b) shall be a final agency action for purposes of review under chapter 7 of title 5, United States Code (5 U.S.C. 701-06).

Subpart D -- Access to Presidential Records

1270.40 Identification of Restricted Records

Once an incumbent President has placed restrictions on access to certain information contained in Presidential records, the Archivist or his designee shall identify the Presidential records affected, or any reasonably segregable portion thereof, and shall restrict public access to the information contained in these records until --

One adds to consultation with the President or designee representative

(a)(1) The date on which the former President waives the restriction on disclosure of the record or information contained within; or

(2) The expiration of the period of restriction specified under 44 U.S.C. 2204(a) for the category of information under which a certain record, or a portion thereof, was restricted;

whichever date is earlier; or

(b) The date on which a determination is made by the Archivist that the former President or an agent of the former President has placed in the public domain a restricted record or a reasonably segregable portion thereof, or any significant element or aspect of the information contained in a restricted record or a reasonably segregable portion thereof, if this date is earlier than either of the dates specified in (a).

1270.42 Denial of Access to Public; Right to Appeal

(a) Any person denied access to a Presidential record (hereinafter "the requestor") because of a determination that the record or a reasonably segregable portion thereof was (1) properly restricted under 44 U.S.C. 2204(a), and (2) not placed in the public domain by the former President or his agent, may file an administrative appeal with the Assistant Archivist for Presidential Libraries (NL), Washington, DC 20408.

(b) Appeals shall be filed no later than ten working days after the requestor receives written notification that access to Presidential records has been denied.

(c) Appeals shall be in writing and shall set forth the reason why the requestor believes access to the records sought should be allowed. The requestor shall identify the specific records sought.

(d) Upon receipt of an appeal, the Assistant Archivist for Presidential Libraries shall have thirty working days from the date an appeal is filed to consider the appeal and to respond in

writing to the requestor. The Assistant Archivist's response shall state whether the Presidential records requested are to be released and the basis for this determination. The decision of the Assistant Archivist is final.

1270.44 Exceptions to Restricted Access

(a) Notwithstanding any restrictions on access imposed pursuant to section 2204 or these regulations, and subject to any rights, defenses, or privileges which the United States or any agency or person may invoke, Presidential records shall be made available in the following instances:

- (1) Pursuant to subpoena or other judicial process properly issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;
- (2) To an incumbent President if the records sought (A) contain information which is needed for the conduct of current business of his office and (B) are not otherwise available;
- (3) To either House of Congress, or, to the extent of matter within its jurisdiction, to a Congressional committee or subcommittee if the records sought (A) contain information which is needed for the conduct of business within its jurisdiction and (B) are not otherwise available.

(b) Requests by an incumbent President, a House of Congress, or a Congressional committee or subcommittee pursuant to paragraph (a) of this section should be addressed to the Archivist. All requests should be in writing and should, where practicable, identify the records sought with reasonable

specificity.

(c) Presidential records of a former President shall be available to the former President or his designated representative upon request.

1270.46 Notice of Intent to Disclose Certain Presidential Records

(a) The Archivist or his designee shall notify a former President or his designated representative whenever a Presidential record, the disclosure of which might adversely affect any rights and privileges the former President may possess, may be disclosed. The notice given shall identify the records with reasonable specificity. In the case of records to be disclosed in accordance with section 1270.44, the notice shall also:

- (i) Identify the requestor and the nature of the request;
- (ii) State whether the requested records contain materials to which access would otherwise be restricted pursuant to 44 U.S.C. 2204(a) and identify the category of restriction within which the record to be disclosed falls; and
- (iii) List the date of the request.

(b) If, after receiving the notice required by subsection (a) of this section, an affected former President raises rights or privileges which he believes should preclude the disclosure of a Presidential record, and it is nevertheless determined, in whole or in part, that the record in question will be disclosed, the

Archivist shall notify the former President or his representative of this determination. This notice shall be similar in form to the notice required by subsection (a) of this section, except that the notice required by this subsection shall also:

- (i) Be in writing;
- (ii) State the basis upon which the record is being disclosed; and
- (iii) Specify the date on which the record will be disclosed.

Notice under this subsection shall be given to the affected former President or his representative at least five working days prior to the release of the records requested.

Subpart E -- Presidential Records Compiled for Law Enforcement
Purposes

1270.50 Consultative Procedures to be Established

The Archivist shall, no later than January 21, 1989, establish procedures for consultation between NARA and appropriate Federal agencies regarding information compiled for law enforcement purposes which may be subject to section 552(b)(7) of title 5, United States Code.

1270.52 Notification

(a) The procedures established under this subpart for consultation shall provide for the notification, in writing, of appropriate Federal agencies. This notice shall include the following:

- (1) A description of the records in question;
- (2) Statements that the records described contain information compiled for law enforcement purposes and may be subject to the exemption provided by section 552(b)(7) of the FOIA for records of this type; and,
- (3) A contact person at NARA.

(b) The notice described in (a) shall also include an invitation to the head of the Federal agency being notified to consult with NARA about the records described in the notice. This consultation may include review of the records for information which may affect the agency's activities or operations.

THE WHITE HOUSE

WASHINGTON

October 20, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: PATRICIA MACK BRYAN *PMB*

SUBJECT: Proposed Draft Presidential Records
Act Regulations

Pursuant to our discussion at a recent Counsel's Office staff meeting, Arnie Intrater, Dean McGrath, and I met to discuss the most appropriate method of allaying OMB's concerns that Congressman Jack Brooks may criticize the Administration for delay in clearing for publication in the Federal Register the above-referenced draft regulations proposed by the Acting Archivist. We suggest that I call Gary Brooks, the General Counsel of the National Archives, and provide him with our preliminary views on these regulations, with the hope that his staff will then undertake to redraft them.

The Acting Archivist forwarded a copy of those regulations to Counsel's Office in late July. At that time, I met with John McGuinness and Barbara Percival of the Office of Legal Counsel; they indicated little concern with the draft regulations, with two basic exceptions. The exceptions included: (1) the inadequacy of the notice provision and (2) the failure to exempt explicitly Executive Privilege claims from coverage by the regulations. We then planned to meet with Gary Brooks to discuss our concerns. In part, because of Gary Brooks' unavailability (vacation) and Barbara Percival's departure from OLC, that meeting was indefinitely postponed.

In late July or early August, I had a conversation with Christopher Runkel on the NARA Legal Services staff in order to determine what the proposed timetable for publishing these regulations was or needed to be; he reaffirmed our view that the regulations would have no effect until the President left office in January of 1989 and noted he was unaware of any reason why a quick turnaround on them was necessary. He later called to inform me that the Acting Archivist was going to go ahead and forward the regulations to OMB for clearance. The regulations were received by OMB on August 14. According to Rob Veeder, the OMB staffer handling these regulations, under its clearance process OMB would circulate these regulations only to Counsel's Office. Because Rob Veeder knew that Counsel's Office had already received a copy of the proposed regulations, he did not circulate a new copy to us. OMB defers to us on whether they should be cleared.

As we discussed, the proposed regulations raise a number of concerns and deserve careful and deliberate consideration. Putting aside Jack Brook's possible criticism, I know of no legal or policy reason why we should not take as much time as we need (or want) to satisfy ourselves that we have determined the best possible approach to this difficult subject before moving on to a more formal stage in the process. We have well over 14 months before these regulations could have any effect.

Nonetheless, in order to avoid any criticism of the Administration and to advance the thinking on these proposed regulations while preserving our options, it seems advisable for me to call Gary Brooks and provide him with our preliminary thoughts on these proposed regulations. Those thoughts are contained in the attached talking points and reflect OLC's concerns as well. It is our hope that, based on that conversation, Gary Brooks will recommend either that his staff take another crack at the regulations or that we convene a meeting to discuss our concerns in more detail.

Please let me know if this plan meets with your approval, or whether you have any further suggestions.

✓

Approve

_____ Disapprove

Please Keep me advised

Attachment

We also may need to keep F. Ryan up-to-date as matters progress

Talking Points on the Proposed Draft
Regulations Implementing the Presidential Records Act

- o Delete any reference that could be viewed as asserting that the National Archives and Records Administration is independent of the President.
 - Supplementary Information, Paragraph 2: delete the phrase "acting through NARA" from the sentence reading "The Presidential Records Act provides that the United States, acting through NARA, shall reserve and retain complete ownership, possession, and control of Presidential records." See, 44 U.S.C. § 2202.
 - From the same paragraph, delete the sentence that reads "the Act also provides for NARA to administer Presidential records in accordance with the provisions of the Act, and to promulgate regulations implementing those provisions." Rewrite the final paragraph to read along the following lines "Under the Presidential Records Act, the Archivist is to promulgate, in accordance with section 553 of title 5, United States Code, regulations necessary to carry out the provisions of this chapter. Pursuant to that authority, the Archivist is publishing notice of the following regulations."
- o Insert statements making clear that these regulations implement only the statutory scheme established by the Presidential Records Act and do not establish policies or procedures governing the assertion of or any response to any constitutionally based privilege that may be asserted by an incumbent or former President
 - in the preamble
 - in § 1270.10
- o 1270.20: Discuss meaning of requirement (c)(3), "that records be identified with reasonable specificity, over which the designee(s) will exercise discretion or authority," given the fact that the designees would seem to exercise the same authority over the same records that the President had.
- o 1270.40: Delete portion of section that requires Archivist or designee to identify the Presidential records affected by the President's designated restrictions on access. Note: Our thinking is that the process of separating Presidential from personal records and putting records in categories should begin very soon and be handled by a team including representatives from the President's transition team, White

House Counsel's Office and Archives. Consequently, regulations on the process will be unnecessary.

o 1270.42: Discuss concerns about the administrative appeal process:

-- odd that an appeal from the Archivist's decision is to the Assistant Archivist.

-- the decision of the Assistant Archivist cannot be final if it results in the release of documents; certainly provision must be made for the former President to seek injunction just as if the Archivist had ruled against him in the first instance. See 2204(b)(3) which denies judicial review except for as allowed in § 2204(e).

o 1270.46: Rework the Notice Section.

-- specify when a former President shall be notified:

(1) when Archivist determines to release records that the former President placed within a restricted category;

(2) when records previously restricted are to be released because of an administrative appeal under § 1270.42 or because of the Archivist's determination that they have been placed by the former President or his agent into the public record;

(3) when the Archivist has determined to disclose records under § 1270.44;

(4) when the disclosure of particular records otherwise might adversely affect any rights and privileges the former President may possess.

-- Specify the form of notice (i.e., in writing)

-- Specify that Archivist shall not disclose any records covered by notice for at least 30 days from receipt of notice by former President.

-- Specify that copy of any notice provided to former President be provided to incumbent President at the same time.

o Where possible conform the language of the regulations to the language of the statute to avoid confusion (e.g., change the "while in office" phrase found in § 1270.30 of the regulations to the statutory phrase "during his term of office"; add the statutory language "through publication" to §§ 1270.40 and 1270.42.