

section 381(a) transaction as separate and distinct trades or businesses after the distribution or transfer will be determined at the time of the transaction based upon the facts and circumstances. Intent to combine books and records of the trades or businesses may be demonstrated by contemporaneous records and documents or by other objective evidence that reflects the acquiring corporation's ultimate plan of operation, even though the actual combination of the books and records may extend beyond the end of the taxable year in which the section 381(a) transaction occurs.

(8) *Establishing an accounting method for taking an inventory.* Notwithstanding any other provision in any other regulation or administrative procedure, an accounting method used by the distributor or transferor corporation immediately prior to the date of distribution or transfer that continues to be used by the acquiring corporation in the taxable year that includes the date of distribution or transfer is an established method of accounting for purposes of section 446(e).

(9) *Other applicable provisions.* Section 381(c)(5) and these regulations do not preempt any other section of the Code or regulations that is applicable to the acquiring corporation's circumstances. Section 381(c)(5) and this § 1.381(c)(5)-1 determine only the inventory method to be used after a section 381(a) transaction. Specifically, section 381(c)(5) and this § 1.381(c)(5)-1 do not apply to assets other than inventory that an acquiring corporation obtains in a transaction to which section 381(a) applies.

(10) *Use of the cash receipts and disbursements method.* If a party to a section 381(a) transaction uses the cash receipts and disbursements method within the meaning of section 446(c)(1) and § 1.446-1(c)(1)(i), or is not required to use inventory accounting methods for its goods, immediately prior to the date of distribution or transfer, section 381(c)(5) and § 1.381(c)(5)-1 do not apply. Section 381(c)(4) and § 1.381(c)(4)-1 must be applied to determine the accounting methods that continue after the transaction.

(11) *Character of items of income and deduction.* Items of income and deduction have the same character in the hands of the acquiring corporation as they would have had in the hands of the distributor or transferor corporation if no distribution or transfer had occurred.

(12) *Prohibited methods.* An acquiring corporation may not use the accounting

method determined under paragraph (a)(2) of this section if the method fails to reflect clearly the acquiring corporation's income within the meaning of section 446(b). Thus, section 381(c)(5) and these regulations do not limit, restrict, or otherwise prevent the Commissioner from requiring the use of another accounting method.

(f) *Effective/applicability date.* The rules of this section apply to corporate reorganizations and tax-free liquidations described in section 381(a) that occur on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 5. Section 1.446-1 is amended by:

1. Revising the first sentence in paragraph (e)(3)(i) and adding a new second sentence.

2. Revising the first sentence in paragraph (e)(4)(i).

3. Adding paragraph (e)(4)(iii).

The revisions and addition read as follows:

§ 1.446-1 General rule for methods of accounting.

* * * * *

(e) * * *

(3) * * * (i) Except as otherwise provided under the authority of paragraph (e)(3)(ii) of this section, to secure the Commissioner's consent to a taxpayer's change in method of accounting, the taxpayer generally must file an application on Form 3115 with the Commissioner during the taxable year in which the taxpayer desires to make the change in method of accounting. See §§ 1.381(c)(4)-1(d)(2) and 1.381(c)(5)-1(d)(2) for rules allowing additional time, in some circumstances, for the filing of an application on Form 3115 with respect to a transaction to which section 381(a) applies.

* * * * *

(4) * * * (i) *In general.* Except as provided in paragraphs (e)(3)(iii), (e)(4)(ii) and (e)(4)(iii) of this section, paragraph (e) of this section applies on or after December 30, 2003.

* * * * *

(iii) *Effective/applicability date for paragraph (e)(3)(i).* The rules of paragraph (e)(3)(i) of this section apply to corporate reorganizations and tax-free liquidations described in section 381(a) that occur on or after the date of publication of the Treasury decision

adopting these rules as final regulations in the **Federal Register**.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7-22411 Filed 11-15-07; 8:45 am]

BILLING CODE 4830-01-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1250, 1251, and 1256

[NARA-07-0006]

RIN 3095-AB32

Testimony by NARA Employees Relating to Agency Information and Production of Records in Legal Proceedings

AGENCY: National Archives and Records Administration.

ACTION: Proposed rule.

SUMMARY: The National Archives and Records Administration (NARA) is proposing to revise its regulations relating to demands for records or testimony in legal proceedings. The rule is intended to facilitate access to records in NARA's custody, centralize agency decisionmaking in response to demands for records or testimony, minimize the disruption of official duties in complying with demands, maintain agency control over the release of agency information, and protect the interests of the United States. The proposed rule affects parties to lawsuits and their counsel.

DATES: Comments must be received by January 15, 2008.

ADDRESSES: NARA invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

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

- *Fax:* Submit comments by facsimile transmission to 301-837-0319.

- *Mail:* Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Planning Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001.

- *Hand Delivery or Courier:* Deliver comments to 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: Laura McCarthy at (301) 837-3023 or via fax number 301-837-0319.

SUPPLEMENTARY INFORMATION: NARA regularly receives subpoenas and other

demands for information, including requests for documents and for NARA employees to provide testimony in legal proceedings in which the United States may or may not be a party. This rule contains NARA's policy and procedures in response to demands for testimony or records in legal proceedings. In addition, this rule consolidates existing regulations and applies to demands in legal proceedings where the United States is a party and to demands in legal proceedings where the United States is not a party.

Many agencies have issued regulations concerning agency responses to demands where the United States is not a party. The courts recognize the authority of Federal agencies to limit compliance with demands in such circumstances; see for example, *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). NARA's proposed rule applies whether or not the United States is a party to the legal proceeding. NARA believes that this is appropriate because our receipt of a demand in a legal proceeding whether or not the United States is a party to the proceeding raises many of the same concerns. Consolidating our existing regulations also assists third parties in easily locating NARA's policy and procedures concerning demands in legal proceedings.

NARA has in its possession the following type of records:

- Permanently-valuable Federal records, Presidential records, donated and deposited historical materials in the National Archives of the United States;
- Records belonging to Federal agencies other than NARA that are in NARA's temporary physical custody;
- Records of defunct agencies that have no successor in function; and
- NARA's own operational records.

NARA's responsibility to manage, preserve, arrange, describe, or provide access to those records places the agency in a unique position in the Federal government regarding demands for records and testimony.

Requests for records that are not classified as demands are treated as requests for records under one of the following authorities: the Freedom of Information Act (5 U.S.C. 552); the Privacy Act (5 U.S.C. 552a); the Federal Records Act and its implementing regulations (44 U.S.C. chs. 21, 29, 31, 33; 36 CFR parts 1250–1256); the Presidential Records Act and its implementing regulations (44 U.S.C. ch. 22; 36 CFR part 1270); or the Presidential Recordings and Materials Preservation Act and its implementing regulations (44 U.S.C. 2111 note; 36 CFR part 1275). This rule does not restrict

access to records under those authorities.

This rule applies certain restrictions to testimony by NARA employees in legal proceedings. These restrictions apply whether or not the United States is a party to the proceeding. Authorization for employees to provide such testimony is based upon the following:

- The applicability of the Federal Rules of Civil Procedure;
- A determination by NARA's General Counsel that NARA has a significant interest in the legal proceeding and that the outcome may affect the implementation of present policies (NARA's Inspector General makes the determination as to whether an employee of NARA's Office of the Inspector General may provide such testimony); or
- Other circumstances or conditions make it necessary to provide the testimony in the public interest.

These restrictions are necessary to minimize the disruption of NARA's official business, and to protect the agency's human and financial resources. NARA employees are not authorized to testify about the content of records in NARA's physical custody when the legal title of such records belongs to another Federal agency. However, NARA can provide a copy of such records and certify that the copy is a true and accurate copy of the records in NARA's physical or legal custody. Such copies have the same legal status as the original record, and when produced under seal, must be judicially noted by all Federal, state, and local courts. See 44 U.S.C. 2116.

This rule does not apply in instances where an employee is requested to appear in adjudicative, legislative, or administrative proceedings that are unrelated to information concerning Federal activities or the employee's duties at NARA. Also, this rule does not apply to subpoenas or requests for information submitted by either House of Congress or by a Congressional committee or subcommittee with jurisdiction over the matter that the testimony or information is requested.

Paperwork Reduction Act

This proposed rule contains information collection activities that are subject to review and approval by OMB under the Paperwork Reduction Act of 1995.

The reporting burden for this collection is estimated to be approximately 1.5 hours per response for providing to NARA the information specified in proposed § 1251.10, including the time for gathering and

maintaining the data needed and completing and reviewing the collection of information. A requestor who produces a demand to a NARA employee to produce documents or testimony would be required to submit the demand in writing to an appropriate party as specified in § 1251.6; a demand issued by, or under color of a state or local court must be signed by a judge. The information would be collected on a one-time basis, at least 45 days before the date the records or testimony is required. Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of NARA's functions, including whether the information would have practical utility; (b) the accuracy of NARA's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques of other forms of information technology.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB). As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small entities because NARA receives fewer than 25 demands per year for testimony from individuals and small entities.

List of Subjects

36 CFR Part 1250

Confidential business information, Freedom of information.

36 CFR Part 1251

Administrative practice and procedure.

36 CFR Part 1256

Archives and records, Copyright, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, NARA proposes to amend Subchapter C of 36 CFR Ch. XII as follows:

PART 1250—PUBLIC AVAILABILITY AND USE OF FEDERAL RECORDS

1. The authority citation for part 1250 continues to read as follows:

Authority: 44 U.S.C. 2104(a), 2204; 5 U.S.C. 552; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

§ 1250.84 [Removed]

2. Remove § 1250.84.

3. Add a new Part 1251 to read as follows:

PART 1251—TESTIMONY BY NARA EMPLOYEES RELATING TO AGENCY INFORMATION AND PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS

Sec.

1251.1 What is the purpose of this part?

1251.2 To what demands does this part apply?

1251.3 What definitions apply to this part?

1251.4 May employees provide records or give testimony in response to a demand without authorization?

1251.6 How does the General Counsel determine whether to comply with a demand for records or testimony?

1251.8 Who is authorized to accept service of a subpoena demanding the production of records or testimony?

1251.10 What are the filing requirements for a demand for documents or testimony?

1251.12 How does NARA process your demand?

1251.14 Who makes the final determination on compliance with demands for records or testimony?

1251.16 Are there any restrictions that apply to testimony?

1251.18 Are there any restrictions that apply to the production of records?

1251.20 Are there any fees associated with producing records or providing testimony?

1251.22 Are there penalties for providing records or testimony in violation of this part?

Authority: 44 U.S.C. 2104; 44 U.S.C. 2108; 44 U.S.C. 2109; 44 U.S.C. 2111 note; 44 U.S.C. 2112; 44 U.S.C. 2116; 44 U.S.C. ch. 22; 44 U.S.C. 3102.

§ 1251.1 What is the purpose of this part?

(a) This part provides the policies and procedures to follow when submitting a demand to an employee of the National Archives and Records Administration (NARA) to produce records or provide testimony relating to agency information in connection with a legal proceeding. You must comply with these requirements when you request the release or disclosure of records or agency information.

(b) The National Archives and Records Administration intends these provisions to:

(1) Promote economy and efficiency in its programs and operations;

(2) Minimize NARA's role in controversial issues not related to its mission;

(3) Maintain NARA's impartiality among private litigants when NARA is not a named party; and

(4) Protect sensitive, confidential information and the deliberative processes of NARA.

(c) In providing for these requirements, NARA does not waive the sovereign immunity of the United States.

(d) This part provides guidance for the internal operations of NARA. It does not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

§ 1251.2 To what demands does this part apply?

This part applies to demands to NARA employees for factual or expert testimony relating to agency information, or for production of records, in legal proceedings whether or not NARA is a named party. However, it does not apply to:

(a) Demands upon or requests for a NARA employee to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of NARA;

(b) Demands upon or requests for a former NARA employee to testify as to matters in which the former employee was not directly or materially involved while at NARA;

(c) Requests for the release of, or access to, records under the Freedom of Information Act, 5 U.S.C. 552, as amended; the Privacy Act, 5 U.S.C. 552a; the Federal Records Act, 44 U.S.C. chs. 21, 29, 31, 33; the Presidential Records Act, 44 U.S.C. ch. 22; or the Presidential Recordings and Materials Preservation Act, 44 U.S.C. 2111 note;

(d) Demands for records or testimony in matters before the Equal Employment Opportunity Commission or the Merit Systems Protection Board; and

(e) Congressional demands and requests for testimony or records.

§ 1251.3 What definitions apply to this part?

The following definitions apply to this part:

Demand means a subpoena, or an order or other command of a court or other competent authority, for the production, disclosure, or release of records in a legal proceeding, or for the appearance and testimony of a NARA employee in a legal proceeding.

General Counsel means the General Counsel of NARA or a person to whom the General Counsel has delegated authority under this part. General Counsel also means the Inspector General of NARA (or a person to whom the Inspector General has delegated authority under this part) when a demand is made for records of NARA's Office of the Inspector General, or for the testimony of an employee of NARA's Office of the Inspector General.

Legal proceeding means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a legal or administrative proceeding. Legal proceeding includes all phases of litigation.

NARA means the National Archives and Records Administration.

NARA employee or employee means:

(1) Any current or former officer or employee of NARA, except that this definition does not include former NARA employees who are retained or hired as expert witnesses or who agree to testify about general matters, matters available to the public, or matters with which they had no specific involvement or responsibility during their employment with NARA;

(2) Any other individual hired through contractual agreement by or on behalf of NARA or who has performed or is performing services under such an agreement for NARA; and

(3) Any individual who served or is serving in any consulting or advisory capacity to NARA, whether formal or informal.

Records or agency information means:

(1) All documents and materials which are NARA agency records under the Freedom of Information Act, 5 U.S.C. 552, as amended;

(2) Presidential records as defined in 44 U.S.C. 2201; historical materials as defined in 44 U.S.C. 2101; records as defined in 44 U.S.C. 2107 and 44 U.S.C. 3301.

(3) All other documents and materials contained in NARA files; and

(4) All other information or materials acquired by a NARA employee in the performance of his or her official duties or because of his or her official status.

Testimony means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, interviews, and statements made by an individual in connection with a legal proceeding.

§ 1251.4 May employees provide records or give testimony in response to a demand without authorization?

No, except as otherwise permitted by this part, no employee may produce records and information or provide any testimony relating to agency information in response to a demand without the prior, written approval of the General Counsel.

§ 1251.6 How does the General Counsel determine whether to comply with a demand for records or testimony?

The General Counsel may consider the following factors in determining

whether or not to grant an employee permission to testify on matters relating to agency information, or produce records in response to a demand:

- (a) NARA's compliance with the demand is required by federal law, regulation or rule, or is otherwise permitted by this part;
- (b) The purposes of this part are met;
- (c) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;
- (d) NARA has an interest in the decision that may be rendered in the legal proceeding;
- (e) Allowing such testimony or production of records would assist or hinder NARA in performing its statutory duties;
- (f) Allowing such testimony or production of records would involve a substantial use of NARA resources;
- (g) Responding to the demand would interfere with the ability of NARA employees to do their work;
- (h) Allowing such testimony or production of records would be in the best interest of NARA or the United States;
- (i) The records or testimony can be obtained from the publicly available records of NARA or from other sources;
- (j) The demand is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand arose;
- (k) Disclosure would violate a statute, Executive Order or regulation;
- (l) Disclosure would reveal confidential, sensitive, or privileged information, trade secrets or similar, confidential commercial or financial information, otherwise protected information, or information which would otherwise be inappropriate for release;
- (m) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceeding, or compromise constitutional rights;
- (n) Disclosure would result in NARA appearing to favor one litigant over another;
- (o) Disclosure relates to documents that were produced by another agency;
- (p) A substantial Government interest is implicated;
- (q) The demand is within the authority of the party making it; and
- (r) The demand is sufficiently specific to be answered.

§ 1251.8 Who is authorized to accept service of a subpoena demanding the production of records or testimony?

- (a) Demands for testimony, except those involving an employee of NARA's

Office of the Inspector General, must be addressed to, and served on, the General Counsel, National Archives and Records Administration, Suite 3110, 8601 Adelphi Road, College Park, MD 20740-6001. Demands for the testimony of an employee of NARA's Office of the Inspector General must be addressed to, and served on, the Inspector General, National Archives and Records Administration, Suite 1300, 8601 Adelphi Road, College Park, MD 20740-6001.

(b) Demands for the production of NARA operational records, except those of the Office of the Inspector General, must be addressed to, and served on, the General Counsel. Demands for records of the Inspector General must be addressed to, and served on, the Inspector General. Please note that in accordance with section (b)(11) of the Privacy Act, 5 U.S.C. § 552a, demands for operational records kept in a Privacy Act system of records require the signature of a court of competent jurisdiction. See *Doe v. Digenova*, 779 F.2d 74 (D.C. Cir. 1985); *Stiles v. Atlanta Gas Light Company*, 453 F. Supp. 798 (N.D. Ga. 1978). This generally means that the demand must be signed by a judge or some other competent entity, not an attorney or court clerk.

(c) Demands for the production of records stored in a Federal Records Center (FRC) must be addressed to, and served on, the director of the FRC where the records are stored. NARA honors the demand to the extent required by law, if the agency having legal title to the records has not imposed any restrictions. If the agency has imposed restrictions, NARA notifies the authority issuing the demand that NARA abides by the agency-imposed restrictions and refers the authority to the agency for further action. See § 1251.8(b) for demands for NARA operational records kept in a Privacy Act system of records.

(d) Demands for the production of materials designated as Federal archival records, Presidential records or donated historical materials administered by NARA must be addressed to, and served on, the appropriate Assistant Archivist, Director of Archival Operations, or Presidential Library Director. An information copy of the demand must be sent to the General Counsel.

(e) For matters where the United States is a party, the Department of Justice should contact the General Counsel instead of submitting a demand for records or testimony.

(f) Contact information for each NARA facility may be found at 36 CFR part 1253.

§ 1251.10 What are the filing requirements for a demand for documents or testimony?

You must comply with the following requirements, as appropriate, whenever you issue a demand to a NARA employee for records, agency information or testimony:

(a) Your demand must be in writing and must be served on the appropriate party as identified in § 1251.6. A demand issued by, or under color of, a state or local court must be signed by a judge.

(b) Your written demand (other than a demand pursuant to rule 45 of the Federal Rules of Civil Procedure, in which case you must comply with the requirements of that rule) must contain the following information:

(1) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved;

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement as to how the need for the information outweighs the need to maintain any confidentiality of the information and outweighs the burden on NARA to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than a NARA employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used instead of testimony;

(7) A description of all previous decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requester and other parties may require with each NARA employee for time spent by the employee to prepare for testimony, in travel, and for attendance in the legal proceeding.

(c) The National Archives and Records Administration reserves the right to require additional information to comply with your demand.

(d) Your demand should be submitted at least 45 days before the date that records or testimony is required. Demands submitted in less than 45 days before records or testimony is required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(e) Failure to cooperate in good faith to enable the General Counsel to make an informed decision may serve as the basis for a determination not to comply with your demand.

(f) The information collection contained in this section has been approved by the Office of Management and Budget under the Paperwork Reduction Act as by OMB under the control number 3095-0038 with a current expiration date of May 31, 2008.

§ 1251.12 How does NARA process your demand?

(a) After service of a demand for production of records or for testimony, an appropriate NARA official reviews the demand and, in accordance with the provisions of this subpart, determines whether, or under what conditions, to produce records or authorize the employee to testify on matters relating to agency information.

(b) The National Archives and Records Administration processes demands in the order in which we receive them. Absent exigent or unusual circumstances, NARA responds within 45 days from the date of receipt. The time for response depends upon the scope of the demand.

(c) The General Counsel may grant a waiver of any procedure described by this subpart where a waiver is considered necessary to promote a significant interest of NARA or the United States or for other good cause.

§ 1251.14 Who makes the final determination on compliance with demands for records or testimony?

The General Counsel makes the final determination on demands to employees for testimony. The appropriate NARA official, as described in § 1251.8, makes the final determination on demands for the production of records. The NARA official notifies the requester and the court or other authority of the final determination and any conditions that may be imposed on the release of records or information, or on the testimony of a NARA employee. If the NARA official deems it appropriate not to comply with the demand, the official communicates the reasons for the noncompliance as appropriate.

§ 1251.16 Are there any restrictions that apply to testimony?

(a) The General Counsel may impose conditions or restrictions on the testimony of NARA employees including, for example, limiting the areas of testimony or requiring the requester and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal or will only be used or made available in the particular legal proceeding for which testimony was requested. The General Counsel may also require a copy of the transcript of testimony at the requester's expense.

(b) NARA may offer the employee's written declaration instead of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee must not:

(1) Disclose confidential or privileged information; or

(2) For a current NARA employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of NARA unless testimony is being given on behalf of the United States.

§ 1251.18 Are there any restrictions that apply to the production of records?

(a) The General Counsel may impose conditions or restrictions on the release of records and agency information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of a confidentiality agreement must be acceptable to the General Counsel. In cases where protective orders or confidentiality agreements have already been executed, NARA may condition the release of records and agency information on an amendment to the existing protective order or confidentiality agreement.

(b) If the General Counsel so determines, original NARA records may be presented for examination in response to a demand, but they are not to be presented as evidence or otherwise used in a manner by which they could lose their identity as official NARA records, nor are they to be marked or altered. Instead of the original records, NARA provides certified copies for evidentiary purposes (see 28 U.S.C. 1733; 44 U.S.C. 2116). Such copies must be given judicial notice and must be admitted into evidence equally with the originals from which they were made (see 44 U.S.C. 2116).

§ 1251.20 Are there any fees associated with producing records or providing testimony?

(a) *Generally.* The General Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs to NARA.

(b) *Fees for records.* Fees for producing records include fees for searching, reviewing, and duplicating records, costs of attorney time spent in reviewing the demand or request, and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. Costs for employee time are calculated on the basis of the hourly pay of the employee (including all pay, allowance, and benefits). Fees for duplication are the same as those charged by NARA in part 1258 of this title.

(c) *Witness fees.* Fees for attendance by a witness include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees are determined based upon the rule of the Federal district court closest to the location where the witness appears. Such fees include cost of time spent by the witness to prepare for testimony, in travel, and for attendance in the legal proceeding.

(d) *Payment of fees.* You must submit pay for fees by submitting to the General Counsel a check or money order for the appropriate amount made payable to the following:

(1) witness fees for current NARA employees are made payable to the Treasury of the United States;

(2) applicable fees paid to former NARA employees providing testimony must be paid directly in accordance with 28 U.S.C. 1821 or other applicable statutes; and

(3) fees for the production of records, including records certification fees, are made payable to the National Archives Trust Fund (NATF).

(e) *Certification (authentication) of copies of records.* The National Archives and Records Administration may certify that records are true copies in order to facilitate their use as evidence. Request certified copies from NARA at least 45 days before the date they are needed. We charge a certification fee for each document certified.

(f) *Waiver or reduction of fees.* The General Counsel, in his or her sole discretion, may, upon a showing of reasonable cause, waive or reduce any fees in connection with the testimony, production, or certification of records.

(g) *De minimis fees.* Fees are not assessed if the total charge is \$10.00 or

less, or as otherwise stated in NARA policy.

§ 1251.22 Are there any penalties for providing records or testimony in violation of this part?

(a) An employee who discloses official records or information or gives testimony relating to official information, except as expressly authorized by NARA or as ordered by a Federal court after NARA has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Additionally, former NARA employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current NARA employee who testifies or produces official records and information in violation of this part is subject to disciplinary action.

PART 1256—PUBLIC AVAILABILITY AND USE OF FEDERAL RECORDS

4. The authority citation for part 1256 continues to read as follows:

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

§ 1256.4 [Removed]

5. Remove § 1256.4.

Dated: November 9, 2007.

Allen Weinstein,

Archivist of the United States.

[FR Doc. E7–22494 Filed 11–15–07; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[OAR–2004–0091; FRL–8496–1]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency (“EPA”).

ACTION: Proposed rule—Consistency Update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf (“OCS”) Air Regulations. Requirements applying to OCS sources located within 25 miles of States’ seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (“COA”), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (“the

Act”). The portions of the OCS air regulations that are being updated pertain to the requirements for OCS sources by the Santa Barbara County Air Pollution Control District (Santa Barbara County APCD), South Coast Air Quality Management District (South Coast AQMD), and Ventura County Air Pollution Control District (Ventura County APCD). The intended effect of approving the OCS requirements for the Santa Barbara County APCD, South Coast AQMD, and Ventura County APCD is to regulate emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed below is proposed to be incorporated by reference into the Code of Federal Regulations and is listed in the appendix to the OCS air regulations.

DATES: Any comments must arrive by December 17, 2007.

ADDRESSES: Submit comments, identified by docket number OAR–2004–0091, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *E-mail:* steckel.andrew@epa.gov.

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at

<http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT:

Cynthia Allen, Air Division (Air-4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4120, allen.cynthia@epa.gov.

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I. Background Information

Why is EPA taking this action?

On September 4, 1992, EPA promulgated 40 CFR part 55,¹ which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a State’s seaward boundary, the requirements shall be the same as would be applicable if the sources were located

¹ The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.