determination of the amount of the United States property treated as held by a controlled foreign corporation (CFC) through a partnership.

DATES: Written or electronic comments and request for a public hearing are still being accepted and must be received by February 1, 2017.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–114734–16), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–114734–16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–114734–16).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Rose E. Jenkins, (202) 317–6934; concerning submissions of comments or request for a public hearing, Regina Johnson, (202) 317–6901 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–114734–16) that is the subject of this document is under sections 954 and 956 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–114734–16) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking, (REG–114734–16), that was the subject of FR Doc. 2016–26424, is corrected as follows:

■ 1. On page 76543, first column, in the preamble, the sixth line from the top of the page, the language, ''property that does not have a principal'' is corrected to read ''property that is respected for Federal income tax purposes under section 704(b) and the regulations thereunder and does not have a principal''.

§ 1.956–4 [Corrected]

■ 2. On page 76543, third column, third line from the bottom of paragraph (b)(2)(ii), the language ''allocation does not have a principal'' is corrected to read ''allocation will be respected for Federal income tax purposes under section 704(b) and the regulations thereunder and does not have a principal''.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2016–31358 Filed 12–27–16; 8:45 am]

BILLING CODE 4830–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1270

[FDMS No. NARA–16–0005; NARA–2017–011]

RIN 3095–AB87

Presidential Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: We are proposing to revise this regulation to reflect changes instituted by the Presidential and Federal Records Acts Amendments of 2014 (2014 Amendments). These Amendments in part added new requirements to the Presidential Records Act (PRA), which went into effect in 2014 and remain in effect, even without this proposed regulatory revision. The proposed changes make clear that, when we maintain electronic Presidential records on behalf of the President before the President's term of office expires, the President retains exclusive control over the records. In addition, the proposed changes establish procedures that we will follow to notify an incumbent President and former President when we propose to disclose Presidential records to the public, Congress, the courts, or the incumbent President under the provisions of the PRA allowing for access to Presidential records otherwise subject to restrictions. We began the regulatory revision process in response to the 2014 Amendments and issue this updated regulation to reduce confusion about access to Presidential records in light of these recent changes in the law.

DATES: Submit comments by January 27, 2017.

ADDRESSES: You may submit comments, identified by RIN 3095–AB87, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Regulation_comments@nara.gov.* Include RIN 3095–AB87 in the subject line of the message.
- *Mail* (for paper, disk, or CD–ROM submissions. Include RIN 3095–AB87 on the submission): Regulations Comments Desk (External Policy Program, Strategy and Performance Division (SP)); Suite 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001
- *Hand delivery or courier:* Deliver comments to the front desk at the address above.

Instructions: You must include on all submissions the Regulatory Information Number (RIN) for this rulemaking (RIN 3095–AB87) and NARA's name. We may publish any comments we receive without changes, including any personal information you provide.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, by email at *regulation_comments@nara.gov,* or by telephone at 301–837–3151.

SUPPLEMENTARY INFORMATION:

Background

We are revising our regulations governing Presidential and Vice Presidential records to incorporate changes made by the Presidential and Federal Records Act Amendments of 2014, (''2014 Amendments,'' Pub. L. 113–187, 128 Stat. 1017).

The 2014 Amendments made several changes to the Presidential Records Act (44 U.S.C. 2201–2209). The most substantial change was codifying the procedures by which we notify former and incumbent Presidents so that they may consider whether to restrict public access to Presidential records of former Presidents that are in our legal custody. This privilege review process was previously controlled by an Executive Order, subject to change by any sitting administration. Because Congress codified the privilege review process for public disclosures in the 2014 Amendments, we are revising the regulation to set out processes for giving notice in such cases, and for former or incumbent Presidents to consider whether to assert a constitutionally based privilege.

The 2014 Amendments did not codify the provisions of the Executive Order allowing for notification to the former and incumbent President when Congress, the courts, or the incumbent President (instead of the public) makes the request for records subject to access restrictions. To ensure that the former and incumbent Presidents are given notice and an opportunity to consider whether to assert a constitutionally based privilege in those circumstances as well, we are revising our regulation to set out procedures we follow prior to disclosing records under the PRA's exceptions to restricted access, which

are similar to the procedures we follow when we propose to make disclosures to the public.

The 2014 Amendments also authorized an incumbent President to transfer physical custody of their permanent electronic Presidential records to NARA, while leaving legal custody with the President, and some other more minor changes. We are therefore also revising the regulation to reflect these changes (the regulatory changes are identified in more detail below).

We are also making a small revision to the regulation to be consistent with 2016 amendments to the Freedom of Information Act, and are revising the wording and organization of the regulation to make it easier to follow, in compliance with provisions of the Plain Writing Act of 2010.

Substantive Changes in the Regulation

Subpart A

§ 1270.1, Scope: Removed ''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.'' The 2014 Amendments at 44 U.S.C. 2208 now include the President's authority to assert a constitutionally based privilege and those provisions have been added to this regulation.

§ 1270.2, Application: Removed ''These regulations apply to all Presidential records created during a term of office of the President beginning on or after January 20, 1981.'' This is already included elsewhere in the regulation and thus was redundant.

Changed from stating that all provisions in the regulation apply to the Vice President and Vice Presidential records, to stating that all provisions except §§ 1270.46 and 1270.48 apply to the Vice President as to the President, because those sections have now been revised due to the 2014 Amendments at 44 U.S.C. 2208 to cover only Presidential authorities.

§ 1270.4, Definitions: Removed ''documentary material, personal records, President, Presidential archival depository, Vice Presidential records, filed'' definitions because they are terms not used in the regulation any longer or the definitions were identical to the statute and not needed.

Subpart B

Changed the title of the subpart from ''Handling Presidential records upon death or disability'' to ''Custody and control of Presidential records'' and revised the subpart to add a provision on ''Presidential records in the Archivist's physical custody'' (§ 1270.20), because the President may request that the Archivist maintain physical custody of Presidential records (now, under the 2014 Amendments at 44 U.S.C. 2203(f), also including electronic records) during the President's term of office. However, the President remains responsible for control and access to these records until the end of the President's term of office.

Subpart C

§ 1270.32, Disposal of Presidential records in the Archivist's custody: Revised to require a preliminary notice of proposed disposal with a 45-day public comment period, in addition to the final notice published 60 days prior to the disposal, as established in the 2014 Amendments at 44 U.S.C. 2203(g)(3).

Subpart D

Added § 1270.38 to clarify when public access to Presidential records may occur based on requirements in 44 U.S.C. 2204, to make it easier for readers to understand the context in which the subsequent sections on restricting access occur.

§ 1270.42(b), Appealing restricted access: Expanded the time in which a person denied access due to a Presidential restriction may file an appeal, from 35 days after receiving NARA's denial letter to 90 days, to be consistent with the 2016 Amendments to the Freedom of Information Act, at 5 U.S.C. 552(a)(6)(i)(III)(aa).

§ 1270.44, Exceptions to restricted access: Under the 2014 Amendments at 44 U.S.C. 2204(f), added a provision at (a)(4) that the Archivist will not release original Presidential records to a President's designated representative who has been convicted of a crime that involves misuse or misappropriation of NARA records.

Added provisions at (d) through (g) allowing for notification of a request for records to the former and incumbent President so that they may consider whether to assert a constitutionally based privilege. These provisions are similar to new section 1270.48, which, in accord with the 2014 Amendments at 44 U.S.C. 2208, covers releasing records to the public and claiming privilege against disclosure.

§ 1270.46, Notice of intent to disclose Presidential records to the public: In accord with the 2014 Amendments at 44 U.S.C. 2208(2)(B), added detail in subsection (b) about what will be included in the notice to the public (such as the NARA case number and the end date of the 60-day working period set out in § 1270.48 for the President to assert a constitutional privilege).

§ 1270.48, Releasing records to the public and claiming privilege against disclosure: Revised to include procedures, now codified in the 2014 Amendments, by which Presidents may restrict public access to Presidential records of former Presidents that are in NARA's legal custody through a constitutionally based privilege against disclosure. This new section parallels new provisions in 44 U.S.C. 2208, including a 60-day notice period in which a President may assert a constitutionally based claim of privilege against disclosure.

The regulation has also been revised throughout with non-substantive edits and reorganization to incorporate Plain Writing Act practices and make it clearer and easier to read.

Regulatory Analysis

Review Under Executive Orders 12866 and 13563

Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (September 30, 1993), and Executive Order 13563, Improving Regulation and Regulation Review, 76 FR 23821 (January 18, 2011), direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This proposed rule is ''significant'' under section 3(f) of Executive Order 12866. It involves revisions to existing regulations to bring them in line with statutory changes, and affects only individuals or Government entities and access to Presidential or Vice Presidential records. The Office of Management and Budget (OMB) has reviewed this proposed regulation.

Review Under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.)

Although this proposed rule is not subject to the Regulatory Flexibility Act, *see* 5 U.S.C. 553(a)(2), 601(2), NARA has considered whether this rule, if promulgated, would have a significant economic impact on a substantial number of small entities (5 U.S.C. 603). NARA certifies, after review and analysis, that this rule will not have a significant adverse economic impact on a substantial number of small entities because it affects only individuals or Government entities and access to Presidential or Vice Presidential records.

Review Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.)

This proposed rule does not contain any information collection requirements subject to the Paperwork Reduction Act.

Review Under Executive Order 13132, Federalism, 64 FR 43255 (August 4, 1999)

Review under Executive Order 13132 requires that agencies review regulations for Federalism effects on the institutional interest of states and local governments, and, if the effects are sufficiently substantial, prepare a Federal assessment to assist senior policy makers. This proposed rule will not have any direct effects on State and local governments within the meaning of the Executive Order. Therefore, the proposed regulation requires no Federalism assessment.

List of Subjects in 36 CFR Part 1270

Archives and records, Government in the Sunshine Act, Open government, Presidential records.

For the reasons stated in the preamble, NARA proposes to revise 36 CFR part 1270 to read as follows:

PART 1270—PRESIDENTIAL RECORDS

Subpart A—General Provisions

Sec.
1270.1 Scope of part.
1270.2 Application.
1270.4 Definitions.

Subpart B—Custody and Control of Presidential Records

1270.20 Presidential records in the physical custody of the Archivist.
1270.22 Designating a representative to act for a President.
1270.24 When the Archivist may act for a President.

Subpart C—Disposing of Presidential Records

1270.30 Disposing of Presidential records by an incumbent President.
1270.32 Disposing of Presidential records in the Archivist's custody.

Subpart D—Accessing Presidential Records

1270.38 Public access to Presidential records.
1270.40 Restricting access to Presidential records.
1270.42 Appealing restricted access.
1270.44 Exceptions to restricted access.
1270.46 Notice of intent to disclose Presidential records to the public.
1270.48 Releasing records to the public and claiming privilege against disclosure.
1270.50 Consulting with law enforcement agencies.

Authority: 44 U.S.C. 2201–2209.

Subpart A—General Provisions

§ 1270.1 Scope of part.

This part implements the provisions of the Presidential Records Act of 1978, as amended, 44 U.S.C. 2201–2209, and establishes requirements for preserving, protecting, disposing of, and providing access to all Presidential and Vice-Presidential records created during a Presidential or Vice Presidential term of office beginning on or after January 20, 1981.

§ 1270.2 Application.

This part, except §§ 1270.46 and 1270.48, applies to Vice-Presidential records in the same manner as to Presidential records. The Vice President's duties and responsibilities, with respect to Vice-Presidential records, are the same as the President's duties and responsibilities with respect to Presidential records, except those in §§ 1270.46 and 1270.48. The Archivist's authority with respect to Vice-Presidential records is the same as the Archivist's authority with respect to Presidential records, except that the Archivist may enter into an agreement with a non-Federal archival repository to deposit Vice-Presidential records, if the Archivist determines it to be in the public interest.

§ 1270.4 Definitions.

For the purposes of this part—

Agency has the meaning given by 5 U.S.C. 551(1)(A)–(D) and 552(f).

Archivist means the Archivist of the United States or staff of the National Archives and Records Administration acting on behalf of the Archivist.

Presidential records has the meaning given by 44 U.S.C. 2201(2).

Subpart B—Custody and Control of Presidential Records

§ 1270.20 Presidential records in the physical custody of the Archivist.

During a President's term of office, the President may request that the Archivist maintain physical custody of Presidential records, including digital or electronic records. However, the President remains exclusively responsible for control and access to their records until their term of office concludes. During the President's terms of office, the Archivist does not disclose any of these records, except under the President's direction, until the President's term of office concludes. If a President serves consecutive terms, the Archivist does not disclose records without the President's direction until the end of the last term, or the end of another period if specified in 44 U.S.C. 2204 and subpart E of this part.

§ 1270.22 Designating a representative to act for a President.

(a) Title 44 U.S.C. chapter 22 grants the President certain discretion and authority over Presidential records. An incumbent or former President may designate one or more representatives to exercise this discretion and authority, including in the event of the President's death or disability.

(b) The designation under paragraph (a) of this section is effective only if the Archivist receives written notice of it, including the names of the representatives, before the President dies or is disabled.

§ 1270.24 When the Archivist may act for a President.

If a President specifies restrictions on access to Presidential records under 44 U.S.C. 2204(a), but has not made a designation under § 1270.22 at the time of their death or disability, the Archivist exercises the President's discretion or authority under 44 U.S.C. 2204, except as limited by 44 U.S.C. 2208 and § 1270.48.

Subpart C—Disposing of Presidential Records

§ 1270.30 Disposing of Presidential records by an incumbent President.

An incumbent President may dispose of any Presidential records of their administration that, in the President's opinion, lack administrative, historical, informational, or evidentiary value, if the President obtains the Archivist's written views about the proposed disposal and either—

(a) Those views state that the Archivist does not intend to request Congress's advice on the matter because the Archivist either does not consider the records proposed for disposal to be of special interest to Congress or does not consider it to be in the public interest to consult with Congress about the proposed disposal; or

(b)(1) Those views state that the Archivist considers either that the records proposed for disposal may be of special interest to Congress or that consulting with Congress about the proposed disposal is in the public interest; and

(2) The President submits copies of the proposed disposal schedule to the Senate and the House of Representatives at least 60 calendar days of continuous congressional session before the proposed disposal date. For the purpose of this section, a continuous congressional session breaks only when Congress adjourns *sine die* (with no date set to resume). If either House of Congress adjourns with a date set to

resume, and breaks for more than three days, the adjourned days do not count when computing the 60-day timeline. The President submits copies of the proposed disposal schedule to the Senate Committees on Rules and Administration and Homeland Security and Governmental Affairs, and to the House Committees on House Administration and Oversight and Government Reform.

§ 1270.32 Disposing of Presidential records in the Archivist's custody.

(a) The Archivist may dispose of Presidential records in the Archivist's legal custody that the Archivist appraises and determines to have insufficient administrative, historical, informational, or evidentiary value to warrant continuing to preserve them.

(b) If the Archivist determines that Presidential records have insufficient value under paragraph (a) of this section, the Archivist publishes a proposed disposal notice in the **Federal Register** with a public comment period of at least 45 days. The notice describes the records the Archivist proposes to dispose of, the reason for disposing of them, and the projected earliest disposal date.

(c) After the public comment period in paragraph (b) of this section, the Archivist publishes a final disposal notice in the **Federal Register** at least 60 calendar days before the earliest disposal date. The notice includes:

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

(2) The earliest disposal date; and

(3) A concise statement of the reason for disposing of the records.

(d) Publishing the notice required by paragraph (c) of this section in the **Federal Register** constitutes a final agency action for purposes of review under 5 U.S.C. 701–706.

Subpart D—Accessing Presidential Records

§ 1270.38 Public access to Presidential records.

Public access to Presidential records generally begins five years after the President leaves office, and is administered through the Freedom of Information Act (5 U.S.C. 552), as modified by the Presidential Records Act (44 U.S.C. 2204(c)).

§ 1270.40 Restricting access to Presidential records.

(a) An incumbent President may, prior to the end of the President's term of office or last consecutive term of office, restrict access to certain information within Presidential records created during their administration, for a period not to exceed 12 years after the President leaves office (in accordance with 44 U.S.C. 2204).

(b) If a President specifies such restrictions, the Archivist consults with that President or the President's designated representative to identify the affected records, or any reasonably segregable portion of them.

(c) The Archivist then restricts public access to the identified records or the restricted information contained in them until the earliest of following occurs:

(1) The restricting President waives the restriction, in whole or in part;

(2) The restriction period in paragraph (a) of this section expires for the category of information; or

(3) The Archivist determines that the restricting President or an agent of that President has published the restricted record, a reasonably segregable portion of the record, or any significant element or aspect of the information contained in the record, in the public domain.

§ 1270.42 Appealing restricted access.

(a) If the Archivist denies a person access to a Presidential record or a reasonably segregable portion of it due to a restriction made under § 1270.40, that person may file an administrative appeal. To file an administrative appeal requesting access to Presidential records, send it to the director of the Presidential Library of the President during whose term of office the record was created, at the address listed in 36 CFR 1253.3. To file an administrative appeal requesting access to Vice Presidential records, send it to the director of the Presidential Materials Division at the address listed in 36 CFR 1253.1.

(b) An appeal must arrive to the director within 90 calendar days from the date on the access denial letter.

(c) Appeals must be in writing and must identify:

(1) The specific records the requester is seeking; and

(2) The reasons why the requester believes they should have access to the records.

(d) The director responds to the requester in writing and within 30 working days from the date they receive the appeal. The director's response states whether or not the director is granting access to the Presidential records and the basis for that decision. The director's decision to withhold release of Presidential records is final and is not subject to judicial review.

§ 1270.44 Exceptions to restricted access.

(a) Even when a President imposes restrictions on access under § 1270.40, NARA still makes Presidential records of former Presidents available in the following instances, subject to any rights, defenses, or privileges which the United States or any agency or person may invoke:

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

(2) To an incumbent President if the President seeks records that contain information they need to conduct current Presidential business and the information is not otherwise available;

(3) To either House of Congress, or to a congressional committee or subcommittee, if the congressional entity seeks records that contain information it needs to conduct business within its jurisdiction and the information is not otherwise available; or

(4) To a former President or their designated representative for access to the Presidential records of that President's administration, except that the Archivist does not make any original Presidential records available to a designated representative that has been convicted of a crime that involves reviewing, retaining, removing, or destroying NARA records.

(b) The President, either House of Congress, or a congressional committee or subcommittee must request the records they seek under paragraph (a) of this section from the Archivist in writing and, where practicable, identify the records with reasonable specificity.

(c) The Archivist promptly notifies the President (or their representative) during whose term of office the record was created, and the incumbent President (or their representative) of a request for records under paragraph (a) of this section.

(d) Once the Archivist notifies the former and incumbent Presidents of the Archivist's intent to disclose records under this section, either President may assert a claim of constitutionally based privilege against disclosing the record or a reasonably segregable portion of it within 30 calendar days after the date of the Archivist's notice. The incumbent or former President must personally make any decision to assert a claim of constitutionally based privilege against disclosing a Presidential record or a reasonably segregable portion of it.

(e) The Archivist does not disclose a Presidential record or reasonably segregable part of a record if it is subject to a privilege claim asserted by the incumbent President unless:

(1) The incumbent President withdraws the privilege claim; or

(2) A court of competent jurisdiction directs the Archivist to release the record through a final court order that is not subject to appeal.

(f)(1) If a former President asserts the claim, the Archivist consults with the incumbent President, as soon as practicable and within 30 calendar days from the date that the Archivist receives notice of the claim, to determine whether the incumbent President will uphold the claim.

(2) If the incumbent President upholds the claim asserted by the former President, the Archivist does not disclose the Presidential record or a reasonably segregable portion of the record unless:

(i) The incumbent President withdraws the decision upholding the claim; or

(ii) A court of competent jurisdiction directs the Archivist to disclose the record through a final court order that is not subject to appeal.

(3) If the incumbent President does not uphold the claim asserted by the former President, fails to decide before the end of the 30-day period detailed in subparagraph (f)(1) of this section, or withdraws a decision upholding the claim, the Archivist discloses the Presidential record 60 calendar days after the Archivist received notification of the claim (or 60 days after the withdrawal) unless a court order in an action in any Federal court directs the Archivist to withhold the record, including an action initiated by the former President under 44 U.S.C. 2204(e).

(g) The Archivist may adjust any time period or deadline under this subpart, as appropriate, to accommodate records requested under this section.

§ 1270.46 Notice of intent to disclose Presidential records to the public.

When the Archivist determines it is in the public interest to make a Presidential record available to the public for the first time, the Archivist will:

(a) Promptly notify, in writing, the former President during whose term of office the record was created and the incumbent President, or their representatives, of the intended disclosure. This notice informs the Presidents of the 60-day period in which either President may make a claim of constitutionally based privilege under § 1270.48; and

(b) Notify the public. The notice includes the following information about the intended disclosure:

(1) The number of pages;

(2) A brief description of the records;

(3) The NARA case number;

(4) The date on which the 60-working-day period set out in § 1270.48(a) expires; and

(5) Any other information the Archivist may decide.

§ 1270.48 Releasing records to the public and claiming privilege against disclosure.

(a) Once the Archivist notifies the former and incumbent Presidents of the Archivist's intent to disclose records under § 1270.46, either President may assert a claim of constitutionally based privilege against disclosing the record or a reasonably segregable portion of it. A President must assert their claim within 60 working days after the date of the Archivist's notice, and make the claim in accordance with paragraph (d) of this section.

(b) If neither President asserts a claim within the 60-working-day period, the Archivist discloses the Presidential record covered by the notice. If either President asserts a claim on a reasonably segregable part of the record, the Archivist may disclose only the portion of the record not subject to the claim.

(c)(1) The incumbent or former President may extend the period under paragraph (a) of this section once, for not more than 30 additional working days, by sending the Archivist a written statement asserting that the President needs the extension to adequately review the record.

(2) However, if the 60-day period under subparagraph (a) of this section, or any extension of that period under subparagraph (c)(1) of this section, would end during the first six months of the incumbent President's first term of office, then the 60-day period or extension automatically extends to the end of that six-month period.

(d)(1) The incumbent or former President must personally make any decision to assert a claim of constitutionally based privilege against disclosing a Presidential record or a reasonably segregable portion of it.

(2) The President must notify the Archivist, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate, of a privilege claim under paragraph (a) of this section on the same day that the President asserts such a claim.

(e)(1) If a former President asserts the claim, the Archivist consults with the incumbent President, as soon as practicable and within 30 calendar days from the date that the Archivist receives notice of the claim, to determine whether the incumbent President will uphold the claim.

(2) The Archivist notifies the former President and the public of the incumbent President's decision on the former President's claim no later than 30 calendar days after the Archivist receives notice of the claim.

(3) If the incumbent President upholds the claim asserted by the former President, the Archivist does not disclose the Presidential record or a reasonably segregable portion of the record unless:

(i) The incumbent President withdraws the decision upholding the claim; or

(ii) A court of competent jurisdiction directs the Archivist to disclose the record through a final court order that is not subject to appeal.

(4) If the incumbent President does not uphold the claim asserted by the former President, fails to decide before the end of the 30-day period detailed in subparagraph (e)(1) of this section, or withdraws a decision upholding the claim, the Archivist discloses the Presidential record 90 calendar days after the Archivist received notification of the claim (or 90 days after the withdrawal) unless a court order in an action in any Federal court directs the Archivist to withhold the record, including an action initiated by the former President under 44 U.S.C. 2204(e).

(f) The Archivist does not disclose a Presidential record or reasonably segregable part of a record if it is subject to a privilege claim asserted by the incumbent President unless:

(1) The incumbent President withdraws the privilege claim; or

(2) A court of competent jurisdiction directs the Archivist to release the record through a final court order that is not subject to appeal.

§ 1270.50 Consulting with law enforcement agencies.

(a) The Archivist requests specific guidance from the appropriate law enforcement agency when the Archivist is determining whether to release Presidential records compiled for law enforcement purposes that may be subject to 5 U.S.C. 552(b)(7). The Archivist requests guidance if:

(1) No general guidance applies;

(2) The record is particularly sensitive; or

(3) The type of record or information is widespread throughout the files.

(b) When the Archivist decides to release Presidential records compiled for law enforcement purposes, the Archivist notifies any agency that has provided guidance on those records under this section. The notice includes the following:

(1) A description of the records in question;

(2) A statement that the records described contain information compiled for law enforcement purposes and may be subject to the exemption provided by 5 U.S.C. 552(b)(7) for records of this type; and

(3) The name of a contact person at NARA.

(c) Any guidance an agency provides under paragraph (a) of this section is not binding on the Archivist. The Archivist decides whether Presidential records are subject to the exemption in 5 U.S.C. 552(b)(7).

Dated: December 15, 2016.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2016–31011 Filed 12–27–16; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of Government Information Services

36 CFR Chapter XII

[FDMS No. NARA–16–0004; NARA–2017–001]

RIN 3095–AB88

Office of Government Information Services

AGENCY: Office of Government Information Services, NARA.

ACTION: Proposed rule.

SUMMARY: The Open Government Act of 2007 created the Office of Government Information Services (OGIS) within the National Archives and Records Administration (NARA). OGIS has three statutorily defined functions: OGIS offers mediation services to help resolve FOIA disputes; reviews agency FOIA policies, procedures and compliance; and identifies procedures and methods for improving compliance under the FOIA. This proposed rule sets out the implementing guidance and procedures by which OGIS carries out its statutory mission, and explains OGIS's role in the FOIA process.

DATES: Submit comments on or before February 27, 2017.

ADDRESSES: You may submit comments on this rule, identified by RIN 3095–AB88, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Regulation_comments@nara.gov.* Include RIN 3095–AB88 in the subject line of the message.
- *Mail (for paper, disk, or CD–ROM submissions):* Send comments to: Regulations Comments Desk (External Policy Program, Strategy & Performance Division (SP)); Suite 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001.
- *Hand delivery or courier:* Deliver comments to front desk at 8601 Adelphi Road, College Park, MD, addressed to: Regulations Comments Desk, External Policy Program; Suite 4100.

FOR FURTHER INFORMATION CONTACT: For information or questions about the regulation and the comments process, contact Kimberly Keravuori, External Policy Program Manager, by email at *regulation_comments@nara.gov,* or by telephone at 301.837.3151. For information or questions on the OGIS program, contact Nikki Gramian, Deputy Director, OGIS, by telephone at 1–877–684–6448.

SUPPLEMENTARY INFORMATION:

Background

The OPEN Government Act of 2007 (Pub. L. 110–175, 121 Stat. 2524) amended the Freedom of Information Act, or FOIA (5 U.S.C. 552, as amended), and created the Office of Government Information Services (OGIS) within the National Archives and Records Administration. OGIS began receiving FOIA cases in September 2009.

This proposed regulation explains OGIS's statutory role in the FOIA process and sets out procedures for one of OGIS's primary functions: Assisting agencies and FOIA requesters with efforts to resolve FOIA disputes. In the future, this regulation will also include provisions on OGIS's other functional areas, which are currently under development.

OGIS's Mediation Function

Title 5, United State Code § 552(h)(3), states that ''The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and administrative agencies as a non-exclusive alternative to litigation. . .'' As a result, we offer dispute resolution services, which is an umbrella term encompassing formal mediation (where a mediator conducts formal sessions to assist in resolving a dispute), facilitation (an informal process in which a mediator aids communication among and between the parties to resolve a dispute), and other commonly recognized resolution methods. OGIS's dispute resolution services may also include OGIS's ombuds services (which include providing information) when those services aid in resolving disputes. Our goal is to be an alternative to litigation by facilitating communication between a requester and the agency and by attempting to resolve disputes arising out of requests for information. We provide all our dispute resolution services in accordance with the Administrative Dispute Resolution Act (ADRA), 5 U.S.C. 571, *et seq.*

Both FOIA requesters and agencies may contact us to help resolve a dispute at any point in the FOIA process. We do not advocate on behalf of a requester or agency; the office promotes a fair FOIA process and works with parties to reach a mutually agreeable resolution. If the parties agree that the dispute has been resolved, we will close the case and may follow-up with the agency to confirm that any agreed-upon action was taken. However, if the parties cannot agree on a resolution, OGIS will issue a final response letter to the parties indicating that we are concluding the dispute resolution efforts.

Regulatory Analysis

Review Under Executive Orders 12866 and 13563

Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (September 30, 1993), and Executive Order 13563, Improving Regulation and Regulation Review, 76 FR 23821 (January 18, 2011), direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This proposed rule is ''significant'' under section 3(f) of Executive Order 12866 because it establishes OGIS implementing regulatory provisions for the first time. The Office of Management and Budget (OMB) has reviewed this proposed regulation.

Review Under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.)

This review requires an agency to prepare an initial regulatory flexibility analysis and publish it when the agency publishes the proposed rule. This requirement does not apply if the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (5 U.S.C. 603). NARA certifies, after review and analysis, that this proposed rule will not have a significant adverse economic