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■

**PRESERVATION AND
PROTECTION OF AND
ACCESS TO THE
PRESIDENTIAL
HISTORICAL MATERIALS
OF THE NIXON
ADMINISTRATION**

Title 41—Public Contracts and Property Management

CHAPTER 105—GENERAL SERVICES ADMINISTRATION

PART 105-63—PRESERVATION AND PROTECTION OF AND ACCESS TO THE PRESIDENTIAL HISTORICAL MATERIALS OF THE NIXON ADMINISTRATION

These regulations are issued pursuant to and in anticipation of the implementation by the Administrator of General Services of Title I of the Presidential Recordings and Materials Preservation Act. Under the Act, the Administrator assumes custody and control of the Presidential historical materials of the Nixon Administration for the purposes of (1) ensuring their physical protection and preservation and (2) providing for Federal and public access. Because outstanding Federal court orders prevent the immediate implementation of the Act, and the effective date of these regulations is postponed accordingly, the General Services Administration invites comments and suggestions. These comments and suggestions should be addressed to the General Services Administration (A), Attention of: Executive Assistant to the Administrator, Washington, DC 20405. Regulations pertaining to public access, which are required under the Act to be submitted for congressional approval, will be published at a later date.

Chapter 105 is amended by the addition of new Part 105-63, as follows:

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§ 105-63.000 Scope of part.

This part sets forth policies and procedures concerning the preservation and protection of and access to the tape recordings, papers, documents, memorandums, transcripts, and other objects and materials which constitute the Presidential historical materials of Richard M. Nixon, covering the period beginning January 20, 1969, and ending August 9, 1974.

Subpart 105-63.1—General Provisions

§ 105-63.101 Purpose.

This Part 105-63 implements the provisions of Title I of the Presidential Recordings and Materials Preservation Act (Public Law 93-526; 88 Stat.). It prescribes policies and procedures by which the General Services Administration will preserve, protect, and provide access to the Presidential historical materials of the Nixon Administration.

§ 105-63.102 Application.

This Part 105-63 applies to all of the Presidential historical materials of the Nixon Administration in the custody of the Administrator of General Services pursuant to the provisions of Title I of the Presidential Recordings and Materials Preservation Act (Public Law 93-526; 88 Stat. 1695).

§ 105-63.103 Legal custody.

The Administrator of General Services has exclusive legal custody and control of all Presidential historical materials of the Nixon Administration held pursuant to the provisions of the Presidential Recordings and Materials Preservation Act (Public Law 93-526; 88 Stat. 1695).

§ 105-63.104 Definitions. [Reserved]

§ 105-63.105 Requests or demands for access.

Except as provided in § 105-63.302-1, each agency which receives a request or legal demand for access to Presidential historical materials of the Nixon Administration shall immediately forward the request or demand to the Administrator of General Services.

Subpart 105-63.2—Preservation and Protection

§ 105-63.201 Responsibility.

The Administrator of General Services or his designated agent is responsible for the preservation and protection of the Presidential historical materials. He may arrange with other Federal agencies, acting pursuant to appropriate Federal authority, for assistance in their preservation and protection.

§ 105-63.202 Security.

The Administrator of General Services or his designated agent will control access to all areas designated as security areas. That control will include:

(a) Physical possession of all keys that control access to the security areas (A copy of each key will be deposited in locations designated by current fire and/or national security regulations with instructions that these keys may be used only in instances in which the Presidential historical materials or their environs are subject to damage or loss. All such emergency use shall be reported to the Administrator of General Services or his designated agent as soon as possible.); and

(b) Exclusive knowledge of all lock combinations that control access to the security areas. Copies of the combinations will be placed in such locations as are required by current fire and/or national security regulations and with the GSA Security Division (BIS), Office of

Administration, in sealed envelopes with instructions that the envelopes may be opened only in instances in which the Presidential historical materials or their environs are subject to damage or loss. All such emergency use shall be reported to the Administrator of General Services or his designated agent as soon as possible.

§ 105-63.203 Security areas.

All Presidential historical materials currently stored in areas secured by Executive Protection Service controlled alarm systems shall continue to be stored in these or equally secure areas unless they are specifically exempted in writing from such security by the Administrator of General Services or his designated agent.

§ 105-63.204 Work areas.

The Administrator of General Services or his designated agent will provide appropriate locations within the Metropolitan Area of the District of Columbia as work areas to be used for the purpose of inventorying, indexing, reviewing, and/or, copying Presidential historical materials in accordance with appropriate authorizations. When such work areas are in use, security shall be equivalent to that in effect in the storage area from which the Presidential historical materials are removed unless the Administrator of General Services or his designated agent waives such equivalent security in writing.

§ 105-63.205 Archival processing.

When authorized by the Administrator of General Services or his designated agent, archivists may enter the security and work areas for the purposes of performing necessary archival processes on the Presidential historical materials. Access for archival processing shall follow the procedures of paragraphs (a), (b), (c), (g), (h), and (i) of § 105-63.206.

§ 105-63.206 Access procedures.

(a) The Administrator of General Services or his designated agent will receive and/or prepare appropriate documentary authorization before each access authorized under under this Part 105-63.

(b) The Administrator of General Services or his designated agent shall determine that each access is thoroughly documented. Each documentation shall include:

- (1) Reasons for the access;
- (2) Time of the access;
- (3) Individuals involved in the access, including each individual's degree of security clearance;
- (4) Record of all activities during the access;
- (5) Record of all Presidential historical materials removed, if any; and
- (6) Time of the completion of the access.

(c) The Administrator of General Services or his designated agent will determine that each individual having access to the Presidential historical materials has a security clearance equivalent to the highest degree of national security classification that may be applicable to any of the materials examined.

(d) Prior to each access which may result in the examination of Presidential historical materials that relate to matters of national security, the Administrator of General Services or his designated agent shall notify the Counsel to the President who shall be given the opportunity to examine these materials and raise any objections, defenses, or privileges to prevent or limit the proposed access.

(e) The Administrator of General Services or his designated agent will provide former President Nixon or his designated attorney or agent prior notice of, and allow him to be present during, each authorized access.

(f) Each access to the security areas shall occur only in the presence of the Administrator of General Services or his designated agent. At least two persons shall be present at all times that the security areas are occupied.

(g) All security areas which currently require the presence of the U.S. Secret Service during access and such other security areas as are designated by the Administrator of General Services or his designated agent shall continue to require the presence of one or more representatives of the U.S. Secret Service or such other Federal security agency as is designated by the Administrator of General Services or his designated agent.

(h) If any of the materials now located in security areas requiring the presence of U.S. Secret Service during access are moved to other locations, access to such new locations shall also require the presence of security agents as provided in paragraph (g) of this section, unless their presence is specifically exempted in writing by the Administrator of General Services of his designated agent.

(i) Whenever possible, a copy, which shall be certified upon request, instead of the original documentary Presidential historical material shall be provided to comply with a subpoena or other lawful process or request. Whenever the original documentary material is removed, a certified copy of the material shall be inserted in the proper file until the return of the original.

§ 105-63.207 Extraordinary authority during emergencies.

In the event of an emergency that threatens the physical preservation of the Presidential historical materials or their environs, the Administrator of General Services or his designated agent will take such steps as may be necessary, including removal of the materials to temporary locations outside the Metropolitan Area of the District of Columbia, to preserve and protect the materials.

Subpart 105-63.3—Access to Materials by Former President Nixon, Federal Agencies, and for Use in Any Judicial Proceeding

§ 105-63.301 Access by former President Nixon.

In accordance with the provisions of Subpart 105-63.2, former President Richard M. Nixon or his designated agent

shall at all times have access to the Presidential historical materials in the custody and control of the Administrator of General Services.

§ 105-63.302 Access by Federal agencies.

In accordance with the provisions of Subpart 105-63.2 any Federal agency or department in the executive branch shall at all times have access for lawful Government use to the Presidential historical materials in the custody and control of the Administrator of General Services.

§ 105-63.302-1 Access by the Special Prosecutor.

Pursuant to § 105-63.302, the Special Prosecutor or his designated agent shall at all times have priority access to the Presidential historical materials relevant and important to ongoing criminal investigations and prosecutions within his jurisdiction in accordance with the agreement of November 9, 1974, among the Special Prosecutor, the Counsel to the President, the Director of the Secret Service, and the Administrator General Services. The Administrator of General Services shall provide access pursuant to this subsection after the Counsel to the President has determined that the access is in accordance with the agreement of November 9, 1974, and has transmitted the Special Prosecutor's request for access to the Administrator of General Services for his determination that the access is authorized under this part. The agreement reads as follows:

Whereas, Gerald R. Ford, President of the United States, has determined and informed his Counsel that the due administration of justice and the public interest require that the Special Prosecutor have prompt and effective use of those Presidential materials of the Nixon Administration now located in the White House complex that are relevant and important to ongoing criminal investigations and prosecutions within the Special Prosecutor's jurisdiction; and

Whereas, this Agreement, if implemented, would accommodate the needs of the Special Prosecutor with respect to such materials;

Now, therefore, the undersigned have agreed as follows:

1. Upon letters from the Special Prosecutor to Counsel to the President specifying those materials that he has reason to believe are relevant to specified criminal investigations or prosecutions within the Special Prosecutor's jurisdiction and explaining why access to such materials is important to a full and fair resolution of those investigations and prosecutions, the Special Prosecutor or his designees shall be afforded access to the materials under the following procedures:

a. *Documents.* 1. Where files are organized by subject matter, only those files may be examined which, because of their titles, may contain documents relevant to these specified investigations and prosecutions.

2. Where files are organized chronologically, only that portion of the file covering the time period relevant to the request may be examined.

3. Where no chronological or subject label is on a file, the file may be examined to determine whether the file contains relevant materials.

4. In order to assist in these searches, the Special Prosecutor may request the assistance of members of the archival staff assigned to the White House in making a list of file titles or other index.

b. *Tape Recordings:* Only the tape recordings of conversations specified by letters according to the above procedures may be listened to.

2. The Special Prosecutor shall be allowed to make copies of only those tapes of conversations and documents that he determines are relevant to criminal investigations or prosecutions within his jurisdiction. Prior to the Special Prosecutor receiving such copies, Counsel to the President may review the copies to determine whether they may not be disclosed for reasons of national security. The originals of any tapes and documents, copies of which are provided to the Special Prosecutor, shall be retained and, if necessary for a criminal proceeding, will be given to the Special Prosecutor for such proceeding in exchange for the copies.

3. Richard M. Nixon or his attorney or designated agent shall be given notice of, and may be present during, searches pursuant to this Agreement. Also, Mr. Nixon or his attorney or designated agent, shall be afforded access to and/or copies of those tapes of conversation and documents for which the Special Prosecutor is allowed copies. The Counsel to the President also may designate individuals to be present during these searches.

4. No Presidential materials shall be removed to locations in Washington, D.C. other than the White House complex without the approval of the Special Prosecutor and no portions of such materials shall be removed to locations outside of the District of Columbia without an indication from the Special Prosecutor that he has no further need for such portions, except upon court order.

5. The parties to this Agreement shall move jointly to modify, if necessary, the temporary restraining order as now outstanding in Civil Action No. 74-1518 and in consolidated cases in the United States District Court for the District of Columbia to permit implementation of this Agreement.

Philip W. Buchen,
Counsel to the President.
Arthur F. Sampson,
Administrator of General Services.
H. Stuart Knight,
Director, U.S. Secret Service.
Henry S. Ruth, Jr.,
Special Prosecutor,
Watergate Special Prosecution Force.

§ 105-63.303 Access for use in judicial proceedings.

In accordance with the provisions of Subpart 105-63.2, and subject to any rights, defenses, or privileges which the Federal Government or any person may invoke, the Presidential historical materials in the custody and control of the Administrator of General Services will be made available for use in any judicial proceeding, and are subject to subpoena or other lawful process. Requests by the Special Prosecutor for access to the Presidential historical materials, whether by court subpoena or other lawful process, including access pursuant to § 105-63.302-1 shall at all times have priority over any other request for the materials.

Subpart 105-63.4—Access by the Public [Reserved]

Effective date. This Part 105-63 is effective upon the vacation of Federal court orders preventing the implementation of Title I of the Presidential Recordings and Materials Preservation Act.

Dated: January 13, 1975.

ARTHUR F. SAMPSON,
Administrator of General Services.
[FR Doc.75-1440; Filed 1-13-75; 12:55 pm]

Just Released

CODE OF FEDERAL REGULATIONS

(Revised as of January 1, 1974)

Finding Aids----- \$5.10

*[A Cumulative checklist of CFR issuances for 1974 appears in the first issue
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