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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

2 CFR Part 3187

45 CFR Parts 1181, 1182 and 1184

RIN 3137-AA25

Freedom of Information Act Regulations and Additional Incidental Technical Amendments to Other IMLS Regulations

AGENCY: Institute of Museum and Library Services (IMLS or Institute), National Foundation on the Arts and the Humanities (NFAH).

ACTION: Final rule.

SUMMARY: This rule amends the regulations the Institute of Museum and Library Services (IMLS) follows in processing records under the Freedom of Information Act, in part in compliance with the FOIA Improvement Act of 2016, and otherwise also revises all current IMLS regulations to reflect the agency's change of address and update outdated information. The revisions to IMLS FOIA regulations clarify and update procedures for requesting information from IMLS and procedures that IMLS follows in responding to requests from the public. The revisions to other IMLS regulations would revise the citation to the Age Discrimination Act of 1975, reflect the agency's change of address, and update outdated information.

DATES: This rule is effective May 20, 2019.

FOR FURTHER INFORMATION CONTACT: Susan B. Gerson, Associate
General Counsel, Institute of Museum and Library Services, (202) 653-4712.

SUPPLEMENTARY INFORMATION:

I. Background Information -- FOIA and Technical Amendments

On December 26, 2018 (83 FR 66163), the Institute published a proposed rule to revise its FOIA regulations in accordance with the FOIA Improvement Act of 2016 and otherwise reflect the agency's change of address and update outdated information. IMLS also proposed to make minor technical amendments to all other IMLS regulations to reflect the agency's change of physical address, update contact information, and otherwise facilitate readability. In the interests of economy of administration, and because all of the regulations proposed to be removed are outdated and the technical amendments are minor, they are included in this one rulemaking.

II. Discussion of the Final Rule

A. Non-Discretionary Changes Required by the FOIA Improvement Act of 2016

In compliance with the FOIA Improvement Act of 2016, the Institute has made changes to its regulatory amendments to update information and otherwise make technical amendments to improve the clarity of the Institute's regulations.

B. Response to Comment and Changes From The Proposed Rule

In total, the Institute received one public submission to its proposed rule. The Institute has given due consideration to the comment received and has made one modification to the rule, as discussed below.

1. Comments on Proposed 45 CFR 1184.1(b) (the purpose and scope of these IMLS regulations) and 1184.2(c) (IMLS's general policies with respect to FOIA).

The commenter suggested that IMLS remove all reference to the OMB Guidelines, including such references made in proposed 45 CFR 1184.1(b) and 45 CFR 1184.2(c), because the commenter submits that the OMB Guidelines are no longer authoritative. The Institute has considered this suggestion and determined that proposed 45 CFR 1184.1(b) and 45 CFR 1184.2(c) adequately replaces the language in the original 45 CFR 1184.1(b) and 45 CFR 1184.2(c).

The revised language's reference to the OMB Guidelines are general references to the overall guidelines; and such guidelines remain in force, continuing to generally apply to agency FOIA regulations. These references to the OMB Guidelines in IMLS's general FOIA regulation provisions at proposed 45 CFR 1184.1(b) and 45 CFR 1184.2(c) also are consistent with the Justice Department's Office of Information Policy Template for Agency FOIA Regulations and consistent with the language used by many other government agencies, including the Department of Justice, which provides interagency leadership on FOIA matters. *See* 28 CFR 16.1.

2. Comments on Proposed 45 CFR 1184.2(c)(8) (Definitions; Representative of the News Media)

The commenter suggested that the Institute revise its definition of Representative of the News Media at 45 CFR 1184.2(c)(8), to remove the outdated “organized and operated” definition and replace it with an updated one tracking the statutory language. The Institute has considered this suggestion and determined that it will revise the language in current 45 CFR 1184.2(c)(8) to comport with a definition of Representative of the News Media which more squarely comports with the FOIA, as amended. More specifically, the Institute will adopt the model definition of Representative of the News Media as delineated in the Justice Department’s Office of Information Policy Template for Agency FOIA Regulations. Because this change is in line with the language used by many other government agencies, including the Department of Justice, the Institute implements this revision without the need of formal notice and comment. *See* 28 CFR 16.10(b)(6).

The commenter further suggested that the Institute supplement its regulations definition of Representative of the News Media to include that: (a) a requester’s eligibility as a Representative of the News Media should be assessed with a focus on the requester rather than the nature of the information requested, (b) distinct works should include, as an example, a substantive press release, which applies editorial skills to raw material, and (c) examples of news media entities should be non-exhaustive, to include evolving news media formats. The Institute has considered these suggestions and determined that the revised 45 CFR 1184.2(c)(8) defining a Representative of the News Media is sufficiently detailed,

focuses on the person or entity rather than the information requested, and provides examples in a manner that is non-exhaustive. The Institute therefore has determined that the model language set forth in the revised 45 CFR 1184.2(c)(8) adequately replaces the language in the original 45 CFR 1184.2(c)(8).

III. Regulatory Analyses

Regulatory Planning and Review (E.O. 12866)

Under Executive Order 12866, the Institute must determine whether the regulatory action is “significant” and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a “significant regulatory action” as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

This rule updates outdated information and makes technical amendments to the Institute’s regulations. As such, it does not impose a compliance burden on the economy generally or on any person or entity. Accordingly, this rule is not a

“significant regulatory action” from an economic standpoint, and it does not otherwise create any inconsistencies or budgetary impacts to any other agency or Federal Program.

Regulatory Flexibility Act

Because this rule would amend outdated regulations and make certain technical amendments, the Institute has determined in Regulatory Flexibility Act (5 U.S.C. 601 et seq.) review that this rule will not have a significant economic impact on a substantial number of small entities because it simply makes technical amendments and amends outdated regulations.

Paperwork Reduction Act

This rule is exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501-3521), since it amends existing outdated regulations and makes only technical amendments. An OMB form 83-1 is not required.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501-1571), this rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, or tribal governments, or by the private sector, of \$100 million or more as adjusted for inflation) in any one year.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or

significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this rule does not have significant takings implications. No rights, property or compensation has been, or will be, taken. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, this rule does not have federalism implications that warrant the preparation of a federalism assessment.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Institute has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Consultation and Coordination with Indian tribes (E.O. 13175)

In accordance with Executive Order 13175, the Institute has evaluated this rule and determined that it has no potential negative effects on federally recognized Indian tribes.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

List of Subjects

2 CFR Part 3187

Federal awards, Nondiscrimination.

45 CFR Part 1181

Accessibility, Employment, Nondiscrimination.

45 CFR Part 1182

Privacy Act.

45 CFR Part 1184

Freedom of Information Act.

For the reasons stated in the preamble and under the authority of 20 U.S.C. 9101 et seq., the Institute of Museum and Library Services amends 2 CFR part 3187 and 45 CFR parts 1181, 1182, and 1184 as follows:

Title 2 – Grants and Agreements

PART 3187--UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

1. The authority citation for part 3187 continues to read as follows:

Authority: 20 U.S.C. 9101-9176, 9103(h); 20 U.S.C. 80r-5; 2 CFR part 200.

2. In § 3187.12, in the table in paragraph (a), revise the entry for “Discrimination on the basis of age” to read as follows:

§ 3187.12 Federal statutes and regulations on nondiscrimination.

(a) * * *

Subject	Statute
* * * * *	
Discrimination on the basis of age	The Age Discrimination Act of 1975 (42 U.S.C. 6101-6107)

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Title 45 – Public Welfare

PART 1181--ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE INSTITUTE OF MUSEUM AND LIBRARY SERVICES

3. The authority citation for part 1181 continues to read as follows:

Authority: 29 U.S.C. 794.

4. Amend § 1181.170 by revising the second sentence of paragraph (c) to read as follows:

§ 1181.170 Compliance procedures.

(c) ***Complaints may be sent to Director, Institute of Museum and Library Services, 955 L'Enfant Plaza North S.W., Suite 4000, Washington, D.C., 20024-2135.

PART 1182—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

5. The authority citation for part 1182 continues to read as follows:

Authority: 5 U.S.C. 552a(f).

6. Revise § 1182.3 to read as follows:

§ 1182.3 Inquiries about the Institute's systems of records or implementation of the Privacy Act.

Inquiries about the Institute's systems of records or implementation of the Privacy Act should be sent to the following address: Institute of Museum and Library Services; Office of the General Counsel, 955 L'Enfant Plaza North S.W., Suite 4000, Washington, D.C., 20024-2135.

§ 1182.5 [Amended]

7. Amend § 1182.5 by removing “Committee on Government Reform of the House of Representatives” and adding in its place “United States House Committee on Oversight and Government Reform” and by removing “Committee on Governmental Affairs of the Senate” and adding in its place “United States Senate Committee on Homeland Security and Governmental Affairs.”

§ 1182.13 [Amended]

8. Amend § 1182.13 by:

a. In paragraph (a) introductory text, adding the word “will” between the words “Institute” and “not;” and

b. In paragraph (a)(2), removing “45 CFR part 1100” and adding in its place “45 CFR part 1184”.

§ 1182.15 [Amended]

6. In § 1182.15, amend paragraph (a)(3) by removing “1182.1” and adding in its place “1182.2”.

7. Revise the heading for § 1182.16 to read as follows:

§ 1182.16 Procedures to ensure that Institute employees involved with its systems of records are familiar with the requirements of the Privacy Act.

**PART 1184—IMPLEMENTATION OF THE FREEDOM OF
INFORMATION ACT**

8. The authority citation for part 1184 continues to read as follows:

Authority: 5 U.S.C. 552.

9. Revise §1184.1 to read as follows:

§ 1184.1 What are the purpose and scope of this part?

(a) This part describe how the Institute of Museum and Library Services (IMLS) processes requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552 as amended. The regulations in this part apply only to records that are both:

- (1) Created or obtained by IMLS; and
- (2) Under the agency's control at the time of the FOIA request.

(b) The rules in this part should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Act Schedule and Guidelines published by the Office of Management and Budget (the "OMB Guidelines"). Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under 45 CFR part 1182 as well as under this part.

10. Amend § 1184.2 by revising paragraphs (a) and (b), (c) introductory text, (c)(8) and (10), the second sentence of (c)(11), and (c)(12) to read as follows:

§ 1184.2 What are IMLS's general policies with respect to FOIA?

(a) *Presumption of openness.* IMLS administers the FOIA with a presumption of openness. Under this presumption, IMLS makes discretionary disclosures of

records whenever such disclosure would not foreseeably harm an interest protected by a FOIA exemption or otherwise be prohibited by law.

(b) *Records available at the IMLS FOIA Electronic Reading Room.* IMLS makes records available on its website Reading Room in accordance with 5 U.S.C. 552(a)(2), as amended, as well as other records that have been requested three or more times or that, because of the nature of their subject matter, are likely to be the subject of FOIA requests. IMLS establishes categories of records that can be disclosed regularly and proactively identifies and discloses additional records of interest to the public. To save time and money, and maximize efficiency, IMLS strongly urges individuals who seek information from IMLS to review documents available at the IMLS FOIA Electronic Reading Room before submitting a FOIA request.

(c) *Definitions.* For purposes of this part, IMLS adopts all of the terms defined in the Freedom of Information Act, and the OMB Guidelines, unless otherwise defined in this part.

(8) *Representative of the news media.* Representative of the news media is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast “news” to the public at large and publishers of periodicals that disseminate “news” and

make their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use. "Freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, agencies can also consider a requester's past publication record in making this determination. Agencies will advise requesters of their placement in this category.

* * * * *

(10) *Review*. The examination of a record located in response to a request to determine whether any portion of it is exempt from disclosure. Review time includes all of the processing that is necessary to prepare any record for disclosure, including, as applicable, redacting portions of the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential business information submitter under § 1184.9 but it does not include time spent resolving general legal or policy issues regarding the applicability of exemptions.

(11) ***Search time includes page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve information from both hard copy and electronic records.

(12) *Working day.* A regular Federal work day constitutes a working day. It does not include Saturdays, Sundays, or Federal holidays.

11. Amend § 1184.3 by revising paragraphs (a) and (b) to read as follows:

§ 1184.3 How do I request records?

(a) *Where to send a request.* You may make a FOIA request for IMLS records by completing the online prompts in the FOIA Online Portal via FOIA.gov or via <https://www.ims.gov/about/foia-request/form> or by sending an e-mail to foia@ims.gov or by submitting a request in writing via regular U.S. Mail addressed directly to the FOIA Public Liaison, Institute of Museum and Library Services, 955 L'Enfant Plaza North, SW, Suite 4000, Washington, DC 20024-2135. Requests may also be sent in writing via facsimile to the FOIA Officer at (202) 653-4625.

(b) *Form of request.* Your FOIA request need not be in any particular format, but it must be in writing, include your name and mailing address, and should be clearly identified as a Freedom of Information Act or "FOIA" request. You must describe the records you seek with sufficient specificity to enable the agency to identify and locate the records, including, if possible, dates, subjects, titles, or authors of the records requested. Before submitting a request, you may contact IMLS's FOIA contact or FOIA Officer to discuss the records you seek and to receive assistance in describing the records. If upon receiving your request IMLS determines that it does not reasonably describe the requested records, IMLS will advise you what additional information is required to perfect your request, or why

your request is otherwise insufficient. You should also indicate if you have a preferred form or format in which you would like to receive the requested records.

12. Amend § 1184.4 by adding paragraph (c) to read as follows:

§ 1184.4 When will I receive a response to my request?

(c) *Expedited processing.* (1) IMLS must process requests and appeals on an expedited basis whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

or

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information.

(2) A request for expedited processing may be made at any time. When making a request for expedited processing of an administrative appeal, the request should be submitted as required by § 1184.6.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (c)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation.

Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public’s right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an “urgency to inform” the public on the topic. As a matter of administrative discretion, IMLS may waive the formal certification requirement.

(4) IMLS must notify the requester within 10 calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request must be given priority, placed in the processing track for expedited requests, and must be processed as soon as practicable. If a request for expedited processing is denied, IMLS must act on any appeal of that decision expeditiously.

13. Amend § 1184.5 by:

- a. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f);
- b. Adding a new paragraph (c); and
- c. In newly redesignated paragraph (f):
 - i. Removing “FOIA Officer” and adding in its place “FOIA Public Liaison;” and
 - ii. Adding a sentence at the end of the paragraph.

The additions read as follows:

§ 1184.5 How will my request be processed?

(c) *Estimated dates of completion and interim responses.* Upon request, IMLS will provide an estimated date by which the agency expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, IMLS may provide interim responses, releasing the records on a rolling basis.

(f) ***In addition, IMLS will provide information about the mediation services provided by the Office of Government Information Services of the National Archives and Records Administration.

14. Amend § 1184.6 by:

- a. Revising paragraph (a); and
- b. In paragraph (b), removing the term “Office of Government Services (OGIS)” and adding in its place “Office of Government Information Services.”

The revision reads as follows:

§ 1184.6 How can I appeal a denial of my request?

(a) *Submission of an appeal.* If your FOIA request has been denied in whole or in part, or if the agency has not found any records in response to your request, you may file an appeal no later than ninety (90) calendar days following the date of the notification of denial. Your appeal must include a description of the initial request, the reason for the appeal, and why you believe the agency's response was incorrect. Your appeal must be in writing, signed, and filed with the IMLS Director, c/o Office of the General Counsel, 955 L'Enfant Plaza North S.W.,

Suite 4000, Washington, D.C., 20024-2135. Appeals may also be sent via email to foia@imls.gov, or via facsimile to (202) 653-4625.

* * * * *

15. Amend § 1184.7 by revising paragraphs (f)(3)(ii) and (g) to read as follows:

§ 1184.7 How will fees be charged?

(f) ***

(3) ***

(ii) When IMLS requests an advance payment, the time limits described in section (a)(6) of the FOIA will begin only after IMLS has received advanced full payment in full.

(g) *Failure to comply.* In the absence of unusual or exceptional circumstances, IMLS will not assess fees if the agency fails to comply with any time limit set forth in this part, unless the agency has determined that unusual circumstances apply and more than 5,000 pages are necessary to respond to the request.

* * * * *

16. Amend § 1184.8 by revising the second sentence of paragraph (b) to read as follows:

§ 1184.8 How can I address concerns regarding my request?

(b) *** If you seek information regarding OGIS and/or the services it offers, please contact OGIS directly at Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS,

College Park, MD 20740-6001, Email: ogis@nara.gov, Phone: (202) 741-5770 or
toll free (877) 684-6448, Fax: (202) 741-5769. ***

§ 1184.9 [Amended]

16. Amend § 1184.9(b)(2) by adding a comma after “local”.

Dated: May 13, 2019.

Kim Miller,
Grants Management Specialist, Institute of Museum and Library Services.

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