



DIGITAL ASSET ACCESS AND USE

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I. PURPOSE

This directive describes the policy for access to and use of the Smithsonian’s digital assets by Smithsonian and non-Smithsonian entities, specifies the criteria for use, including circumstances when restrictions on access and use may be imposed, and when it is appropriate to charge fees.

II. BACKGROUND

Digital assets held by the Smithsonian are rapidly increasing both in quantity and type, and will continue to expand significantly as the Institution implements its Digitization Strategic Plan. At the same time, public demand for access to the Smithsonian’s digital assets continues to increase.

Digital assets, as defined in this policy, are found in a variety of contexts throughout the Institution. They exist but are not limited to the following contexts: (i) in the collections as works of art; (ii) as digital reproductions or “surrogates” for physical items in the collections; and (iii) as digital records generated as a result of research by the Smithsonian and its units.

The Smithsonian maintains these digital assets to advance the Smithsonian’s mission to increase and diffuse knowledge, support the Institution’s strategic goals, and facilitate access to multiple stakeholders and audiences. This directive enables the Smithsonian

II. BACKGROUND (continued)

to better achieve its “diffusion” mission with 21st-century audiences and cultural heritage and technology partners.

The commitment to share digital assets must be balanced against the Smithsonian’s stewardship, management and preservation responsibilities. These obligations must take into consideration a wide range of legal, ethical and practical factors, and also reflect the staff and financial resources required to generate, maintain and render digital assets publicly accessible. Such considerations may dictate the need for access and use restrictions and the need to assess fees.

III. SCOPE

This directive applies to all digital assets held by the Smithsonian Institution except records of the Institution, as defined by [SD 807, Requests for Smithsonian Institution Information](#).¹ It also does not apply to digital assets of Smithsonian affiliated agencies collocated at the Smithsonian unless ownership is transferred to, or shared with, the Smithsonian. Collections that are digital are included in the scope of this policy and also covered by [SD 600, Collections Management](#), which specifies policy for use and sharing of collection items. In the event of any conflicts between the policies, SD 600 shall govern. Questions about collections that are digital can be directed to the National Collections Program in the Office of the Deputy Under Secretary for Collections and Interdisciplinary Support.

IV. ROLES AND RESPONSIBILITIES

The **Secretary** is responsible for establishing institutional goals regarding access to and use of the Institution’s digital assets, and for overseeing the application and enforcement of this policy. Responsibility to implement the direct management, oversight, and record keeping pertaining to digital assets may be redelegated to appropriate management officials.

The **Provost** is responsible for ensuring that access to and use of digital assets are carried out in compliance with this policy through oversight by unit directors, and for hearing appeals of decisions by holding unit directors to deny requests for access and use.

¹ SD 807 defines records as email, contracts, employee records, donor, vendor and lender records, and other information created, stored, or maintained by the Smithsonian in the course of conducting its business.

IV. ROLES AND RESPONSIBILITIES (continued)

The **Deputy Under Secretary for Collections and Interdisciplinary Support** and the **National Collections Program (NCP)** are responsible for improving the stewardship and management of Smithsonian collections by providing central leadership and policy oversight of Institution-wide collections initiatives, including the administration and implementation of [SD 600, Collections Management](#), and the review and approval of collecting unit collections management policies. The NCP is responsible for coordinating with the Digitization Program Office collections management policies that may affect implementation of the requirements set forth in this directive for collections that are digital.

The **Office of the Chief Information Officer (OCIO)** is responsible for designing, implementing and maintaining the information technology (IT) infrastructure and systems to facilitate the sharing, use and accessibility of Smithsonian digital assets within and outside the Smithsonian, in accordance with this policy.

The **Digitization Program Office (DPO)**, which operates under the OCIO, is responsible for improving the overall stewardship and long-term management of the Smithsonian's digital assets by providing central leadership and policy oversight of the Institution-wide digitization program. The DPO develops and maintains pan-Institutional digitization directives, and aggregates and reports statistics regarding unit responses to requests for access and use of digital assets.

The **Office of Communications and External Affairs (OCEA)** maintains the Institution's main public-facing website (si.edu), posts the terms and conditions for the use of digital assets on this website, consistent with this policy, provides updates to such terms and conditions of use in consultation with the Office of General Counsel (OGC), and maintains and posts on the website a current list of unit contacts responsible for handling digital asset use requests.

The **Holding Unit Directors** oversee the implementation of this policy, ensuring compliance by the holding unit's staff. This includes defining which restriction categories are applicable to the digital assets maintained by the holding unit, and resolving disputes with respect to requests for access and use. The holding unit directors also designate contacts within their respective holding units to handle requests to use digital assets, notify OCEA of the contacts, and update contact information as appropriate.

Holding Unit Staff is responsible for responding to requests in a timely manner, evaluating the incoming requests for access and use, determining whether an Allowable Restriction Category applies to the requested digital asset, documenting the decision to grant or deny access, tracking the basis for denials, completing required licensing forms,

IV. ROLES AND RESPONSIBILITIES (continued)

and retaining records of decisions in accordance with applicable records retention policies. Holding unit staff is also responsible for providing statistical information to the DPO in a timely manner, upon request, regarding the use of Allowable Restrictions for their assets.

Requesting Unit Staff will abide by the restrictions regarding access to and use of digital assets consistent with restrictions specified by the holding unit.

The **Office of General Counsel (OGC)** provides legal advice to the holding unit in connection with questions concerning allowable restriction categories and in determining whether commercial use requests are consistent with existing legal obligations, in consultation with Smithsonian Enterprises. Standard and custom licensing agreements are developed in coordination with the Office of Contracting and Personal Property Management (OCon&PPM).

The **Office of Contracting and Personal Property Management (OCon&PPM)** assists the holding units in preparing, drafting, negotiating and executing contracts and licenses to third parties for the use of digital assets, in accordance with [SD 314, Contracting](#). OCon&PPM also pre-approves unit-specific digital image licensing forms. Standard and custom licensing agreements are developed in coordination with the OGC.

Smithsonian Enterprises (SE) is consulted on and may be responsible for requests that the Institution receives to use the Smithsonian Marks in connection with the production, distribution and marketing of products (as defined below). Smithsonian Enterprises works with the holding units, OGC, and OCon&PPM in evaluating whether such requests are consistent with existing contractual obligations and other projects using the Smithsonian Marks to generate revenue for the Institution. When the Smithsonian Marks are used, Smithsonian Enterprises will work with OCon&PPM and OGC on any contracts involving the licensing of Smithsonian Marks.

V. DEFINITIONS

Commercial Use: Any use of a Smithsonian digital asset in which the asset is marketed, promoted and/or sold, or is incorporated into a product.

Examples include, but are not limited to, consumer merchandise (whether produced by the Smithsonian Institution or by a non-Smithsonian entity), periodicals, trade publications, scholarly journals with paid subscriptions, television programs, feature films, advertisements, websites with paid advertising, and cause-related marketing.

V. DEFINITIONS (continued)

Digital Asset: A digital asset includes text, still images, moving images, sound recordings, research datasets, 3D models, and collections data, and other types of media originally created in digital format (i.e., born digital) or digitized from another format or state (i.e., a digital surrogate) that are created, stored, or maintained by the Smithsonian. For the purpose of this directive, digital assets also include metadata (also known as cataloging and collections information) used to describe the digital asset and its content. Digital assets, for purposes of this policy, may be collection objects (e.g., digital art), reproductions of collection items, or content generated in digital form as a result of research and programmatic activities.

Eligible Digital Asset: A digital asset that is not subject to any of the restriction categories in Section VII of this policy. Eligible digital assets may include public domain materials.

Fair Use: A legal concept under United States copyright law that allows the reproduction and use of copyrighted material for certain educational purposes, such as news, commentary, and teaching, without obtaining permission from the copyright owner. Fair use is a legal defense to a claim of copyright infringement and is based on a four-part test, which takes into consideration the purpose and character of the use, the nature of the copied work, the amount and substantiality used in relation to the whole, and the effect of the use on the market for the original. In addition to the fair-use categories of news, commentary, and teaching, other uses may satisfy the requirements for fair use if such use is transformative; the new use must use the original in a way that adds and enhances its value rather than as a mere copy or derivative.

Holding Unit: The Smithsonian unit responsible for approving access to and use of digital assets under its delegated management responsibilities and in accordance with its digital asset management plan. The holding unit is not the Office of the Chief Information Officer, which is the unit that manages the systems that store or provide technological access to the digital asset, or the unit which aggregates content from other Smithsonian units.

Internal Use: Any use of a Smithsonian digital asset by a Smithsonian entity that is purely within the Smithsonian and for on-site usage (e.g., research on the Smithsonian's intranet), and is not disseminated externally through the Internet, publication, or other distribution.

Intranet: An environment where digital assets are shared internally at the Smithsonian via the Smithsonian network (SInet).

V. DEFINITIONS (continued)

Metadata: The information used to describe a digital asset. Generally, metadata is grouped into three categories: (i) administrative (e.g., date/time of scan, restrictions attached to the digital asset itself, such as copyright, and the unit that retains the original); (ii) descriptive (e.g., subject, location, title, date of item, dimensions, restrictions attached to the underlying content of the digital asset); and (iii) technical (e.g., specification of the digital asset and digitization equipment).

Non-Commercial Use: Use of a Smithsonian digital asset by a Smithsonian entity for standard Smithsonian uses (including exhibition, education, research, public programming, archival uses, and fund raising) or by a non-Smithsonian entity solely for the purpose of educational, scholarly, or personal use, provided that the digital asset and any product into which it is incorporated is not marketed, promoted or sold.²

Non-Smithsonian Entity: A person, corporate entity, or organization other than a Smithsonian entity.

Product: A product, publication or other form of media that includes a Smithsonian digital asset and is marketed, promoted and/or sold. Products created by or on behalf of the Smithsonian shall not be considered a digital asset subject to this policy.

Public Domain: The public domain is an intellectual property designation that describes the copyright status of original content (e.g., text, images, audio, video). Content falls into the public domain after a specified period of copyright protection expires or if the content is not eligible for copyright protection in the first instance, such as work created by a federal employee within the scope of his or her official duties, or when an author affirmatively places creative works into the public domain.

Publicly Accessible: A digital asset is publicly accessible if it is available on a Smithsonian or Smithsonian-sponsored or hosted website, or if it appears in a Smithsonian digital publication (e.g., DVD). This term is not applicable to materials that are subject to and/or made available pursuant to Smithsonian's "Plan for Increased Public Access to Results of Federally Funded Research" (e.g., scholarly publications and supporting data sets).

Requesting Unit: The unit that wishes to use a digital asset for internal use or external dissemination.

² Use of digital assets may be deemed non-commercial use for purposes of this policy, but such uses may not necessarily constitute a "fair use" under copyright law. The determination of fair use must be made on a case-by-case basis, in consultation with the OGC as needed.

V. DEFINITIONS (continued)

Restricted Digital Asset: A digital asset that is subject to one or more of the restriction categories in Section VII of this policy. Restricted digital assets may include public domain materials.

Smithsonian Entity: Smithsonian units, employees, Smithsonian-based employees of affiliated agencies (e.g., U.S. Department of Agriculture), volunteers registered with the Smithsonian, interns, Fellows and research associates, who are (a) acting within the scope of official Smithsonian business; or (b) in the case of Smithsonian-based employees of affiliated agencies, volunteers, interns, Fellows and research associates, seeking access to a digital asset for an official Smithsonian purpose. For these purposes, contractors are not considered Smithsonian entities.

Smithsonian Marks: The names “Smithsonian,” “Smithsonian Institution,” the Smithsonian sunburst logo, and/or the names and/or logos of specific Smithsonian museums, offices and programs. Smithsonian Marks shall not be considered digital assets subject to this policy.

Unit: A Smithsonian museum, research center, or office, including all subordinate organizations.

VI. ACCESS AND USE POLICY

Holding units will provide access to, and use of, digital assets for all uses by Smithsonian entities and non-Smithsonian entities subject to allowable restriction categories in Section VII of this policy. Holding units are strongly encouraged to make digital assets available at the best quality (e.g., size and resolution), but decisions about quality such as size, format, resolution and other similar technical details are at the discretion of the holding unit.

A. Use of Eligible Digital Assets

All uses of publicly accessible eligible digital assets are automatically permitted and do not require a written permission, provided that such uses comply with the Terms of Use posted on the Smithsonian website applicable to the publicly accessible eligible digital asset.

VI. ACCESS AND USE POLICY (continued)

B. Requests for Access to Eligible Digital Assets

If a holding unit has not made the eligible digital asset available at the desired quality, a written request must be submitted to the holding unit. The holding unit should acknowledge the request within 10 business days and notify the requester when a response will be provided. If the holding unit does not have the requested asset at the desired quality, it may generate the desired quality and charge fees consistent with Section IX of this policy. If the holding unit denies the request pursuant to the resource limitation restriction under Section VII(B)(3), it must notify the requester in writing (e.g., electronic notification).

C. Non-Commercial Use of Restricted Digital Assets

Non-commercial use of publicly accessible restricted digital assets is automatically permitted and does not require written permission unless the restriction explicitly requires such permission. Any such use shall also comply with the Terms of Use posted on the Smithsonian website applicable to the publicly accessible restricted digital asset.

D. Requests for Use of Restricted Digital Assets

Any use of a restricted digital asset that would be considered commercial or that is inconsistent with the Terms of Use applicable to such assets requires a written request to the holding unit. The following procedures apply to such requests:

1. Requests must be submitted in writing to the holding unit and must specify the proposed use of the restricted digital asset and any changes to the restricted digital asset or metadata in connection with such use.
2. The holding unit should acknowledge the request within 10 business days and notify the requester when a response will be provided.
3. If the holding unit denies the request, it must notify the requester in writing (e.g., electronic notification).
4. Decisions by the holding unit to deny a use requested under this Section are final and not subject to appeal, except that if the denial by the holding unit directly and adversely affects activities or obligations of another unit (e.g., commitments made to a sponsor), the affected unit may appeal to the Provost.

VI. ACCESS AND USE POLICY (continued)

5. If the holding unit would like to grant the request and the holding unit determines that the proposed use is permitted notwithstanding the applicable restriction, then:
 - If the request is for routine commercial licensing of restricted digital assets in publications or other media, the holding unit may grant the request provided that it uses a written licensing form pre-approved by OCon&PPM or OGC. For these purposes, “routine commercial licensing” means the licensing of restricted digital assets to a third party (e.g., publisher, scholar, non-profit institution) where the third party seeks to use, reproduce or incorporate digital assets in a publication or media product (e.g., exhibition catalogue, journal article, book, CD) that is not branded with the Smithsonian Marks and does not consist predominantly of Smithsonian digital assets. The agreement typically will require the requester to resolve any restrictions prior to the holding unit granting the request.
 - If the external request is for non-routine commercial use of restricted digital assets, the holding unit will first contact SE to ensure that such commercial uses will not interfere or conflict with existing contracts or other commercial obligations, according to the criteria set forth in subsection 6 below. If there is a conflict, the holding unit will work with SE to address the conflict.
 - If the request is for non-routine commercial licensing of restricted digital assets and no conflict exists with SE, the holding unit may grant the request provided that it either uses a preapproved written license form or contacts OCon&PPM or OGC to develop a custom license.
 6. In deciding whether the request for commercial use of a restricted digital asset will interfere or conflict with the Smithsonian’s own commercial and revenue-generating activities, the following factors will be considered: a) whether the quantity or prominence of Smithsonian-restricted digital assets used in the product creates the impression that it is a Smithsonian product; b) whether the proposed product will be branded as a Smithsonian product and marketed and sold using the Smithsonian Marks; c) whether the proposed product might conflict with an existing Smithsonian project or contract; or d) whether the proposed product will violate an applicable law or legal obligation. Smithsonian Enterprises and OCon&PPM will consult with OGC as needed in making these determinations.
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VII. ALLOWABLE RESTRICTION CATEGORIES

For a variety of legal, ethical and policy reasons, it may be necessary at times to restrict access to and use of the Smithsonian's digital assets internally, externally or both. The most common types of restrictions are set forth below. When use of a digital asset is restricted, the nature of the restriction must be documented, preferably in the collections information system that manages the asset or, at a minimum, in writing when responding to a request for use. Reference codes for the Allowable Restriction Categories are provided below so holding units can consistently record, document, and report the use of these restrictions.

A. Digital Assets Subject to Legal Restrictions

Legal restrictions and the manner in which they apply to digital assets are the same as those that pertain to the use of tangible collection objects generally. Therefore, when collection objects are subject to allowable restrictions, digital surrogates of such objects may be subject to the same restrictions. Restrictions include, but are not limited to, the categories listed below. For a glossary of terms included below as Allowable Restriction Categories, see Appendix A.

1. Intellectual Property Rights:

- a. *Copyright* is an intellectual property law that protects original works of authorship fixed in a tangible medium of expression (e.g., books, artwork, music, websites, photographs, research, digital assets, etc.). Many of the works of art and other content generated and held by the Smithsonian are protected by copyright. Depending on how digital assets are created or acquired by the Smithsonian, the copyright may or may not be owned by the Smithsonian, and copyright ownership is an important factor that determines whether, and to what extent, the digital asset may be used and reproduced. For a general discussion of copyright, see [SD 600](#), the [SD 600 Implementation Manual](#) on intellectual property, and the Copyright Office website, <https://www.copyright.gov/>. Ideas and titles are not protected by copyright, but may be protected by other intellectual property laws. SD 609 Restriction Code: A1a.
- b. *Moral rights* are set forth as part of the copyright law in the Visual Artists Rights Act ("VARA"), and they consist of an artist's right to protect his or her name and reputation from damage caused by intentional distortion or mutilation of his or her artistic works, and other similar protections. SD 609 Restriction Code: A1b.

VII. ALLOWABLE RESTRICTION CATEGORIES (continued)

- c. *Trademark* is any work, name or symbol, or device, or any combination that is adopted and used by a person or entity to identify goods or services and to distinguish them from those manufactured or sold by others. The purpose of a trademark is to indicate the source of goods or services. Titles, slogans, service marks, logos, and other symbols that identify or are capable of distinguishing goods and services are protected under trademark law. Names of museums, exhibition titles, and other names or designs may be eligible for trademark protection, either under common law principles or by federal registration with the United States Patent and Trademark Office. A trademark owner may prevent others from using the same or substantially similar word, design, symbol or title in a manner that is likely to create confusion in the mind of the public. See <https://www.uspto.gov/> for more information about trademarks. SD 609 Restriction Code: A1c.
- d. *Patent* is a grant conferring the right to exclude others from making, using or selling an invention. Novel and useful processes and inventions or new designs for useful objects are governed by patent laws. SD 609 Restriction Code: A1d.
- e. *Rights of Privacy and Publicity* of persons depicted in digital assets recognize that an individual has certain personal and pecuniary interests in his or her name, voice, picture, likeness, and other identifying characteristics that may restrict uses of these attributes without the individual's consent. Privacy rights also protect individuals from being depicted in a false light or in an embarrassing situation. These rights may prevent use or reproduction of photographs of living subjects, particularly children, without express written consent of the subjects or, in the case of minor children, their parents and/or guardians. Although privacy and publicity rights are not technically intellectual property rights, they are closely related concepts that should be considered in connection with Smithsonian activities. Certain types of privacy rights are governed by state law and common law, and not by federal law. SD 609 Restriction Code: A1e.
- f. *Sensitive Personally Identifiable Information ("sPII")* is a subset of personally identifiable information ("PII") and is defined as certain PII data elements that, if disclosed or used in combination with other data, could lead to harm to the individual (i.e., identity theft with the intention to do financial harm). PII is information about individuals maintained by the Smithsonian, which may or may not be publicly available, including information which can be used to distinguish or trace an individual's identity (e.g., home address, email

VII. ALLOWABLE RESTRICTION CATEGORIES (continued)

address, telephone number) and any other information that is linked or linkable to an individual, such as medical, educational, financial or employment information. sPII generally falls into the following categories:

Category 1: sPII is the first and last name or last name and first initial in combination with one or more of the following data elements:

- Social Security number or personal Tax Identification Number;
- Driver's license or Government-issued ID number;
- Credit card number with or without an access code;
- Bank account number with or without a personal identification number (PIN) or password; or
- Medical information (i.e., a diagnosis or condition).

Category 2: Physical personally identifiable information, such as biometric identifiers: iris scans, retina scans, fingerprints, voice prints, are stand-alone data elements which are considered sensitive because of the possibility of increased risk to individuals if the information were to be compromised

Disclosure of such information without consent could violate an individual's privacy rights. For a more detailed description of PII, contact the Smithsonian Privacy Officer, privacy@si.edu. SD609 Restriction Code: A1f.

2. Contractual restrictions (e.g., deeds of gift, contracts, licenses, loan agreements). SD 609 Restriction Code: A2;
3. Native American and Native Hawaiian human remains and objects (e.g., funerary objects, sacred objects, and items of cultural patrimony) subject to repatriation. If a collection object has been repatriated, any associated digital assets may be restricted. SD 609 Restriction Code: A3;
4. Cultural items returned to their country of origin because of the circumstances of acquisition (e.g., illegally or unethically exported or acquired). SD 609 Restriction Code: A4;
5. Rare, threatened or endangered species (e.g., locality or collector information). SD 609 Restriction Code: A5;

VII. ALLOWABLE RESTRICTION CATEGORIES (continued)

6. Images, other media, or data that reveal the location of archaeological, paleontological, geological, sacred and historic sites. SD 609 Restriction Code: A6;
7. Uncertain provenance. SD 609 Restriction Code: A7;
8. Collections management, conservation, inventory, loan, valuation, and other business records not covered by this policy. SD 609 Restriction Code: A8; and
9. Assets that may be subject to other legal restrictions or regulatory schemes in their tangible or digital forms (e.g., objects that qualify as defense articles or dual-use technology subject to U.S. export controls, weapons, objects that are subject to products liability considerations, or biological specimens subject to international treaties or protocols). SD 609 Restriction Code A9.

B. Digital Assets that Are Subject to Policy and Other Restrictions

Digital assets, like the underlying tangible collection objects from which they are derived, may be subject to a range of policy and other restrictions that have become generally accepted in museum and scholarly communities.

1. *Sensitive Content* is defined in different ways by members of individual communities, nations, tribes, ethnic groups, and religious denominations, but may include materials that relate to traditional knowledge and practices. Such materials may: a) be considered the private domain of specific individuals, clans, cults or societies; b) require an appropriate level of knowledge to view and understand; c) threaten the privacy and well-being of a community when exposed or disclosed to outsiders; and/or d) give offense if inappropriately used or displayed, or when appropriated or exploited for commercial purposes. SD 609 Restriction Code: B1.
2. *Unpublished Research Data/Resources* consist of raw data, primary research and manuscripts (“Unpublished Research”) generated during the course of research by Smithsonian entities that may be temporarily delayed or restricted from access and use to provide an opportunity for the Smithsonian entity that generated the Unpublished Research to compile and publish the data prior to general access. The duration of these limitations varies by professional discipline. SD 609 Restriction Code: B2.

VII. ALLOWABLE RESTRICTION CATEGORIES (continued)

3. *Resource Limitations* may provide the basis for a holding unit to deny a request if it does not have resources (e.g., staff, expertise or time) necessary to generate the digital asset or undertake the research to determine whether the digital asset is subject to an allowable restriction category, and the holding unit is unable to obtain reimbursement of the associated costs from the requesting entity. SD 609 Restriction Code: B3.

VIII. PUBLIC DOMAIN MATERIALS

The public domain describes a category of creative works (i.e., intellectual property) that are not eligible for copyright protection in the United States and, therefore, may be used and reproduced freely by any person or entity that obtains access to the property. Creative works fall into the public domain because: a) the term of copyright protection afforded under applicable copyright law has expired; b) the works are not eligible for copyright protection in the first instance (such as works created by federal employees within the course of their official duties); or c) the works are placed affirmatively into the public domain by their authors and creators.

IX. ALLOWABLE FEES

When the Smithsonian charges fees for the use of its digital assets, it does so to generate funds for a variety of mission-related purposes, including, but not limited to, performing collections management and digitization functions, maintaining digital assets and related metadata, recovering the actual direct and indirect costs of staff and systems used to manage and provide access to the assets, and making greater amounts of digital content available to the public online and through other electronic media.

Holding units *shall not* charge access and use fees for any use of publicly accessible eligible digital assets, but may charge for the costs of any additional services provided by the holding unit related to an eligible digital asset (e.g., generating new or higher resolution digital assets). Holding units may charge fees for the use of restricted digital assets pursuant to Section VI(d) of this policy.

SUPERSEDES:	SD 609, July 15, 2011.
INQUIRIES:	Office of the Chief Information Officer (OCIO).
RETENTION:	Indefinite. Subject to review for currency 36 months from date of issue.
