

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

Statement of Regulatory Priorities

The National Archives and Records Administration (NARA) promulgates (a) regulations directed to other Federal agencies regarding adequate and proper documentation of the policies and transactions of the Federal Government and for ensuring proper records disposition, and (b) regulations directed to the public relating to access to and use of the historically valuable archives, donated historical materials, Nixon Presidential materials, and Presidential records in the National Archives, regional archives, Presidential libraries, and Presidential Materials Projects operated by NARA. NARA also promulgates regulations relating to the National Historical Publications and Records Commission (NHPRC) grant programs.

NARA's regulatory priorities for fiscal year 1996 will be the clarification and updating of records-management regulations concerning Federal agency recordkeeping requirements, electronic records, and audiovisual records; and the completion of the rulemaking process for the NHPRC grant program regulations.

NARA records-management regulations must provide agencies with the guidance they need to fulfill their statutory obligation to make and preserve records containing adequate and proper documentation of the agency's business. This guidance must be reviewed and updated periodically to reflect changing information technology and recordkeeping practices in agencies. NARA has determined that existing regulations on personal papers and on the removal of nonrecord and personal materials do not provide sufficient protection against improper removal of Federal records from agency control. NARA plans to expand guidance on personal papers and add a requirement for agencies to protect against the removal of Federal records by issuing written procedures for the removal of nonrecord and personal materials. NARA also sees a need to revise regulations on records creation and maintenance to emphasize their applicability to electronic records.

During fiscal year 1995, NARA began the rulemaking process to update records management regulations to provide broader coverage of audiovisual materials created by agencies today. The rule will address formats not covered in the current regulations and will help agencies to ensure that audiovisual

records are properly preserved. NARA also is undertaking a revision of its records-management regulations on transfer of electronic records to the National Archives to address optical media. The agency plans to complete both rulemakings in fiscal year 1996.

NARA plans no significant rulemakings in the area of public use of archival records and materials in NARA research rooms in fiscal year 1996.

NARA

PROPOSED RULE STAGE

141. STANDARDS FOR AGENCY RECORDKEEPING REQUIREMENTS—RECORDS, NONRECORD MATERIALS, AND PERSONAL PAPERS

Priority:

Other Significant

Legal Authority:

44 USC 2904; 44 USC 2905; 44 USC 3101; 44 USC 3102; 44 USC 3301; 44 USC 3314

CFR Citation:

36 CFR 1222

Legal Deadline:

None

Abstract:

This revision of the regulation expands the guidance on personal papers and adds a requirement for agencies to protect against the removal of Federal records by issuing written procedures for the removal of nonrecord and personal materials. It also adds a requirement that agencies document the removal of nonrecord and personal materials and certify that no Federal records were taken. Finally, this revision provides more explicit guidance on records in electronic form.

Statement of Need:

This regulation is needed to ensure that Federal records are not improperly removed from agency custody by departing officials and that agencies fully recognize the applicability of records management requirements to records in electronic form.

Summary of the Legal Basis:

This regulation reflects the legal requirements for agencies to create and maintain adequate and proper documentation, to correctly identify documentation that meets the definition of *Federal record*, and to

prevent the unauthorized destruction or removal of Federal records. The National Archives and Records Administration (NARA) is required by law to issue standards and guidelines to Federal agencies regarding adequate and proper documentation of the policies and transactions of the Federal Government and for ensuring proper records disposition. The Archivist of the United States is also statutorily responsible for establishing standards for the selective retention of records of continuing value. This regulation reflects the statutory requirements and responsibilities by providing guidance on applying the legal definition of Federal records to materials created on any media including electronic, distinguishing records from nonrecord materials, identifying and maintaining personal papers, and ensuring that appropriate documentation is provided by contractors.

Alternatives:

An alternative to this regulatory change would be to state in the regulations only the statutory requirements for creation of adequate and proper documentation without regard to their applicability to electronic records and without strengthening the requirements for protection against removal of records. NARA plans to issue a records management guide on recordkeeping requirements that contains interpretation and guidance on implementing the statutory requirements and regulations; this guidance could be expanded to include provisions that would be deleted from the regulation under this approach. This alternative, however, would reduce the effectiveness of the regulation since the applicability of the regulations to electronic records and the methods for implementing statutory requirements would be contained in nonmandatory guidance.

Anticipated Costs and Benefits:

The only new costs associated with compliance with the regulation would be in Federal agency staff resources to implement the requirement to review nonrecord and personal materials that individuals wish to remove from their agency and to certify that Federal records are not included. Agencies could choose to implement the requirement by prohibiting the removal of any documentary materials, at little or no cost, or by various levels of review, where the costs would depend on the size of the agency and the number of individuals likely to request permission to remove materials. We are

unable to quantify the costs at this time, but will ask agencies to estimate their costs in the notice of proposed rulemaking. The benefits that will accrue from adherence to this regulation are also not easily quantifiable; they include creation and protection of Federal records that may be needed for accountability, audit and inspection, continuity, and protection of the rights of the Government and of individuals directly affected by Government actions.

Risks:

Failure to follow these regulations could result in an inability to account for the expenditure of funds, lack of documentation of significant decisions that could have serious or wide-ranging

affects on the public, lack of evidence of wrongdoing, resources wasted in "reinventing the wheel," failure to acquire useful documentation created under contract, inefficient operation of Government programs resulting from burdensome searches for needed information, and lack of documentation for future research.

Timetable:

Action	Date	FR Cite
NPRM	03/00/96	
NPRM Comment Period End	05/00/96	
Final Action	06/00/96	
Final Action Effective	07/00/96	

Small Entities Affected:

None

Government Levels Affected:

Federal

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