

FEDERAL RECORDS MODERNIZATION ACT OF 2016

SEPTEMBER 19, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CHAFFETZ, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany H.R. 5709]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 5709) to improve Federal employee compliance with Federal and Presidential recordkeeping requirements, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 5709, the Federal Records Modernization Act, makes a number of updates to the Federal Records Act (FRA) to provide penalties for federal record destruction, improve recordkeeping accountability, reform the *Federal Register*, and make other technical improvements. H.R. 5709 will allow agencies to suspend without pay employees that an Inspector General has found to have willfully and unlawfully altered, removed, or destroyed a federal record. The bill will also prohibit federal employees from using personal e-mails or other electronic communication tools to conduct official business as a way of circumventing federal recordkeeping laws. Additionally, the legislation requires federal agencies to disclose on their websites notices indicating an actual, impending, or threatened loss of federal records.

BACKGROUND AND NEED FOR LEGISLATION

In recent years, deficiencies in records management at federal agencies have been well-documented by the agency Inspectors General and the National Archives and Records Administration (Archives).¹ There are a number of laws in place aimed at ensuring adequate recordkeeping. Specifically, the Presidential Records Act (PRA) and the FRA work together to ensure that our nation's records—defined as “all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics . . . in connection with the transaction of public business”—are preserved, sometimes in perpetuity, as a clear record of the government's operation and decision making processes.²

Considering the federal government's reliance on electronic and information technology systems, most of the records generated by federal agencies today are “born digital,” meaning they are not produced in a tangible, paper-based format. “Born-digital” records are “machine-readable, electronic records—whether produced via e-mail, word processing, social media, websites, databases, or other applications.”³ As the federal government moves away from paper-based records and toward “born digital” records, H.R. 5709 presents an opportunity to ensure that the policies and processes governing the federal government's maintenance of records is modernized to reflect current technology.

Prohibiting the unauthorized alteration, removal, or destruction of federal records

H.R. 5709, the Federal Records Modernization Act will go further than the current PRA and FRA to better prevent and detect the alteration, removal, or improper destruction of federal records. Under the current system, Archives is directed to prescribe procedures to prevent the unauthorized removal, damage, or destruction of

¹ Office of Inspector General, U.S. Department of State, *Review of State Messaging and Archive Retrieval Toolset and Record Email* (March 2015), available at: <https://oig.state.gov/system/files/isp-i-15-15.pdf>.

² 44 U.S.C. § 3301.

³ Congressional Research Service, *Retaining and Preserving Federal Records in a Digital Environment: Background and Issues for Congress* (July 2013).

records, but the statute provides little accountability over violations of both the PRA and the FRA.⁴ H.R. 5709 will address this problem by allowing agencies to suspend employees without pay if their agency's Inspector General has found the employee willfully and unlawfully altered, removed, or destroyed a federal record. H.R. 5709 will also increase transparency by requiring agencies to disclose on their websites notices indicating an actual, impending, or threatened loss of federal records.

Automatic preservation of senior officials' emails

Importantly, the legislation also includes a provision to require automation of the preservation of senior officials' emails. As the federal government shifts away from a "print-to-file" regime for federal recordkeeping, electronic preservation in many cases is still fully reliant on affirmative actions by individuals for records to be preserved. The need for an affirmative action makes it easier for records to be accidentally or deliberately destroyed. To address this issue, the legislation specifically requires agencies to identify senior officials whose email is the most likely to contain federal records and ensure those accounts are automatically and fully preserved.

Federal Register modernization

The Federal Register Act was enacted in 1935 with the purpose of creating a comprehensive source for distributing all agency promulgated rules and regulations. The first issue of the *Federal Register* was published in 1936.⁵ As the *Federal Register* expanded, it adapted its methods of records preservation, adopting new methods of printing with the emergence of the latest technology. In the 1970s, the Office of the Federal Register (OFR) stopped manually cutting and pasting the manuscript, shifting to electronic photo-composition technology.⁶ By the 1980s, each staff member at the OFR had their own computer, and by 1994 the *Federal Register* was published in an electronic format.⁷ Now, complete editions of the *Federal Register* are readily available on the Internet at federalregister.gov.⁸

To help further modernize the *Federal Register*, the Archivist of the United States requested the language in section seven of the bill "to take advantage of modern technology and improve efficiency" and allow OFR to "increase interaction with the public and improve interoperability with other federal systems dealing with agency rulemaking."

LEGISLATIVE HISTORY

On July 11, 2016, Representative Mark Meadows (R-NC), introduced H.R. 5709, the Federal Records Modernization Act, which was referred to the House Committee on Oversight and Govern-

⁴Pub. L. No. 113-187 (2014).

⁵*A Research Guide to the Federal Register and the Code of Federal Regulations*, Law Librarians' Society of Washington, D.C. (June 2016) available at: <http://www.llsdc.org/fr-cfr-research-guide>.

⁶Id.

⁷Id.

⁸*About Us*, Federal Register, www.federalregister.gov/blog/policy/about-us (last visited August 18, 2016). ⁹Letter from David S. Ferriero, Archivist, NARA, to John Boehner, Speaker, House of Representatives, (Nov. 12, 2013).

ment Reform. On July 12, 2016, H.R. 5709 was ordered reported by voice vote.

In 2014, Representative Meadows introduced H.R. 5170, the Federal Records Accountability Act, which contained many of the provisions included in H.R. 5709. H.R. 5170 passed the House on September 16, 2014 by voice vote.

SECTION-BY-SECTION

Section 1. Short title; Table of contents

Designates the short title of the bill as the “Federal Records Modernization Act of 2016.”

Section 2. Removal for deliberate destruction of Federal records

Creates “Subchapter VI—Federal Records” in Chapter 75 of title 5, United States Code. Directs the head of an agency to suspend without pay an employee the Inspector General has found to have willfully and unlawfully altered, removed, or destroyed a federal record. Permits the employee 15 days to submit information to the head of an agency to show why the employee should be restored to duty. After the 15-day period, requires the head of an agency to remove the suspended employee if—after investigation and review—the agency head determines the employee did willfully and unlawfully alter, remove, or destroy a federal record. Authorizes the employee to appeal a removal decision to the Merit Systems Protection Board.

Section 3. Use of non-official electronic messaging accounts

Subsection (a) amends the Presidential Records Act to prohibit covered individuals from creating or transmitting a Presidential record using a non-official electronic messaging account unless the applicable individual includes an official account of the same individual as a recipient of the message, or if the message is electronically forwarded to the applicable individual’s official account within 20 days, or if the message is printed and submitted for proper archival storage within 20 days. Requires that failure to disclose use of non-official electronic messaging accounts for official use be considered destruction of a federal record and subject to Subchapter VI of Chapter 75 as created by section 2 of the bill. Defines covered employee, electronic message, and electronic messaging account.

Subsection (b) amends the Federal Records Act to prohibit individuals covered by the Federal Records Act from creating or transmitting a federal record using a non-official electronic messaging account unless the individual includes an official account of the same individual as a recipient of the message, or the message is electronically forwarded to the individual’s official account within 20 days, or the message is printed and submitted for proper archival storage within 20 days. Sets a requirement that failure to disclose use of non-official electronic messaging accounts is to be considered destruction of a federal record and subject to Subchapter VI of Chapter 75 as created by section 1 of the bill. Defines covered employee, electronic message, and electronic messaging account.

Section 4. Reporting of the loss or potential loss of records

Requires federal agency heads made aware that records have been, or may be, lost, altered, or destroyed, to publish a general description of the affected records on the website of the agency.

Section 5. Senior Agency Official for Records compliance

Requires the head of each federal agency to designate or reconfirm each year a Senior Agency Official for Records Management. Requires the designated official to be at least at the level of an Assistant Secretary or its equivalent, and to be responsible for ensuring agency compliance with all applicable recordkeeping statutes and regulations.

Section 6. Retention of electronic correspondence

Requires the identification and automatic preservation of electronic messaging accounts (as defined in section 2911) that are most likely to contain permanent federal records, including the accounts of Federal agency heads, deputies and assistants of those heads, program office heads, and officials in other significant positions.

Requires the Government Accountability Office to evaluate and report to Congress every two years on Federal agency management of electronic mail preservation required by this section.

Amends the Inspector General Act to direct Inspectors General to make recommendations in semiannual reports concerning compliance with record retention requirements as necessary.

Section 7. Federal Register modernization

Amends the Federal Register Act, Chapter 15 of title 44 of the United States Code, by replacing all references to “print” with “publish” and defining publish as circulate or distribute. Eliminates the requirement that agencies provide multiple copies of documents submitted to the *Federal Register*.

Section 8. Statutory protection for National Archives and Records Administration volunteers

Amends title 44 to provide protections relating to compensation for injury, tort claims, and damage or loss of personal property for volunteers at the National Archives and Records Administration.

EXPLANATION OF AMENDMENTS

No amendments to H.R. 5709 were offered or adopted during Full Committee consideration of the bill.

COMMITTEE CONSIDERATION

On July 12, 2016 the Committee met in open session and ordered reported favorably the bill, H.R. 5709, by voice vote, a quorum being present.

ROLL CALL VOTES

No roll call votes were requested or conducted during Full Committee consideration of H.R. 5709.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill improves Federal employee compliance with Federal and Presidential recordkeeping requirements. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goal or objective of this bill is to improve Federal employee compliance with Federal and Presidential recordkeeping requirements.

DUPLICATION OF FEDERAL PROGRAMS

No provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting this bill does not direct the completion of any specific rule makings within the meaning of 5 U.S.C. 551.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of Rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of Congressional Budget Office:

SEPTEMBER 9, 2016.

Hon. JASON CHAFFETZ,
*Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5709, the Federal Records Modernization Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 5709—Federal Records Modernization Act of 2016

H.R. 5709 would amend federal laws regarding the management of federal records. Specifically, the legislation would establish new procedures for suspending and removing federal employees who inappropriately destroy federal records, modify federal employees' authority to use nonfederal accounts for electronic messaging for work purposes, and require the Government Accountability Office (GAO) and Inspector Generals (IGs) to prepare evaluations and reports concerning the use of electronic records. H.R. 5709 also would require each federal agency to designate a senior official to oversee records management including requirements for retaining and storing those records. Finally, under H.R. 5709, the federal government would no longer require that the *Federal Register* and the *Code of Federal Regulations* (CFR) be made available in hard copy.

Most of the provisions of the bill would codify and expand current practices of the federal government. For example, the Federal Records Act requires each agency to make and preserve records of its activities, and executive orders and Presidential memoranda have directed all agencies, including the National Archives and Records Administration (NARA), to better manage their records.

Based on information from the NARA, the Government Printing Office, and selected agencies, CBO expects that agencies, GAO, and IGs governmentwide would incur additional administrative costs under H.R. 5709 totaling less than \$40,000 annually per agency, primarily to meet the bill's reporting requirements. In total, CBO estimates those activities would cost about \$5 million over the 2017–2021 period; most such spending would be subject to appropriation. CBO expects that enacting the bill would not significantly affect costs to print the *Federal Register* and the CFR since most spending related to those documents stems from preparing content, not printing and duplication.

In addition, H.R. 5709 would increase both direct spending and revenues; therefore, pay-as-you-go procedures apply. In particular, the bill could affect administrative costs of agencies not funded through annual appropriations, but CBO expects that any resulting increases in direct spending would be insignificant. In addition, H.R. 5709 could increase revenues from civil and criminal fines that are imposed on federal employees who improperly destroy federal records. Because relatively few cases would probably arise, CBO estimates that any increase in revenues and associated direct spending would not be significant in any year.

CBO estimates that enacting H.R. 5709 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 5709 would not impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no cost on state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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SUBPART F—LABOR-MANAGEMENT AND EMPLOYEE RELATIONS

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CHAPTER 75—ADVERSE ACTIONS

SUBCHAPTER I—SUSPENSION OF 14 DAYS OR LESS

Sec.

7501. Definitions.

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SUBCHAPTER VI—FEDERAL RECORDS

7551. Definitions.

7552. Suspension and removal.

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SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

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§ 7512. Actions covered

This subchapter applies to—

- (1) a removal;
- (2) a suspension for more than 14 days;
- (3) a reduction in grade;
- (4) a reduction in pay; and
- (5) a furlough of 30 days or less;

but does not apply to—

- (A) a suspension or removal under section 7532 of this title,
 - (B) a reduction-in-force action under section 3502 of this title,
 - (C) the reduction in grade of a supervisor or manager who has not completed the probationary period under section 3321(a)(2) of this title if such reduction is to the grade held immediately before becoming such a supervisor or manager,
 - (D) a reduction in grade or removal under section 4303 of this title,
 - (E) an action initiated under section 1215 or 7521 of this title; or
 - (F) a suitability action taken by the Office under regulations prescribed by the Office, subject to the rules prescribed by the President under this title for the administration of the competitive service.
- (F) a suspension or removal under section 7552 of this title.

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SUBCHAPTER VI—FEDERAL RECORDS

§ 7551. Definitions

In this subchapter the following definitions apply:

(1) *EMPLOYEE.*—The term “employee” means—

- (A) an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; or

(B) a career appointee in the Senior Executive Service who—

(i) has completed the probationary period prescribed under section 3393(d) of this title; or

(ii) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service.

(2) RECORD.—The term “record” has the meaning given that term in section 3301 of title 44.

(3) SUSPENSION.—The term “suspension” has the meaning given that term in section 7501 of this title.

§ 7552. Suspension and removal

(a) INSPECTOR GENERAL FINDING.—If the Inspector General of an agency determines an employee of the agency has willfully and wrongfully concealed, removed, mutilated, obliterated, falsified, or destroyed any record, proceeding, map, book, document, paper, or other thing in the custody of such employee, or verifies a violation under section 2209 or 2911 of title 44, the Inspector General shall promptly inform the head of the agency of that determination in writing.

(b) SUSPENSION.—The head of an agency shall suspend an employee of that agency who has been determined by the Inspector General under subsection (a) to have willfully and unlawfully concealed, removed, mutilated, obliterated, falsified, or destroyed any record, proceeding, map, book, document, paper, or other thing in the custody of such employee, or who has been verified by the Inspector General to be in violation of section 2209 or 2911 of title 44.

(c) REQUIREMENTS AFTER SUSPENSION.—An employee suspended under subsection (b) is entitled, after suspension and before removal, to—

(1) be represented by an attorney or other representative;

(2) a written statement of the charges against the employee within 15 days after suspension, which may be amended within 30 days thereafter;

(3) an opportunity within 15 days after the receipt of the written statement under paragraph (2), plus an additional 15 days if the charges are amended, to answer the charges and submit affidavits;

(4) a hearing, at the request of the employee, by an agency authority duly constituted for this purpose;

(5) a review of the employee’s case by the head of the agency or a designee, before a decision adverse to the employee is made final; and

(6) a written statement of the decision of the head of the agency.

(d) REMOVAL.—Subject to subsection (c) of this section and after any investigation and review the head of the agency considers necessary, the head of an agency shall remove an employee suspended under subsection (b) if such head determines that the employee willfully and unlawfully concealed, removed, mutilated, obliterated, falsified, or destroyed any record, proceeding, map, book, document, paper, or other thing in the custody of such employee.

(e) *APPEAL*.—An employee who is removed under subsection (d) is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

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TITLE 44, UNITED STATES CODE

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CHAPTER 15—FEDERAL REGISTER AND CODE OF FEDERAL REGULATIONS

Sec.

1501. Definitions.

[1502. Custody and printing of Federal documents; appointment of Director.

[1503. Filing documents with Office; notation of time; public inspection; transmission for printing.

[1504. “Federal Register”; printing; contents; distribution; price.**]**

1502. *Custody and publishing of Federal documents; appointment of Director.*

1503. *Filing documents with Office; notation of time; public inspection; transmission for publishing.*

1504. *“Federal Register”; publishing; contents; distribution; price.*

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§ 1501. Definitions

As used in this chapter, unless the context otherwise requires—
 “document” means a Presidential proclamation or Executive order and an order, regulation, rule, certificate, code of fair competition, license, notice, or similar instrument, issued, prescribed, or promulgated by a Federal agency;

“Federal agency” or “agency” means the President of the United States, or an executive department, independent board, establishment, bureau, agency, institution, commission, or separate office of the administrative branch of the Government of the United States but not the legislative or judicial branches of the Government;

“person” means an individual, partnership, association, or corporation; **[and]**

“publish” means to circulate for sale or distribution to the public; and

“National Archives of the United States” has the same meaning as in section 2901(11) of this title.

§ 1502. Custody and **[printing] publishing of Federal documents; appointment of Director**

The Archivist of the United States, acting through the Office of the Federal Register, is charged with the custody and, together with the Director of the Government Publishing Office, with the prompt and uniform **[printing and distribution]** *publishing* of the documents required or authorized to be published by section 1505 of this title. There shall be at the head of the Office a director, appointed by, and who shall act under the general direction of, the Archivist of the United States in carrying out this chapter and the regulations prescribed under it.

[§ 1503. Filing documents with Office; notation of time; public inspection; transmission for printing

[The original and two duplicate originals or certified copies of a document required or authorized to be published by section 1505 of this title shall be filed with the Office of the Federal Register, which shall be open for that purpose during all hours of the working days when the National Archives Building is open for official business. The Archivist of the United States shall cause to be noted on the original and duplicate originals or certified copies of each document the day and hour of filing. When the original is issued, prescribed, or promulgated outside the District of Columbia, and certified copies are filed before the filing of the original, the notation shall be of the day and hour of filing of the certified copies. Upon filing, at least one copy shall be immediately available for public inspection in the Office. The original shall be retained by the National Archives and Records Administration and shall be available for inspection under regulations prescribed by the Archivist, unless such original is disposed of in accordance with disposal schedules submitted by the Administrative Committee of the Federal Register and authorized by the Archivist pursuant to regulations issued under chapter 33 of this title; however, originals of proclamations of the President and Executive orders shall be permanently retained by the Administration as part of the National Archives of the United States. The Office shall transmit immediately to the Government Printing Office for printing, as provided by this chapter, one duplicate original or certified copy of each document required or authorized to be published by section 1505 of this title. Every Federal agency shall cause to be transmitted for filing the original and the duplicate originals or certified copies of all such documents issued, prescribed, or promulgated by the agency.

[§ 1504. "Federal Register"; printing; contents; distribution; price

[Documents required or authorized to be published by section 1505 of this title shall be printed and distributed immediately by the Government Printing Office in a serial publication designated the "Federal Register." The Director of the Government Publishing Office shall make available the facilities of the Government Printing Office for the prompt printing and distribution of the Federal Register in the manner and at the times required by this chapter and the regulations prescribed under it. The contents of the daily issues shall be indexed and shall comprise all documents, required or authorized to be published, filed with the Office of the Federal Register up to the time of the day immediately preceding the day of distribution fixed by regulations under this chapter. There shall be printed with each document a copy of the notation, required to be made by section 1503 of this title, of the day and hour when, upon filing with the Office, the document was made available for public inspection. Distribution shall be made by delivery or by deposit at a post office at a time in the morning of the day of distribution fixed by regulations prescribed under this chapter. The prices to be charged for the Federal Register may be fixed by the Administrative Committee of the Federal Register established by section 1506 of this title without reference to the restrictions placed upon

and fixed for the sale of Government publications by sections 1705 and 1708 of this title.】

§ 1503. Filing documents with Office; notation of time; public inspection; transmission for publishing

The original document required or authorized to be published by section 1505 of this title shall be filed with the Office of the Federal Register for publication at times established by the Administrative Committee of the Federal Register by regulation. The Archivist of the United States shall cause to be noted on the original of each document the day and hour of filing. Upon filing, the document shall be immediately available for public inspection in the Office. The original shall be retained by the National Archives and Records Administration and shall be available for inspection under regulations prescribed by the Archivist, unless such original is disposed of in accordance with disposal schedules submitted by the Administrative Committee and authorized by the Archivist pursuant to regulations issued under chapter 33 of this title; however, originals of proclamations of the President and executive orders shall be permanently retained by the Administration as part of the National Archives of the United States. The Office shall transmit to the Government Publishing Office, as provided by this chapter, each document required or authorized to be published by section 1505 of this title. Every Federal agency shall cause to be transmitted for filing the original of all such documents issued, prescribed, or promulgated by the agency.

§ 1504. “Federal Register”; publishing; contents; distribution; price

Documents required or authorized to be published by section 1505 of this title shall be published immediately by the Government Publishing Office in a serial publication designated the “Federal Register”. The Director of the Government Publishing Office shall make available the facilities of the Government Publishing Office for the prompt publication of the Federal Register in the manner and at the times required by this chapter and the regulations prescribed under it. The contents of the daily issues shall constitute all documents, required or authorized to be published, filed with the Office of the Federal Register up to the time of the day immediately preceding the day of publication fixed by regulations under this chapter. There shall be published with each document a copy of the notation, required to be made by section 1503 of this title, of the day and hour when, upon filing with the Office, the document was made available for public inspection. Distribution shall be made at a time in the morning of the day of distribution fixed by regulations prescribed under this chapter. The prices to be charged for the Federal Register may be fixed by the Administrative Committee of the Federal Register established by section 1506 of this title without reference to the restrictions placed upon and fixed for the sale of Government publications by sections 1705 and 1708 of this title.

§ 1505. Documents to be published in Federal Register

(a) PROCLAMATIONS AND EXECUTIVE ORDERS; DOCUMENTS HAVING GENERAL APPLICABILITY AND LEGAL EFFECT; DOCUMENTS RE-

REQUIRED TO BE PUBLISHED BY CONGRESS.—There shall be published in the Federal Register—

(1) Presidential proclamations and Executive orders, except those not having general applicability and legal effect or effective only against Federal agencies or persons in their capacity as officers, agents, or employees thereof;

(2) documents or classes of documents that the President may determine from time to time have general applicability and legal effect; and

(3) documents or classes of documents that may be required so to be published by Act of Congress.

For the purposes of this chapter every document or order which prescribes a penalty has general applicability and legal effect.

(b) DOCUMENTS AUTHORIZED TO BE PUBLISHED BY REGULATIONS; [COMMENTS] *NEWS COMMENTARY* AND NEWS ITEMS EXCLUDED.—In addition to the foregoing there shall also be published in the Federal Register other documents or classes of documents authorized to be published by regulations prescribed under this chapter with the approval of the President, but [comments] *news commentary* or news items of any character may not be published in the Federal Register.

(c) SUSPENSION OF REQUIREMENTS FOR FILING OF DOCUMENTS; ALTERNATE SYSTEMS FOR PROMULGATING, FILING, OR PUBLISHING DOCUMENTS; PRESERVATION OF ORIGINALS.—In the event of an attack or threatened attack upon the continental United States and a determination by the President that as a result of an attack or threatened attack—

(1) publication of the Federal Register or filing of documents with the Office of the Federal Register is impracticable, or

(2) under existing conditions publication in the Federal Register would not serve to give appropriate notice to the public of the contents of documents, the President may, without regard to any other provision of law, suspend all or part of the requirements of law or regulation for filing with the Office or publication in the Federal Register of documents or classes of documents.

The suspensions shall remain in effect until revoked by the President, or by concurrent resolution of the Congress. The President shall establish alternate systems for promulgating, filing, or publishing documents or classes of documents affected by such suspensions, including requirements relating to their effectiveness or validity, that may be considered under the then existing circumstances practicable to provide public notice of the issuance and of the contents of the documents. The alternate systems may, without limitation, provide for the use of regional or specialized publications or depositories for documents, or of the press, the radio, *telecommunications*, *the Internet*, or similar mediums of general communication. Compliance with alternate systems of filing or publication shall have the same effect as filing with the Office or publication in the Federal Register under this chapter or other law or regulation. With respect to documents promulgated under alternate systems, each agency shall preserve the original [and two duplicate originals or two certified copies] *document* for filing with the Office when the President determines that it is practicable.

【§ 1506. Administrative Committee of the Federal Register; establishment and composition; powers and duties

【The Administrative Committee of the Federal Register shall consist of the Archivist of the United States or Acting Archivist, who shall be chairman, an officer of the Department of Justice designated by the Attorney General, and the Director of the Government Publishing Office or Acting Director of the Government Publishing Office. The Director of the Federal Register shall act as secretary of the committee. The committee shall prescribe, with the approval of the President, regulations for carrying out this chapter. The regulations shall provide, among other things—

【(1) the manner of certification of copies required to be certified under section 1503 of this title, which certification may be permitted to be based upon confirmed communications from outside the District of Columbia;

【(2) the documents which shall be authorized under section 1505(b) of this title to be published in the Federal Register;

【(3) the manner and form in which the Federal Register shall be printed, reprinted, and compiled, indexed, bound, and distributed;

【(4) the number of copies of the Federal Register, which shall be printed, reprinted, and compiled, the number which shall be distributed without charge to Members of Congress, officers and employees, of the United States, or Federal agency, for official use, and the number which shall be available for distribution to the public; and

【(5) the prices to be charged for individual copies of, and subscriptions to, the Federal Register and reprints and bound volumes of it.】

§ 1506. Administrative Committee of the Federal Register; establishment and composition; powers and duties

The Administrative Committee of the Federal Register shall consist of the Archivist of the United States or Acting Archivist, who shall chair the committee, an officer of the Department of Justice designated by the Attorney General, and the Director of the Government Publishing Office or Acting Director of the Government Publishing Office. The Director of the Federal Register shall act as secretary of the committee. The committee shall prescribe, with the approval of the President, regulations for carrying out this chapter. The regulations shall provide for, among other things—

(1) the documents which shall be authorized under section 1505(b) of this title to be published in the Federal Register;

(2) the manner and form in which the Federal Register shall be published;

(3) the manner of distribution to Members of Congress, officers and employees of the United States, or Federal agency, for official use, and the number which shall be available for distribution to the public;

(4) the prices to be charged for individual copies of, and subscriptions to, the Federal Register and any reprints and bound volumes of it;

(5) the manner and form by which the Federal Register may receive information and comments from the public, if practicable and efficient; and

(6) *special editions of the Federal Register.*

§ 1507. Filing document as constructive notice; publication in Federal Register as presumption of validity; judicial notice; citation

A document required by section 1505(a) of this title to be published in the Federal Register is not valid as against a person who has not had actual knowledge of it until **the duplicate originals or certified copies of the document have** *the document has* been filed with the Office of the Federal Register and a copy made available for public inspection as provided by section 1503 of this title. Unless otherwise specifically provided by statute, filing of a document, required or authorized to be published by section 1505 of this title, except in cases where notice by publication is insufficient in law, is sufficient to give notice of the contents of the document to a person subject to or affected by it. The publication in the Federal Register of a document creates a rebuttable presumption—

- (1) that it was duly issued, prescribed, or promulgated;
- (2) that it was filed with the Office of the Federal Register and made available for public inspection at the day and hour stated in the **printed** *published* notation;
- (3) that the copy contained in the Federal Register is a true copy of the original; and
- (4) that all requirements of this chapter and the regulations prescribed under it relative to the document have been complied with.

The contents of the Federal Register shall be judicially noticed and without prejudice to any other mode of citation, may be cited by volume and page number.

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§ 1509. Costs of publication, etc.

(a) The cost of **printing, reprinting, wrapping, binding, and distributing** *publishing* the Federal Register and the Code of Federal Regulations, and, except as provided in subsection (b), other expenses incurred by the Government Printing Office in carrying out the duties placed upon it by this chapter shall be charged to the revolving fund provided in section 309. Reimbursements for such costs and expenses shall be made by the Federal agencies and credited, together with all receipts, as provided in section 309(b).

(b) The cost of **printing, reprinting, wrapping, binding, and distributing** *publishing* all other publications of the Federal Register program, and other expenses incurred by the Government Printing Office in connection with such publications, shall be borne by the appropriations to the Government Printing Office and the appropriations are made available, and are authorized to be increased by additional sums necessary for the purposes, the increases to be based upon estimates submitted by the Director of the Government Publishing Office.

§ 1510. Code of Federal Regulations

[(a)] The Administrative Committee of the Federal Register, with the approval of the President, may require, from time to time as it considers necessary, the preparation and publication in special or

supplemental editions of the Federal Register of complete codifications of the documents of each agency of the Government having general applicability and legal effect, issued or promulgated by the agency by publication in the Federal Register or by filing with the Administrative Committee, and are relied upon by the agency as authority for, or are invoked or used by it in the discharge of, its activities or functions, and are in effect as to facts arising on or after dates specified by the Administrative Committee.

[(b) A codification published under subsection (a) of this section shall be printed and bound in permanent form and shall be designated as the "Code of Federal Regulations." The Administrative Committee shall regulate the binding of the printed codifications into separate books with a view to practical usefulness and economical manufacture. Each book shall contain an explanation of its coverage and other aids to users that the Administrative Committee may require. A general index to the entire Code of Federal Regulations shall be separately printed and bound.

[(c) The Administrative Committee shall regulate the supplementation and the collation and republication of the printed codifications with a view to keeping the Code of Federal Regulations as current as practicable. Each book shall be either supplemented or collated and republished at least once each calendar year.

[(d) The Office of the Federal Register shall prepare and publish the codifications, supplements, collations, and indexes authorized by this section.

[(e) The codified documents of the several agencies published in the supplemental edition of the Federal Register under this section, as amended by documents subsequently filed with the Office and published in the daily issues of the Federal Register shall be prima facie evidence of the text of the documents and of the fact that they are in effect on and after the date of publication.

[(f) The Administrative Committee shall prescribe, with the approval of the President, regulations for carrying out this section.

[(g) This section does not require codification of the text of Presidential documents published and periodically compiled in supplements to Title 3 of the Code of Federal Regulations.]

§ 1510. Code of Federal Regulations

(a) *SPECIAL EDITION FOR CODIFICATION OF AGENCY DOCUMENTS.*—The Administrative Committee of the Federal Register, with the approval of the President, may require, from time to time as it considers necessary, the preparation and publication in a special edition of the Federal Register a complete codification of the documents of each agency of the Government having general applicability and legal effect, issued or promulgated by the agency by publication in the Federal Register or by filing with the Administrative Committee, and which are relied upon by the agency as authority for, or are invoked or used by it in the discharge of, its activities or functions, and are in effect as to facts arising on or after dates specified by the Administrative Committee.

(b) *CODE OF FEDERAL REGULATIONS.*—A codification prepared under subsection (a) of this section shall be published and shall be designated as the "Code of Federal Regulations". The Administra-

tive Committee shall regulate the manner and forms of publishing this codification.

(c) *SUPPLEMENTATION, COLLATION, AND REPUBLICATION.*—The Administrative Committee shall regulate the supplementation and the collation and republication of the codification with a view to keeping the Code of Federal Regulations as current as practicable. Each unit of codification shall be supplemented and republished at least once each calendar year. The Office of the Federal Register may create updates of each unit of codification from time to time and make the same available electronically or may provide public access using an electronic edition that allows a user to select a specific date and retrieve the version of the codification in effect as of that date.

(d) *PREPARATION AND PUBLICATION BY THE FEDERAL REGISTER.*—The Office of the Federal Register shall prepare and publish the codifications, supplements, collations, and user aids authorized by this section.

(e) *PRIMA FACIE EVIDENCE.*—The codified documents of the several agencies published in the Code of Federal Regulations under this section, as amended by documents subsequently filed with the Office and published in the daily issues of the Federal Register, shall be prima facie evidence of the text of the documents and of the fact that they are in effect on and after the date of publication.

(f) *REGULATIONS.*—The Administrative Committee, with approval of the President, shall issue regulations for carrying out this section.

(g) *EXCEPTION.*—This section does not require codification of the text of Presidential documents published and periodically compiled in supplements to title 3 of the Code of Federal Regulations.

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CHAPTER 21—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

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§ 2105. Personnel and services

(a)(1) The Archivist is authorized to select, appoint, employ, and fix the compensation of such officers and employees, pursuant to part III of title 5, as are necessary to perform the functions of the Archivist and the Administration.

(2) Notwithstanding paragraph (1), the Archivist is authorized to appoint, subject to the consultation requirements set forth in paragraph (f)(2) of section 2203 of this title, a director at each Presidential archival depository established under section 2112 of this title. The Archivist may appoint a director without regard to subchapter I and subchapter VIII of chapter 33 of title 5, United States Code, governing appointments in the competitive service and the Senior Executive Service. A director so appointed shall be responsible for the care and preservation of the Presidential records and historical materials deposited in a Presidential archival depository, shall serve at the pleasure of the Archivist and shall perform such other functions as the Archivist may specify.

(b) The Archivist is authorized to obtain the services of experts and consultants under section 3109 of title 5.

(c) Notwithstanding the provisions of section 973 of title 10 or any other provision of law, the Archivist, in carrying out the functions of the Archivist or the Administration, is authorized to utilize in the Administration the services of officials, officers, and other personnel in other Federal agencies, including personnel of the armed services, with the consent of the head of the agency concerned.

(d) Notwithstanding section 1342 of title 31, United States Code, the Archivist is authorized to accept and utilize voluntary and uncompensated services. *An individual who provides voluntary and uncompensated service under this subsection shall not be considered an employee, except for purposes of chapter 81 of title 5 (relating to compensation for injury), sections 2671 through 2680 of title 28 (relating to tort claims), and section 3721 of title 31 (related to damage or loss of personal property incident to volunteer service).*

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CHAPTER 22—PRESIDENTIAL RECORDS

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§ 2204. Restrictions on access to Presidential records

(a) Prior to the conclusion of a President’s term of office or last consecutive term of office, as the case may be, the President shall specify durations, not to exceed 12 years, for which access shall be restricted with respect to information, in a Presidential record, within one or more of the following categories:

- (1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;
- (2) relating to appointments to Federal office;
- (3) specifically exempted from disclosure by statute (other than sections 552 and 552b of title 5, United States Code), provided that such statute (A) requires that the material be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of material to be withheld;
- (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (5) confidential communications requesting or submitting advice, between the President and the President’s advisers, or between such advisers; or
- (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(b)(1) Any Presidential record or reasonably segregable portion thereof containing information within a category restricted by the President under subsection (a) shall be so designated by the Archivist and access thereto shall be restricted until the earlier of—

- (A)(i) the date on which the former President waives the restriction on disclosure of such record, or
- (ii) the expiration of the duration specified under subsection (a) for the category of information on the basis of which access to such record has been restricted; or

(B) upon a determination by the Archivist that such record or reasonably segregable portion thereof, or of any significant element or aspect of the information contained in such record or reasonably segregable portion thereof, has been placed in the public domain through publication by the former President, or the President's agents.

(2) Any such record which does not contain information within a category restricted by the President under subsection (a), or contains information within such a category for which the duration of restricted access has expired, shall be exempt from the provisions of subsection (c) until the earlier of—

(A) the date which is 5 years after the date on which the Archivist obtains custody of such record pursuant to [section 2203(d)(1)] *section 2203(g)(1)*; or

(B) the date on which the Archivist completes the processing and organization of such records or integral file segment thereof.

(3) During the period of restricted access specified pursuant to subsection (b)(1), the determination whether access to a Presidential record or reasonably segregable portion thereof shall be restricted shall be made by the Archivist, in the Archivist's discretion, after consultation with the former President, and, during such period, such determinations shall not be subject to judicial review, except as provided in subsection (e) of this section. The Archivist shall establish procedures whereby any person denied access to a Presidential record because such record is restricted pursuant to a determination made under this paragraph, may file an administrative appeal of such determination. Such procedures shall provide for a written determination by the Archivist or the Archivist's designee, within 30 working days after receipt of such an appeal, setting forth the basis for such determination.

(c)(1) Subject to the limitations on access imposed pursuant to subsections (a) and (b), Presidential records shall be administered in accordance with section 552 of title 5, United States Code, except that paragraph (b)(5) of that section shall not be available for purposes of withholding any Presidential record, and for the purposes of such section such records shall be deemed to be records of the National Archives and Records Administration. Access to such records shall be granted on nondiscriminatory terms.

(2) Nothing in this Act shall be construed to confirm, limit, or expand any constitutionally-based privilege which may be available to an incumbent or former President.

(d) Upon the death or disability of a President or former President, any discretion or authority the President or former President may have had under this chapter, except section 2208, shall be exercised by the Archivist unless otherwise previously provided by the President or former President in a written notice to the Archivist.

(e) The United States District Court for the District of Columbia shall have jurisdiction over any action initiated by the former President asserting that a determination made by the Archivist violates the former President's rights or privileges.

(f) The Archivist shall not make available any original Presidential records to any individual claiming access to any Presidential record as a designated representative under section 2205(3)

of this title if that individual has been convicted of a crime relating to the review, retention, removal, or destruction of records of the Archives.

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§ 2209. Disclosure requirement for official business conducted using non-official electronic messaging accounts

[(a) IN GENERAL.—The President, the Vice President, or a covered employee may not create or send a Presidential or Vice Presidential record using a non-official electronic message account unless the President, Vice President, or covered employee—

[(1) copies an official electronic messaging account of the President, Vice President, or covered employee in the original creation or transmission of the Presidential record or Vice Presidential record; or

[(2) forwards a complete copy of the Presidential or Vice Presidential record to an official electronic messaging account of the President, Vice President, or covered employee not later than 20 days after the original creation or transmission of the Presidential or Vice Presidential record.

[(b) ADVERSE ACTIONS.—The intentional violation of subsection (a) by a covered employee (including any rules, regulations, or other implementing guidelines), as determined by the appropriate supervisor, shall be a basis for disciplinary action in accordance with subchapter I, II, or V of chapter 75 of title 5, as the case may be.

[(c) DEFINITIONS.—In this section:

[(1) COVERED EMPLOYEE.—The term “covered employee” means—

[(A) the immediate staff of the President;

[(B) the immediate staff of the Vice President;

[(C) a unit or individual of the Executive Office of the President whose function is to advise and assist the President; and

[(D) a unit or individual of the Office of the Vice President whose function is to advise and assist the Vice President.

[(2) ELECTRONIC MESSAGES.—The term “electronic messages” means electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals.

[(3) ELECTRONIC MESSAGING ACCOUNT.—The term “electronic messaging account” means any account that sends electronic messages.]

§ 2209. Disclosure requirement for official business conducted using non-official electronic messaging accounts

(a) IN GENERAL.—The President, Vice President, or covered employee may not create or send a Presidential or Vice Presidential record using a non-official electronic messaging account (in this section, referred to as “applicable electronic message”) unless the President, Vice President, or covered employee—

(1) includes an official electronic messaging account of the President, Vice President, or covered employee, as applicable, as a recipient in the original creation or transmission of the applicable electronic message and identifies all recipients of the applicable electronic message in such message;

(2) forwards a complete copy of the applicable electronic message, including a complete list of the recipients of such message, to an official electronic messaging account of the President, Vice President, or covered employee, as applicable, within twenty days after the original creation or transmission of the message; or

(3) prints a complete copy of the applicable electronic message, including a complete list of the recipients of such message, and submits the message to the appropriate location or individual for appropriate archival storage by the Executive Office of the President within twenty days after the original creation or transmission of the message.

(b) *ADVERSE ACTIONS.*—An intentional violation of subsection (a) (including any rules, regulations, or other implementing guidelines) by a covered employee, as determined by the appropriate supervisor, shall be forwarded to the Inspector General of the agency for a verification of the violation, and upon verification, shall be subject to the suspension and removal provisions under section 7552 of title 5.

(c) *DEFINITIONS.*—In this section:

(1) *COVERED EMPLOYEE.*—The term “covered employee” means—

(A) the immediate staff of the President;

(B) the immediate staff of the Vice President;

(C) an individual of the Executive Office of the President whose function is to advise and assist the President; or

(D) an individual of the Office of the Vice President whose function is to advise and assist the Vice President.

(2) *ELECTRONIC MESSAGE.*—The term “electronic message” means electronic mail and all other means by which individuals and groups may communicate with each other electronically.

(3) *ELECTRONIC MESSAGING ACCOUNT.*—The term “electronic messaging account” means any account that sends an electronic message.

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CHAPTER 29—RECORDS MANAGEMENT BY THE ARCHIVIST OF THE UNITED STATES

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§ 2911. Disclosure requirement for official business conducted using non-official electronic messaging accounts

[(a) IN GENERAL.—An officer or employee of an executive agency may not create or send a record using a non-official electronic messaging account unless such officer or employee—

[(1) copies an official electronic messaging account of the officer or employee in the original creation or transmission of the record; or

[(2) forwards a complete copy of the record to an official electronic messaging account of the officer or employee not later than 20 days after the original creation or transmission of the record.

[(b) ADVERSE ACTIONS.—The intentional violation of subsection (a) (including any rules, regulations, or other implementing guidelines), as determined by the appropriate supervisor, shall be a basis for disciplinary action in accordance with subchapter I, II, or V of chapter 75 of title 5, as the case may be.

[(c) DEFINITIONS.—In this section:

[(1) ELECTRONIC MESSAGES.—The term “electronic messages” means electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals.

[(2) ELECTRONIC MESSAGING ACCOUNT.—The term “electronic messaging account” means any account that sends electronic messages.

[(3) EXECUTIVE AGENCY.—The term “executive agency” has the meaning given that term in section 105 of title 5.]

§2911. Disclosure requirement for official business conducted using non-official electronic messaging accounts

(a) *IN GENERAL.*—An officer or employee of an executive agency may not create or send a record using a non-official electronic messaging account (in this section, referred to as “applicable electronic message”) unless such officer or employee—

(1) includes an official electronic messaging account of the officer or employee as a recipient in the original creation or transmission of the applicable electronic message and identifies all recipients of the applicable electronic message in such message;

(2) forwards a complete copy of the applicable electronic message, including a complete list of the recipients of such message, to an official electronic messaging account of the officer or employee within twenty days after the original creation or transmission of the record; or

(3) prints a complete copy of the applicable electronic message, including a complete list of the recipients of such message, and submits it to the appropriate location or individual for appropriate archival storage by the executive agency within twenty days after the original creation or transmission of the message.

(b) *ADVERSE ACTIONS.*—An intentional violation of subsection (a) (including any rules, regulations, or other implementing guidelines) by an officer or employee of an executive agency, as determined by the appropriate supervisor, shall be forwarded to the Inspector General of the agency for a verification of the violation, and upon verification, shall be subject to the suspension and removal provisions under section 7552 of title 5.

(c) *DEFINITIONS.*—In this section:

(1) *ELECTRONIC MESSAGE.*—The term “electronic message” means electronic mail and all other means by which individuals and groups may communicate with each other electronically.

(2) *ELECTRONIC MESSAGING ACCOUNT.*—The term “electronic messaging account” means any account that sends an electronic message.

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CHAPTER 31—RECORDS MANAGEMENT BY FEDERAL AGENCIES

Sec.

3101. Records management by agency heads; general duties.

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3108. Senior Agency Official for Records Compliance.

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§ 3102. Establishment of program of management

The head of each Federal agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of the agency. The program, among other things, shall provide for

(1) effective controls over the creation and over the maintenance and use of records in the conduct of current business;

(2) procedures for identifying records of general interest or use to the public that are appropriate for public disclosure, and for posting such records in a publicly accessible electronic format;

(3) cooperation with the Archivist in applying standards, procedures, and techniques designed to improve the management of records, promote the maintenance and security of records deemed appropriate for preservation, and facilitate the segregation and disposal of records of temporary value; and

(4) compliance with sections 2101–2117, 2501–2507, 2901–2909, and 3101–3107, of this title and the regulations issued under them.

(4) *the identification of electronic messaging accounts (as defined in section 2911) that should be preserved because such accounts are most likely to contain records that should be preserved as permanent Federal records and the automatic retention of those records, including the accounts of each head of a Federal agency, the deputies and assistants of such head, the head of each program office and staff office, each assistant secretary, each administrator, each commissioner, each director of an office, bureau, or the equivalent, each principal regional official, each staff assistant to such official (such as a special assistant, confidential assistant, or administrative assistant), each career Federal employee, each political appointee, and each member of the Armed Forces serving in equivalent or comparable positions; and*

(5) *electronic capture, management, and preservation of the electronic messaging accounts (as defined in section 2911) described in paragraph (4), in accordance with the records disposal requirements of chapter 33 of this title such that—*

(A) *electronic records are readily accessible for retrieval through electronic searches; and*

(B) there are mandatory minimum functional requirements for electronic records management systems to ensure compliance with this section.

* * * * *

【§ 3106. Unlawful removal, destruction of records

[(a) FEDERAL AGENCY NOTIFICATION.—The head of each Federal agency shall notify the Archivist of any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency, and with the assistance of the Archivist shall initiate action through the Attorney General for the recovery of records the head of the Federal agency knows or has reason to believe have been unlawfully removed from that agency, or from another Federal agency whose records have been transferred to the legal custody of that Federal agency.]

[(b) ARCHIVIST NOTIFICATION.—In any case in which the head of a Federal agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action described in subsection (a), or is participating in, or believed to be participating in any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.】

§ 3106. Unlawful removal, destruction of records

(a) NOTIFICATION.—

(1) ARCHIVIST AND PUBLIC NOTIFICATION.—*Whenever the actual, impending, or threatened unlawful concealment, removal, mutilation, obliteration, falsification, or destruction of any record, proceeding, map, book, document, paper, or other thing in the custody of a Federal agency comes to the attention of the head of the Federal agency, the head shall—*

(A) notify the Archivist; and

(B) publish a general description of the records at risk or that have been lost on the website of the Federal agency.

(2) FEDERAL AGENCY NOTIFICATION.—*Whenever the actual, impending, or threatened unlawful concealment, removal, mutilation, obliteration, falsification, or destruction of any record, proceeding, map, book, document, paper, or other thing in the custody of a Federal agency comes to the attention of a Senior Agency Official for Records Management, such official shall immediately notify the head of the Federal agency.*

(b) RECLAMATION OF RECORDS.—*With the assistance of the Archivist, the head of a Federal agency shall initiate action through the Attorney General for the recovery of records the head knows or has reason to believe have been unlawfully removed from the agency, or from another Federal agency whose records have been transferred to the legal custody of the head.*

(c) ACTION BY THE ARCHIVIST.—*In any case in which the head of the Federal agency does not initiate an action for the recovery of records described in subsection (b) or other redress within a reasonable period of time after being notified of any such unlawful removal, the Archivist shall request the Attorney General to initiate*

an action described in subsection (b), and shall notify the Congress not later than 5 days after the date on which such a request has been submitted to the Attorney General.

§ 3107. Authority of Comptroller General

[Chapters 21] (a) *IN GENERAL.*—*Chapters 21, 25, 27, 29, and 31 of this title do not limit the authority of the Comptroller General of the United States with respect to prescribing accounting systems, forms, and procedures, or lessen the responsibility of collecting and disbursing officers for rendition of their accounts for settlement by the General Accounting Office.*

(b) *COMPTROLLER GENERAL EVALUATION.*—*The Comptroller General shall evaluate and report to Congress not less than every two years on Federal agency management of electronic mail records required under paragraphs (4) and (5) of section 3102.*

§ 3108. Senior Agency Official for Records Management

(a) *DESIGNATION.*—*Not later than October 1, 2016, the head of each Federal agency shall designate a Senior Agency Official for Records Management, and not later than November 15 of each year thereafter the head of each Federal agency shall reaffirm or designate a new Senior Agency Official for Records Management.*

(b) *AUTHORITIES AND RESPONSIBILITIES.*—*The Senior Agency Official for Records Management shall—*

(1) be at least at the level of an Assistant Secretary or the equivalent; and

(2) be responsible for the coordinating with the appropriate Agency Records Officer and appropriate agency officials to ensure compliance with all applicable records management statutes, regulations, and any guidance issued by the Archivist.

(c) *FEDERAL AGENCY COORDINATION.*—*In addition to the designation made pursuant to subsection (a), the head of a Federal agency may designate additional Senior Agency Officials for Records Management as the head of the agency determines to be necessary.*

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INSPECTOR GENERAL ACT

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DUTIES AND RESPONSIBILITIES

SEC. 4. (a) It shall be the duty and responsibility of each Inspector General, with respect to the establishment within which his Office is established—

(1) to provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of such establishment;

(2) to review existing and proposed legislation and regulations relating to programs and operations of such establishment and to make recommendations in the semiannual reports required by section 5(a) concerning the impact of such legislation or regulations on the economy and efficiency in the administration of programs and operations administered or financed

by such establishment or the prevention and detection of fraud and abuse in such programs and operations;

(3) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by such establishment for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;

(4) to recommend policies for, and to conduct, supervise, or coordinate relationships between such establishment and other Federal agencies, State and local governmental agencies, and non-governmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by such establishment, or (B) the identification and prosecution of participants in such fraud or abuse; and

(5) to keep the head of such establishment and the Congress fully and currently informed, by means of the reports required by section 5 and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by such establishment, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action; and

(6) to review existing and proposed legislation and regulations relating to records retention requirements under the chapters 21, 29, 31, and 33 of title 44, United States Code (commonly referred to as the Federal Records Act) for programs and operations of such establishment and to make recommendations in the semiannual reports required by section 5(a) concerning compliance with records retention requirements.

(b)(1) In carrying out the responsibilities specified in subsection (a)(1), each Inspector General shall—

(A) comply with standards established by the Comptroller General of the United States for audits of Federal establishments, organizations, programs, activities, and functions;

(B) establish guidelines for determining when it shall be appropriate to use non-Federal auditors; and

(C) take appropriate steps to assure that any work performed by non-Federal auditors complies with the standards established by the Comptroller General as described in paragraph (1).

(2) For purposes of determining compliance with paragraph (1)(A) with respect to whether internal quality controls are in place and operating and whether established audit standards, policies, and procedures are being followed by Offices of Inspector General of establishments defined under section 12(2), Offices of Inspector General of designated Federal entities defined under section 8F(a)(2), and any audit office established within a Federal entity defined under section 8F(a)(1), reviews shall be performed exclusively by an audit entity in the Federal Government, including the General Accounting Office or the Office of Inspector General of each establishment defined under section 12(2), or the Office of Inspector General of each designated Federal entity defined under section 8F(a)(2).

(c) In carrying out the duties and responsibilities established under this Act, each Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view toward avoiding duplication and insuring effective coordination and cooperation.

(d) In carrying out the duties and responsibilities established under this Act, each Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

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