

(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.

(Added Pub. L. 113–187, §10(a), Nov. 26, 2014, 128 Stat. 2014.)

CHAPTER 31—RECORDS MANAGEMENT BY FEDERAL AGENCIES

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AMENDMENTS

1976—Pub. L. 94–575, §3(b), Oct. 21, 1976, 90 Stat. 2727, substituted “Transfer of records to records centers” for “Storage, processing, and servicing of records” in item 3103.

§ 3101. Records management by agency heads; general duties

The head of each Federal agency shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency’s activities.

(Pub. L. 90–620, Oct. 22, 1968, 82 Stat. 1297.)

HISTORICAL AND REVISION NOTES

Based on 44 U.S. Code, 1964 ed., §396(a) (June 30, 1949, ch. 288, title V, §506(a), as added Sept. 5, 1950, ch. 849, §6(d), 64 Stat. 583).

MANAGING GOVERNMENT RECORDS

Memorandum of President of the United States, Nov. 28, 2011, 76 F.R. 75423, provided:

Memorandum for the Heads of Executive Departments and Agencies

SECTION 1. *Purpose.* This memorandum begins an executive branch-wide effort to reform records management policies and practices. Improving records management will improve performance and promote openness and accountability by better documenting agency actions and decisions. Records transferred to the National Archives and Records Administration (NARA) provide the prism through which future generations will understand and learn from our actions and decisions. Modernized records management will also help executive departments and agencies (agencies) minimize costs and operate more efficiently. Improved records management thus builds on Executive Order 13589 of November 9, 2011 (Promoting Efficient Spending), which directed agencies to reduce spending and focus on mission-critical functions.

When records are well-managed, agencies can use them to assess the impact of programs, to reduce redundant efforts, to save money, and to share knowledge within and across their organizations. In these ways, proper records management is the backbone of open Government.

Decades of technological advances have transformed agency operations, creating challenges and opportunities for agency records management. Greater reliance on electronic communication and systems has radically increased the volume and diversity of information that agencies must manage. With proper planning, technology can make these records less burdensome to manage and easier to use and share. But if records management policies and practices are not updated for a digital age, the surge in information could overwhelm agency systems, leading to higher costs and lost records.

We must address these challenges while using the opportunity to develop a 21st-century framework for the management of Government records. This framework will provide a foundation for open Government, leverage information to improve agency performance, and reduce unnecessary costs and burdens.

SEC. 2. *Agency Commitments to Records Management Reform.* (a) The head of each agency shall:

(i) ensure that the successful implementation of records management requirements in law, regulation, and this memorandum is a priority for senior agency management;

(ii) ensure that proper resources are allocated to the effective implementation of such requirements; and

(iii) within 30 days of the date of this memorandum, designate in writing to the Archivist of the United States (Archivist), a senior agency official to supervise the review required by subsection (b) of this section, in coordination with the agency’s Records Officer, Chief Information Officer, and General Counsel.

(b) Within 120 days of the date of this memorandum, each agency head shall submit a report to the Archivist and the Director of the Office of Management and Budget (OMB) that:

(i) describes the agency’s current plans for improving or maintaining its records management program, particularly with respect to managing electronic records, including email and social media, deploying cloud-based services or storage solutions, and meeting other records challenges;

(ii) identifies any provisions, or omissions, in relevant statutes, regulations, or official NARA guidance that currently pose an obstacle to the agency’s adoption of sound, cost-effective records management policies and practices; and

(iii) identifies policies or programs that, if included in the Records Management Directive required by section 3 of this memorandum or adopted or implemented by NARA, would assist the agency’s efforts to improve records management.

The reports submitted pursuant to this subsection should supplement, and therefore need not duplicate, information provided by agencies to NARA pursuant to other reporting obligations.

SEC. 3. *Records Management Directive.* (a) Within 120 days of the deadline for reports submitted pursuant to section 2(b) of this memorandum, the Director of OMB and the Archivist, in coordination with the Associate Attorney General, shall issue a Records Management Directive that directs agency heads to take specific steps to reform and improve records management policies and practices within their agency. The directive shall focus on:

(i) creating a Government-wide records management framework that is more efficient and cost-effective;

(ii) promoting records management policies and practices that enhance the capability of agencies to fulfill their statutory missions;

(iii) maintaining accountability through documentation of agency actions;

(iv) increasing open Government and appropriate public access to Government records;

(v) supporting agency compliance with applicable legal requirements related to the preservation of information relevant to litigation; and

(vi) transitioning from paper-based records management to electronic records management where feasible.

(b) In the course of developing the directive, the Archivist, in coordination with the Director of OMB and the Associate Attorney General, shall review relevant statutes, regulations, and official NARA guidance to identify opportunities for reforms that would facilitate improved Government-wide records management practices, particularly with respect to electronic records. The Archivist, in coordination with the Director of OMB and the Associate Attorney General, shall present to the President the results of this review, no later than the date of the directive's issuance, to facilitate potential updates to the laws, regulations, and policies governing the management of Federal records.

(c) In developing the directive, the Director of OMB and the Archivist, in coordination with the Associate Attorney General, shall consult with other affected agencies, interagency groups, and public stakeholders.

SEC. 4. *General Provisions.* (a) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 5. *Publication.* The Archivist is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 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) 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

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

(Pub. L. 90–620, Oct. 22, 1968, 82 Stat. 1298; Pub. L. 94–575, §3(a)(1), (2), Oct. 21, 1976, 90 Stat. 2726; Pub. L. 98–497, title I, §107(b)(19), Oct. 19, 1984, 98 Stat. 2290; Pub. L. 113–187, §9(g), Nov. 26, 2014, 128 Stat. 2014.)

HISTORICAL AND REVISION NOTES

Based on 44 U.S. Code, 1964 ed., §396(b) (June 30, 1949, ch. 288, title V, §506(b), as added Sept. 5, 1950, ch. 849, §6(d), 64 Stat. 583).

AMENDMENTS

2014—Par. (2). Pub. L. 113–187 struck out “the Administrator of General Services and” before “the Archivist”.

1984—Pars. (2), (3). Pub. L. 98–497 inserted “and the Archivist” after “Administrator of General Services” in par. (2), and substituted “sections 2101–2117” for “sections 2101–2113” and struck out “2701,” before “2901” in par. (3).

1976—Pub. L. 94–575, §3(a)(1), (2), substituted in par. (1) “the creation and over the maintenance” for “the creation, maintenance,” and in par. (3) reference to sections “2901–2909” for “2901, 2903–2909” of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–497 effective Apr. 1, 1985, see section 301 of Pub. L. 98–497, set out as a note under section 2102 of this title.

§ 3103. Transfer of records to records centers

When the head of a Federal agency determines that such action may affect substantial economies or increased operating efficiency, the head of such agency shall provide for the transfer of records to a records center maintained and operated by the Archivist, or, when approved by the Archivist, to a center maintained and operated by the head of the Federal agency.

(Added Pub. L. 94–575, §3(a)(3), Oct. 21, 1976, 90 Stat. 2726; amended Pub. L. 98–497, title I, §107(b)(20), Oct. 19, 1984, 98 Stat. 2290; Pub. L. 113–187, §8(9), Nov. 26, 2014, 128 Stat. 2012.)

PRIOR PROVISIONS

A prior section 3103, Pub. L. 90–620, Oct. 22, 1968, 82 Stat. 1298, contained provisions similar to those comprising this section, prior to repeal by Pub. L. 94–575, §3(a)(3).

AMENDMENTS

2014—Pub. L. 113–187 substituted “the head of such agency” for “he”.

1984—Pub. L. 98–497 substituted “Archivist” for “Administrator” wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–497 effective Apr. 1, 1985, see section 301 of Pub. L. 98–497, set out as a note under section 2102 of this title.

§ 3104. Certifications and determinations on transferred records

An official of the Government who is authorized to certify to facts on the basis of records in such official's custody, may certify to facts on the basis of records that have been transferred by such official or such official's predecessors to the Archivist, and may authorize the Archivist to certify to facts and to make administrative determinations on the basis of records transferred to the Archivist, notwithstanding any other law.

(Pub. L. 90–620, Oct. 22, 1968, 82 Stat. 1298; Pub. L. 98–497, title I, §107(b)(21), Oct. 19, 1984, 98 Stat. 2290; Pub. L. 113–187, §8(10), Nov. 26, 2014, 128 Stat. 2012.)

HISTORICAL AND REVISION NOTES

Based on 44 U.S. Code, 1964 ed., §396(d) (June 30, 1949, ch. 288, title V, §506(d), as added Sept. 5, 1950, ch. 849, §6(d), 64 Stat. 583, and amended Feb. 5, 1964, Pub. L. 88–265, 78 Stat. 8).

AMENDMENTS

2014—Pub. L. 113–187 substituted “such official's custody” for “his custody” and “such official or such official's predecessors” for “him or his predecessors”.

1984—Pub. L. 98-497 substituted “Archivist” for “Administrator of General Services” and “Archivist” for “Administrator” wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of this title.

§ 3105. Safeguards

The head of each Federal agency shall establish safeguards against the removal or loss of records the head of such agency determines to be necessary and required by regulations of the Archivist. Safeguards shall include making it known to officials and employees of the agency—

(1) that records in the custody of the agency are not to be alienated or destroyed except in accordance with sections 3301-3314 of this title, and

(2) the penalties provided by law for the unlawful removal or destruction of records.

(Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1298; Pub. L. 98-497, title I, §107(b)(22), Oct. 19, 1984, 98 Stat. 2290; Pub. L. 113-187, §8(11), Nov. 26, 2014, 128 Stat. 2012.)

REFERENCES IN TEXT

Sections 3304 to 3307 of this title, included in the reference in par. (1) to sections 3301 to 3314 of this title, were repealed by Pub. L. 91-287, §2(c), June 23, 1970, 84 Stat. 321.

HISTORICAL AND REVISION NOTES

Based on 44 U.S. Code, 1964 ed., §396(e) (June 30, 1949, ch. 288, title V, §506(e), as added Sept. 5, 1950, ch. 849, §6(d), 64 Stat. 583).

AMENDMENTS

2014—Pub. L. 113-187 substituted “the head of such agency” for “he” in introductory provisions.

1984—Pub. L. 98-497 substituted “Archivist” for “Administrator of General Services”.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of this title.

§ 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.

(Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1298; Pub. L. 98-497, title I, §107(b)(21), title II, §203(b), Oct. 19, 1984, 98 Stat. 2290, 2294; Pub. L. 113-187, §4, Nov. 26, 2014, 128 Stat. 2009.)

HISTORICAL AND REVISION NOTES

Based on 44 U.S. Code, 1964 ed., §396(f) (June 30, 1949, ch. 288, title V, §506(f), as added Sept. 5, 1950, ch. 849, §6(d), 64 Stat. 583).

AMENDMENTS

2014—Pub. L. 113-187 amended section generally. Prior to amendment, text read as follows: “The head of each Federal agency shall notify the Archivist of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the agency of which he is the head that shall come to his attention, and with the assistance of the Archivist shall initiate action through the Attorney General for the recovery of records he knows or has reason to believe have been unlawfully removed from his agency, or from another Federal agency whose records have been transferred to his legal custody. In any case in which the head of the 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, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.”

1984—Pub. L. 98-497, §107(b)(21), substituted “Archivist” for “Administrator of General Services” and “Archivist” for “Administrator”.

Pub. L. 98-497, §203(b), inserted at end “In any case in which the head of the 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, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of this title.

§ 3107. Authority of Comptroller General

Chapters 21, 25, 27,¹ 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 Government Accountability Office.

(Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1298; Pub. L. 94-575, §3(a)(4), Oct. 21, 1976, 90 Stat. 2726; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

HISTORICAL AND REVISION NOTES

Based on 44 U.S. Code, 1964 ed., §396(g) (June 30, 1949, ch. 288, title V, §506(g), as added Sept. 5, 1950, ch. 849, §6(d), 64 Stat. 583).

REFERENCES IN TEXT

Chapter 27 of this title, referred to in text, was repealed by Pub. L. 95-378, §2(a), Sept. 22, 1978, 92 Stat. 723.

AMENDMENTS

2004—Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

¹ See References in Text note below.

1976—Pub. L. 94-575 substituted “Chapters 21, 25, 27, 29, and 31 of this title” for “Sections 2101-2113, 2501-2507, 2701, 2901, 2904-2910, and 3101-3107, of this title”.

CHAPTER 33—DISPOSAL OF RECORDS

- Sec.
3301. Definition of records.
3302. Regulations covering lists of records for disposal, procedure for disposal, and standards for reproduction.
3303. Lists and schedules of records to be submitted to Archivist by head of each Government agency.¹
3303a. Examination by Archivist of lists and schedules of records lacking preservation value; disposal of records.
[3304 to 3307. Repealed.]
3308. Disposal of similar records where prior disposal was authorized.
3309. Preservation of claims of Government until settled in Government Accountability Office; disposal authorized upon written approval of Comptroller General.
3310. Disposal of records constituting menace to health, life, or property.
3311. Destruction of records outside continental United States in time of war or when hostile action seems imminent; written report to Archivist.
3312. Photographs or microphotographs of records considered as originals; certified reproductions admissible in evidence.
3313. Moneys from sale of records payable into the Treasury.
3314. Procedures for disposal of records exclusive.
[3315 to 3324. Repealed.]

AMENDMENTS

2014—Pub. L. 113-187, §7(b), Nov. 26, 2014, 128 Stat. 2011, struck out items 3315 “Definitions”, 3316 “Establishment of Commission”, 3317 “Duties of Commission”, 3318 “Membership”, 3319 “Director and staff; experts and consultants”, 3320 “Powers of Commission”, 3321 “Support services”, 3322 “Report”, 3323 “Termination”, and 3324 “Authorization of appropriations”.

2004—Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814, substituted “Government Accountability Office” for “General Accounting Office” in item 3309.

1984—Pub. L. 98-497, title I, §107(b)(25)(D), Oct. 19, 1984, 98 Stat. 2290, substituted “Archivist” for “Administrator of General Services” in items 3303, 3303a, and 3311.

1976—Pub. L. 94-575, §4(c)(1), Oct. 21, 1976, 90 Stat. 2727, struck out “; approval by President” after “standards for reproduction” in item 3302.

1974—Pub. L. 93-526, title II, §203, Dec. 19, 1974, 88 Stat. 1702, added items 3315 to 3324.

1970—Pub. L. 91-287, §3, June 23, 1970, 84 Stat. 322, inserted item 3303a and struck out items 3304 “Lists and schedules of records lacking preservation value; submission to Congress by Administrator of General Services”, 3305 “Examination of lists and schedules by joint congressional committee and report to Congress”, 3306 “Disposal of records by head of Government agency upon notification by Administrator of General Services of action by joint congressional committee”, and 3307 “Disposal of records upon failure of joint congressional committee to act”.

§ 3301. Definition of records

(a) RECORDS DEFINED.—

(1) IN GENERAL.—As used in this chapter, the term “records”—

(A) includes all recorded information, regardless of form or characteristics, made or

received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them; and

(B) does not include—

(i) library and museum material made or acquired and preserved solely for reference or exhibition purposes; or

(ii) duplicate copies of records preserved only for convenience.

(2) RECORDED INFORMATION DEFINED.—For purposes of paragraph (1), the term “recorded information” includes all traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form.

(b) DETERMINATION OF DEFINITION.—The Archivist’s determination whether recorded information, regardless of whether it exists in physical, digital, or electronic form, is a record as defined in subsection (a) shall be binding on all Federal agencies.

(Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1299; Pub. L. 94-575, §4(c)(2), Oct. 21, 1976, 90 Stat. 2727; Pub. L. 113-187, §5(a), Nov. 26, 2014, 128 Stat. 2009.)

HISTORICAL AND REVISION NOTES

Based on 44 U.S. Code, 1964 ed., §366 (July 7, 1943, ch. 192, §1, 57 Stat. 380).

AMENDMENTS

2014—Pub. L. 113-187 amended section generally. Prior to amendment, text read as follows: “As used in this chapter, ‘records’ includes all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included.”

1976—Pub. L. 94-575 expanded “records” to include “machine readable materials”.

§ 3302. Regulations covering lists of records for disposal, procedure for disposal, and standards for reproduction

The Archivist shall promulgate regulations, not inconsistent with this chapter, establishing—

(1) procedures for the compiling and submitting to the Archivist of lists and schedules of records proposed for disposal,

(2) procedures for the disposal of records authorized for disposal, and

(3) standards for the reproduction of records by photographic, microphotographic, or digital processes with a view to the disposal of the original records.

¹ Does not conform to section catchline.