

Statutory Notes and Related Subsidiaries

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.

§ 2909. Retention of records

The Archivist may empower a Federal agency to retain records for a longer period than that specified in disposal schedules, and may withdraw disposal authorizations covering records listed in disposal schedules. The Archivist shall promulgate regulations in accordance with section 2104(a) of this title to implement this section.

(Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1297; Pub. L. 91-287, §4, June 23, 1970, 84 Stat. 322; Pub. L. 98-497, title I, §107(b)(15)(B), Oct. 19, 1984, 98 Stat. 2288; Pub. L. 108-383, §2(a), Oct. 30, 2004, 118 Stat. 2218.)

HISTORICAL AND REVISION NOTES

Based on 44 U.S. Code, 1964 ed., §395(f) (June 30, 1949, ch. 288, title V, §505(f), as added Sept. 5, 1950, ch. 849, §6(d), 64 Stat. 583).

Editorial Notes

AMENDMENTS

2004—Pub. L. 108-383 struck out “, upon the submission of evidence of need,” after “Federal agency”, substituted “, and” for “; and, in accordance with regulations promulgated by him,” and inserted at end “The Archivist shall promulgate regulations in accordance with section 2104(a) of this title to implement this section.”

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

1970—Pub. L. 91-287 struck out “approved by Congress” after “disposal schedules” in two places.

Statutory Notes and Related Subsidiaries

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.

§ 2910. Preservation of Freedmen’s Bureau records

The Archivist shall preserve the records of the Bureau of Refugees, Freedmen, and Abandoned Lands, commonly referred to as the “Freedmen’s Bureau”, by using—

(1) microfilm technology for preservation of the documents comprising these records so that they can be maintained for future generations; and

(2) the results of the pilot project with the University of Florida to create future partnerships with Howard University and other institutions for the purposes of indexing these records and making them more easily accessible to the public, including historians, genealogists, and students, and for any other purposes determined by the Archivist.

(Added Pub. L. 106-444, §2(a), Nov. 6, 2000, 114 Stat. 1929.)

Editorial Notes

PRIOR PROVISIONS

A prior section 2910, Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1297, provided for final authority of Adminis-

trator in records practices, prior to repeal by Pub. L. 94-575, §2(a)(4), Oct. 21, 1976, 90 Stat. 2726.

§ 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.

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

§ 2912. Preservation of electronic messages and other records

(a) REGULATIONS REQUIRED.—The Archivist shall promulgate regulations governing Federal agency preservation of electronic messages that are determined to be records. Such regulations shall, at a minimum—

(1) require the electronic capture, management, and preservation of such electronic records in accordance with the records disposition requirements of chapter 33;

(2) require that such electronic records are readily accessible for retrieval through electronic searches; and

(3) include timelines for Federal agency implementation of the regulations that ensure compliance as expeditiously as practicable.

(b) COVERAGE OF OTHER ELECTRONIC RECORDS.—To the extent practicable, the regulations promulgated under subsection (a) shall also include requirements for the capture, management, and preservation of other electronic records.

(c) REVIEW OF REGULATIONS REQUIRED.—The Archivist shall periodically review and, as necessary, amend the regulations promulgated under subsection (a).

(Added Pub. L. 116-283, div. H, title XCVI, §9602(b)(1), Jan. 1, 2021, 134 Stat. 4828.)

Statutory Notes and Related Subsidiaries

DEADLINE FOR REGULATIONS

Pub. L. 116-283, div. H, title XCVI, §9602(b)(2), Jan. 1, 2021, 134 Stat. 4828, provided that: “Not later than one year after the date of the enactment of this Act [Jan. 1, 2021], the Archivist shall propose the regulations required under section 2912(a) of title 44, United States Code, as added by paragraph (1).”

CHAPTER 31—RECORDS MANAGEMENT BY FEDERAL AGENCIES

Sec.

- 3101. Records management by agency heads; general duties.
- 3102. Establishment of program of management.
- 3103. Transfer of records to records centers.
- 3104. Certifications and determinations on transferred records.
- 3105. Safeguards.
- 3106. Unlawful removal, destruction of records.
- 3107. Authority of Comptroller General.

Editorial Notes

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).

Executive Documents

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