

## Public Law 113-187

### The Presidential and Federal Records Act Amendments of 2014,

#### 44 U.S.C. Chapter 21

#### § 2107. Acceptance of records for historical preservation

(a) **IN GENERAL.**—When it appears to the Archivist to be in the public interest, ~~he~~ **the Archivist** may—

(1) accept for deposit with the National Archives of the United States the records of a Federal agency, the Congress, the Architect of the Capitol, or the Supreme Court determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the United States Government;

(2) direct and effect the transfer ~~to the National Archives of the United States~~ of records of a Federal agency ~~that have been in existence for more than thirty years and~~ determined by the Archivist ~~of the United States~~ to have sufficient historical or other value to warrant their continued preservation by the United States Government **to the National Archives of the United States, as soon as practicable, and at a time mutually agreed upon by the Archivist and the head of that Federal agency not later than thirty years after such records were created or received by that agency, unless the head of the such agency which has custody of them has certifies certified** in writing to the Archivist that ~~they~~ **such records** must be retained in ~~his~~ **the custody of such agency** for use in the conduct of the regular ~~current~~ business of the agency;

(3) direct and effect, with the approval of the head of the originating **Federal** agency, or if the existence of the agency has been terminated, ~~then~~ with the approval of ~~his~~ **that agency's** successor in function, if any, the transfer of records, deposited or approved for deposit with the National Archives of the United States to public or educational institutions or associations; title to the records to remain vested in the United States unless otherwise authorized by Congress; and

(4) transfer materials from private sources authorized to be received by the Archivist by section 2111 of this title.

(b) **EARLY TRANSFER OF RECORDS.**—The Archivist —

(1) in consultation with the head of the originating Federal agency, is authorized to accept a copy of records described in subsection (a)(2) that have been in existence for less than thirty years; and

(2) may not disclose any such records until the expiration of —

(A) the thirty-year period described in paragraph (1);

- (B) any longer period established by the Archivist by order; or
- (C) any shorter period agreed to by the originating Federal agency.

**§ 2108. Responsibility for custody, use, and withdrawal of records**

Note: PROCEDURES TO PREVENT UNAUTHORIZED REMOVAL OF CLASSIFIED RECORDS FROM NATIONAL ARCHIVES.

(a) CLASSIFIED RECORDS.—Not later than 90 days after the date of the enactment of this Act, the Archivist shall prescribe internal procedures to prevent the unauthorized removal of classified records from the National Archives and Records Administration or the destruction or damage of such records, including when such records are accessed or searched electronically. Such procedures shall include, at a minimum, the following prohibitions:

- (1) An individual, other than covered personnel, may not view classified records in any room that is not secure, except in the presence of National Archives and Records Administration personnel or under video surveillance.
- (2) An individual, other than covered personnel, may not be left alone with classified records, unless that individual is under video surveillance.
- (3) An individual, other than covered personnel, may not review classified records while possessing any cellular phone, electronic personal communication device, or any other devices capable of photographing, recording, or transferring images or content.
- (4) An individual seeking access to review classified records, as a precondition to such access, must consent to a search of their belongings upon conclusion of their records review.
- (5) All notes and other writings prepared by an individual, other than covered personnel, during the course of a review of classified records shall be retained by the National Archives and Records Administration in a secure facility until such notes and other writings are determined to be unclassified, are declassified, or are securely transferred to another secure facility.

(b) DEFINITIONS.—In this section:

- (1) COVERED PERSONNEL.—The term “covered personnel” means any individual—
  - (A) who has an appropriate and necessary reason for accessing classified records, as determined by the Archivist; and
  - (B) who is either—

(i) an officer or employee of the United States Government with appropriate security clearances; or

(ii) any personnel with appropriate security clearances of a Federal contractor authorized in writing to act for purposes of this section by an officer or employee of the United States Government.

(2) RECORDS.—The term “records” has the meaning given that term under section 3301 of title 44, United States Code.

### **§ 2111. Material accepted for deposit**

(a) IN GENERAL.—When the Archivist considers it to be in the public interest ~~he~~ the Archivist may accept for deposit—

(1) the papers and other historical materials of a President or former President of the United States, or other official or former official of the Government, and other papers relating to and contemporary with a President or former President of the United States, subject to restrictions agreeable to the Archivist as to their use; and

(2) ~~documents, including motion picture films, still pictures, and sound recordings,~~ recorded information (as such term is defined in section 3301(a)(2) of this title) from private sources that are appropriate for preservation by the Government as evidence of its organization, functions, policies, decisions, procedures, and transactions.

(b) EXCEPTION.—This section shall not apply in the case of any Presidential records which are subject to the provisions of chapter 22 of this title.

### **§ 2114. Preservation of ~~motion picture films, still pictures, and sound recordings of~~ audio and visual records**

The Archivist may make and preserve ~~motion picture films, still pictures, and sound recordings~~ audio and visual records, including motion-picture films, still photographs, and sound recordings, in analog, digital, or any other form, pertaining to and illustrative of the historical development of the United States Government and its activities, and provide for preparing, editing, titling, scoring, processing, duplicating, reproducing, exhibiting, and releasing for non-profit educational purposes, motion-picture films, still pictures, and sound recordings in ~~his~~ the Archivist’s custody.

### **§ 2115. Reports; correction of violations**

- (a) In carrying out ~~their respective~~ **the** duties and responsibilities under chapters 21, 25, 29, 31, and 33 of this title, the Archivist ~~and the Administrator~~ may each obtain reports from any Federal agency on such agency's activities under such chapters.
- (b) When ~~either the Archivist or the Administrator~~ finds that a provision of any such chapter has been or is being violated, the Archivist ~~or the Administrator~~ shall (1) inform in writing the head of the agency concerned of the violation and make recommendations for its correction; and (2) unless satisfactory corrective measures are ~~inaugurated~~ **demonstrably commenced** within a reasonable time, submit a written report of the matter to the President and the Congress.

### **§ 2116. Legal status of reproductions; official seal; fees for copies and reproductions**

- (a) When records that are required by statute to be retained indefinitely have been reproduced by photographic, microphotographic, **digital** or other processes, in accordance with standards established by the Archivist, the indefinite retention by the photographic, microphotographic, **digital** or other reproductions constitutes compliance with the statutory requirement for the indefinite retention of the original records. The reproductions, as well as reproductions made under regulations to carry out chapter 21, 29, 31, and 33 of this title, shall have the same legal status as the originals.
- (b) There shall be an official seal for the National Archives of the United States which shall be judicially noticed. When a copy or reproduction, furnished under this section, is authenticated by the official seal and certified by the Archivist, the copy or reproduction shall be admitted in evidence equally with the original from which it was made.
- (c) The Archivist may charge a fee set to recover the costs for making or authenticating copies or reproductions of materials transferred to ~~his~~ **the Archivist's** custody. Such fee shall be fixed by the Archivist at a level which will recover, so far as practicable, all elements of such costs, and may, in the Archivist's discretion, include increments for the estimated replacement cost of equipment. Such fees shall be paid into, administered, and expended as a part of the National Archives Trust Fund. The Archivist may not charge for making or authenticating copies or reproductions of materials for official use by the United States Government unless appropriations available to the Archivist for this purpose are insufficient to cover the cost of performing the work.

*44 U.S.C. Chapter 22*

**§ 2201. Definitions**

As used in this chapter—

(1) The term “documentary material” means all books, correspondence, ~~memorandums~~ ~~memoranda~~, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, and motion pictures, including, but not limited to, ~~audio, audiovisual~~ ~~audio and visual records~~, or other electronic or mechanical recordings, ~~whether in analog, digital, or any other form.~~

(2) The term “Presidential records” means documentary materials, or any reasonably segregable portion thereof, created or received by the President, ~~his~~ ~~the President’s~~ immediate staff, or a unit or individual of the Executive Office of the President whose function is to ~~advise and assist~~ ~~advise or assist~~ the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term—

(A) includes any documentary materials relating to the political activities of the President or members of ~~his~~ ~~the President’s~~ staff, but only if such activities relate to or have a direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; but

(B) does not include any documentary materials that are (i) official records of an agency (as defined in section 552(e) of title 5, United States Code; (ii) personal records; (iii) stocks of publications and stationery; or (iv) extra copies of documents produced only for convenience of reference, when such copies are clearly so identified.

(3) The term “personal records” means all documentary materials, or any reasonably segregable portion thereof, of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term includes—

(A) diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal which are not prepared or utilized for, or circulated or communicated in the course of, transacting Government business;

(B) materials relating to private political associations, and having no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; and

(C) materials relating exclusively to the President's own election to the office of the Presidency; and materials directly relating to the election of a particular individual or individuals to Federal, State, or local office, which have no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President.

(4) The term "Archivist" means the Archivist of the United States.

(5) The term "former President," when used with respect to Presidential records, means the former President during whose term or terms of office such Presidential records were created.

### **§ 2203. Management and custody of Presidential records**

(a) Through the implementation of records management controls and other necessary actions, the President shall take all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of ~~his~~ **the President's** constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are **preserved and** maintained as Presidential records pursuant to the requirements of this section and other provisions of law.

(b) Documentary materials produced or received by the President, ~~his~~ **the President's** staff, or units or individuals in the Executive Office of the President the function of which is to ~~advise and assist~~ **advise or assist** the President, shall, to the extent practicable, be categorized as Presidential records or personal records upon their creation or receipt and be filed separately.

(c) During ~~his~~ **the President's** term of office, the President may dispose of ~~those of his Presidential records~~ **those Presidential records of such President** that no longer have administrative, historical, informational, or evidentiary value if—

(1) the President obtains the views, in writing, of the Archivist concerning the proposed disposal of such Presidential records; and

(2) the Archivist states that ~~he~~ **the Archivist** does not intend to take any action under subsection (e) of this section.

(d) In the event the Archivist notifies the President under subsection (c) that ~~he~~ **the Archivist** does intend to take action under subsection (e), the President may dispose of such Presidential records if copies of the disposal schedule are submitted to the appropriate Congressional Committees at least 60 calendar days of continuous session of Congress in advance of the proposed disposal date. For the purpose of this section, continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because

of an adjournment of more than three days to a day certain are excluded in the computation of the days in which Congress is in continuous session.

(e) The Archivist shall request the advice of the Committee on Rules and Administration and the Committee on Governmental Affairs of the Senate and the Committee on House Oversight and the Committee on Government Operations of the House of Representatives with respect to any proposed disposal of Presidential records whenever ~~he~~ [the Archivist](#) considers that—

(1) these particular records may be of special interest to the Congress; or

(2) consultation with the Congress regarding the disposal of these particular records is in the public interest.

[\(f\) During a President's term of office, the Archivist may maintain and preserve Presidential records on behalf of the President, including records in digital or electronic form. The President shall remain exclusively responsible for custody, control and access to such Presidential records. The Archivist may not disclose any such records, except under direction of the President, until the conclusion of a President's term of office, if a President serves consecutive terms upon the conclusion of the last term, or such other period provided for under section 2204 of this title.](#)

~~(fg)~~(1) Upon the conclusion of a President's term of office, or if a President serves consecutive terms upon the conclusion of the last term, the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President. The Archivist shall have an affirmative duty to make such records available to the public as rapidly and completely as possible consistent with the provisions of this ~~Act~~ [chapter](#).

(2) The Archivist shall deposit all such Presidential records in a Presidential archival depository or another archival facility operated by the United States. The Archivist is authorized to designate, after consultation with the former President, a director at each depository or facility, who shall be responsible for the care and preservation of such records.

(3) The Archivist is authorized to dispose of such Presidential records which ~~he~~ [the Archivist](#) has appraised and determined to have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation. Notice of such disposal shall be published in the Federal Register at least 60 days in advance of the proposed disposal date. Publication of such notice shall constitute a final agency action for purposes of review under chapter 7 of title 5, United States Code.

#### § 2204. Restrictions on access to Presidential records

(a) Prior to the conclusion of ~~his~~ 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 ~~his~~ 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 ~~his~~ [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) [sic]<sup>1</sup>; 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 his 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 ~~his~~ [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.

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<sup>1</sup> Should reference 2203(g)(1).

(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.

### **§ 2205. Exceptions to restricted access**

Notwithstanding any restrictions on access imposed pursuant to ~~section 2204~~ sections 2204 and 2208—

(1) the Archivist and persons employed by the National Archives and Records Administration who are engaged in the performance of normal archival work shall be permitted access to Presidential records in the custody of the Archivist;

(2) subject to any rights, defenses, or privileges which the United States or any agency or person may invoke, Presidential records shall be made available—

(A) pursuant to subpoena or other judicial process issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;

(B) to an incumbent President if such records contain information that is needed for the conduct of current business of ~~his~~ the incumbent President's office and that is not otherwise available; and

(C) to either House of Congress, or, to the extent of matter within its jurisdiction, to any committee or subcommittee thereof if such records contain information that is needed for the conduct of its business and that is not otherwise available; and

(3) the Presidential records of a former President shall be available to such former President or ~~his~~ the former President's designated representative.

### **§ 2207. Vice-Presidential records**

Vice-Presidential records shall be subject to the provisions of this chapter in the same manner as Presidential records. The duties and responsibilities of the Vice President, with respect to Vice-Presidential records, shall be the same as the duties and responsibilities of the President under this chapter, ~~except section 2208,~~<sup>2</sup> with respect to Presidential records. The authority of the

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<sup>2</sup> RULE OF CONSTRUCTION.—Nothing in the amendment made by paragraph (2)(C) [amending section 2207] shall be construed to—

Archivist with respect to Vice-Presidential records shall be the same as the authority of the Archivist under this chapter with respect to Presidential records, except that the Archivist may, when the Archivist determines that it is in the public interest, enter into an agreement for the deposit of Vice-Presidential records in a non-Federal archival depository. Nothing in this chapter shall be construed to authorize the establishment of separate archival depositories for such Vice-Presidential records.

### **§ 2208. Claims of constitutionally based privilege against disclosure**

(a)(1) When the Archivist determines under this chapter to make available to the public any Presidential record that has not previously been made available to the public, the Archivist shall—

(A) promptly provide notice of such determination to—

- (i) the former President during whose term of office the record was created; and
- (ii) the incumbent President; and

(B) make the notice available to the public.

(2) The notice under paragraph (1)—

(A) shall be in writing; and

(B) shall include such information as may be prescribed in regulations issued by the Archivist.

(3)(A) Upon the expiration of the 60-day period (excepting Saturdays, Sundays, and legal public holidays) beginning on the date the Archivist provides notice under paragraph (1)(A), the Archivist shall make available to the public the Presidential record covered by the notice, except any record (or reasonably segregable part of a record) with respect to which the Archivist receives from a former President or the incumbent President notification of a claim of constitutionally based privilege against disclosure under subsection (b).

(B) A former President or the incumbent President may extend the period under subparagraph (A) once for not more than 30 additional days (excepting Saturdays,

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(A) affect the requirement of section 2207 of title 44, United States Code, that Vice Presidential records shall be subject to chapter 22 of that title in the same manner as Presidential records; or

(B) affect any claim of constitutionally based privilege by a President or former President with respect to a Vice Presidential record.

Sundays, and legal public holidays) by filing with the Archivist a statement that such an extension is necessary to allow an adequate review of the record.

(C) Notwithstanding subparagraphs (A) and (B), if the 60-day period under subparagraph (A), or any extension of that period under subparagraph (B), would otherwise expire during the 6-month period after the incumbent President first takes office, then that 60-day period or extension, respectively, shall expire at the end of that 6-month period.

(b)(1) For purposes of this section, the decision to assert any claim of constitutionally based privilege against disclosure of a Presidential record (or reasonably segregable part of a record) must be made personally by a former President or the incumbent President, as applicable.

(2) A former President or the incumbent President shall notify the Archivist, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate of a privilege claim under paragraph (1) on the same day that the claim is asserted under such paragraph.

(c)(1) If a claim of constitutionally based privilege against disclosure of a Presidential record (or reasonably segregable part of a record) is asserted under subsection (b) by a former President, the Archivist shall consult with the incumbent President, as soon as practicable during the period specified in paragraph (2)(A), to determine whether the incumbent President will uphold the claim asserted by the former President.

(2)(A) Not later than the end of the 30-day period beginning on the date of which the Archivist receives notification from a former President on the assertion of a claim of constitutionally based privilege against disclosure, the Archivist shall provide notice to the former President and the public of the decision of the incumbent President under paragraph (1) regarding the claim.

(B) If the incumbent President upholds the claim of privilege asserted by the former President, the Archivist shall not make the Presidential record (or reasonably segregable part of a record) subject to the claim publicly available unless—

(i) the incumbent President withdraws the decision upholding the claim of privilege asserted by the former President; or

(ii) the Archivist is otherwise directed by a final court order that is not subject to appeal.

(C) If the incumbent President determines not to uphold the claim of privilege asserted by the former President, or fails to make the determination under paragraph (1) before the end of the period specified in subparagraph (A), the Archivist shall release the

Presidential record subject to the claim at the end of the 90-day period beginning on the date on which the Archivist received notification of the claim, unless otherwise directed by a court order in an action initiated by the former President under section 2204(e) of this title or by a court order in another action in any Federal court.

(d) The Archivist shall not make publicly available a Presidential record (or reasonably segregable part of a record) that is subject to a privilege claim asserted by the incumbent President unless—

- (1) the incumbent President withdraws the privilege claim; or
- (2) the Archivist is otherwise directed by a final court order that is not subject to appeal.

(e) The Archivist shall adjust any otherwise applicable time period under this section as necessary to comply with the return date of any congressional subpoena, judicial subpoena, or judicial process.

**§ 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.

#### *44 U.S.C. Chapter 29*

### **§ 2901. Definitions**

As used in this chapter, and chapters 21, 25, 31, and 33 of this title—

(1) the term “records” has the meaning given it by section 3301 of this title;

(2) the term “records management” means the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations;

(3) the term “records creation” means the production or reproduction of any record;

(4) the term “records maintenance and use” means any activity involving—

(A) location of records of a Federal agency;

(B) storage, retrieval, and handling of records kept at office file locations by or for a Federal agency;

(C) processing of mail by a Federal agency; or

(D) selection and utilization of equipment and supplies associated with records and copying;

(5) the term “records disposition” means any activity with respect to—

(A) disposal of temporary records no longer necessary for the conduct of business by destruction or donation;

(B) transfer of records to Federal agency storage facilities or records centers;

(C) transfer to the National Archives of the United States of records determined to have sufficient historical or other value to warrant continued preservation; or

(D) transfer of records from one Federal agency to any other Federal agency;

(6) the term “records center” means an establishment maintained and operated by the Archivist or by another Federal agency primarily for the storage, servicing, security, and processing of records which need to be preserved for varying periods of time and need not be retained in office equipment or space;

(7) the term “records management study” means an investigation and analysis of any Federal agency records, or records management practices or programs (whether manual or automated), with a view toward rendering findings and recommendations with respect thereto;

(8) the term “inspection” means reviewing any Federal agency’s records or records management practices or programs with respect to effectiveness and compliance with records management laws and making necessary recommendations for correction or improvement of records management;

(9) the term “servicing” means making available for use information in records and other materials in the custody of the Archivist, or in a records center—

(A) by furnishing the records or other materials, or information from them, or copies or reproductions thereof, to any Federal agency for official use, or to the public; or

(B) by making and furnishing authenticated or unauthenticated copies or reproductions of the records or other materials;

(10) the term “unauthenticated copies” means exact copies or reproductions of records or other materials that are not certified as such under seal and that need not be legally accepted as evidence;

(11) the term “National Archives of the United States” means those official records which have been determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the Federal Government, and which have been accepted by the Archivist for deposit in ~~his~~ [the Archivist’s](#) custody;

(12) the term “Archivist” means the Archivist of the United States;

(13) the term “executive agency” shall have the meaning given such term by section 102 of title 40;

(14) the term “Federal agency” means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Supreme Court, the Senate, the House of Representatives, and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol); and

(15) the term “Administrator” means the Administrator of General Services.

### **§ 2902. Objectives of records management**

It is the purpose of this chapter, and chapters 21, 31, and 33 of this title, to require the establishment of standards and procedures to assure efficient and effective records management. Such records management standards and procedures shall seek to implement the following goals:

(1) Accurate and complete documentation of the policies and transactions of the Federal Government.

(2) Control of the quantity and quality of records produced by the Federal Government.

(3) Establishment and maintenance of mechanisms of control with respect to records creation in order to prevent the creation of unnecessary records and with respect to the effective and economical operations of an agency.

(4) Simplification of the activities, systems, and processes of records ~~creation and of records maintenance and use~~ **creation, maintenance, transfer, and use.**

(5) Judicious preservation and disposal of records.

(6) Direction of continuing attention on records from their initial creation to their final disposition, with particular emphasis on the prevention of unnecessary Federal paperwork **and the transfer of records from Federal agencies to the National Archives of the United States in digital or electronic form to the greatest extent possible.**

(7) Establishment and maintenance of such other systems or techniques as ~~the Administrator or the Archivist~~ **the Administrator or the Archivist** considers necessary to carry out the purposes of this chapter, and chapters 21, 31, and 33 of this title.

#### § 2904. General responsibilities for records management

(a) The Archivist shall provide guidance and assistance to Federal agencies with respect to ensuring adequate and proper documentation of the policies and transactions of the Federal Government and ensuring proper records disposition.

(b) The ~~Administrator~~ Archivist shall provide guidance and assistance to Federal agencies to ensure economical and effective records management by such agencies.

(c) In carrying out ~~their~~ the responsibilities under ~~subsection (a) or (b), respectively~~ subsections (a) and (b), the Archivist ~~and the Administrator~~ shall each have the responsibility—

(1) to promulgate standards, procedures, and guidelines with respect to records management and the conduct of records management studies;

(2) to conduct research with respect to the improvement of records management practices and programs;

(3) to collect and disseminate information on training programs, technological developments, and other activities relating to records management;

(4) to establish such interagency committees and boards as may be necessary to provide an exchange of information among Federal agencies with respect to records management;

(5) to direct the continuing attention of Federal agencies and the Congress on the need for adequate policies governing records management;

(6) to conduct records management studies and, in ~~his~~ the Archivist's discretion, designate the heads of executive agencies to conduct records management studies with respect to establishing systems and techniques designed to save time and effort in records management;

(7) to conduct inspections or surveys of the records and the records management programs and practices within and between Federal agencies;

(8) to report to the appropriate oversight and appropriations committees of the Congress and to the Director of the Office of Management and Budget in January of each year and at such other times as the Archivist ~~or the Administrator (as the case may be)~~ deems desirable—

(A) on the results of activities conducted pursuant to paragraphs (1) through (7) of this section,

(B) on evaluations of responses by Federal agencies to any recommendations resulting from inspections or studies conducted under paragraphs (6) and (7) of this section, and

(C) to the extent practicable, estimates of costs to the Federal Government resulting from the failure of agencies to implement such recommendations.

(d) ~~In addition, the Administrator, in carrying out subsection (b), shall have the responsibility to promote economy and efficiency in the selection and utilization of space, staff, equipment, and supplies for records management.~~ The Archivist shall promulgate regulations requiring all Federal agencies to transfer all digital or electronic records to the National Archives of the United States in digital or electronic form to the greatest extent possible.

#### **§ 2905. Establishment of standards for selective retention of records; security measures**

(a) The Archivist shall establish standards for the selective retention of records of continuing value, and assist Federal agencies in applying the standards to records in their custody. ~~He~~ The Archivist shall notify the head of a Federal agency of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the agency that shall come to ~~his~~ the Archivist's attention, and assist the head of the agency in initiating action through the Attorney General for the recovery of records unlawfully removed and for other redress provided by law. 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.

(b) The Archivist shall assist the Administrator for the Office of Information and Regulatory Affairs in conducting studies and developing standards relating to record retention requirements imposed on the public and on State and local governments by Federal agencies.

#### **§ 2906. Inspection of agency records**

(a)(1) In carrying out ~~their respective~~ the duties and responsibilities under this chapter, ~~the Administrator of General Services and the Archivist (or the designee of either)~~ may inspect the records or the records management practices and programs of any Federal agency ~~solely~~ for the purpose of rendering recommendations for the improvement of records management practices and programs ~~and for determining whether the records of Federal agencies have sufficient value to warrant continued preservation or lack sufficient value to justify continued preservation.~~ Officers and employees of such agencies shall cooperate fully in such inspections, subject to the provisions of paragraphs (2) and (3) of this subsection.

(2) Records, the use of which is restricted by law or for reasons of national security or the public interest, shall be inspected, in accordance with regulations promulgated by ~~the Administrator and~~ the Archivist, subject to the approval of the head of the agency concerned or of the President. ~~The regulations promulgated by the Administrator and the Archivist under this paragraph shall, to the extent practicable, be identical.~~

(3) If ~~the Administrator or the Archivist~~ (or the designee of either) inspects a record, as provided in this subsection, which is contained in a system of records which is subject to section 552a of title 5, such record shall be—

(A) maintained by ~~the Administrator, the Archivist~~ **the Archivist**, or such designee as a record contained in a system of records; or

(B) deemed to be a record contained in a system of records for purposes of subsections (b), (c), and (i) of section 552a of title 5.

(b) In conducting the inspection of agency records provided for in subsection (a) of this section, ~~the Administrator and the Archivist~~ (or the designee of either) shall, in addition to complying with the provisions of law cited in subsection (a)(3), comply with all other Federal laws and be subject to the sanctions provided therein.

#### **§ 2907. Records centers and centralized microfilming or digitization services**

The Archivist may establish, maintain, and operate records centers and centralized microfilming or digitization services for Federal agencies.

#### **§ 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.

### *44 U.S.C. Chapter 31*

#### **§ 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 Administrator of General Services and~~ 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.

#### **§ 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, ~~he~~ **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.

#### **§ 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 ~~his~~ **such official’s** custody, may certify to facts on the basis of records that have been transferred by ~~him or his~~ **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.

### § 3105. Safeguards

The head of each Federal agency shall establish safeguards against the removal or loss of records ~~he~~ **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.

### § 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, ~~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~~ **the head of the Federal agency** knows or has reason to believe have been unlawfully removed from ~~his~~ **that** agency, or from another Federal agency whose records have been transferred to ~~his~~ **the** legal custody **of that Federal agency**.

(b) **ARCHIVIST NOTIFICATION.**—In any case in which the head of the **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.

## *44 U.S.C. Chapter 33*

### § 3301. Definition of records

(a) **RECORDS DEFINED.**—

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

(A) includes all ~~books, papers, maps, photographs, machine-readable materials, or other documentary materials~~ **recorded information**, regardless of ~~physical~~ form or characteristics, made or received by an **Federal** 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 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) ~~extra duplicate~~ copies of ~~documents~~ records preserved only for convenience of reference, and ~~stocks of publications and of processed documents~~ are not included.

(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.

### **§ 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 ~~him~~ 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 or microphotographic processes~~ photographic, microphotographic, or digital processes with a view to the disposal of the original records.

### **§ 3303. Lists and schedules of records to be submitted to the Archivist by head of each Government agency**

The head of each agency of the United States Government shall submit to the Archivist, under regulations promulgated as provided by section 3302 of this title—

(1) lists of any records in the custody of the agency that have been ~~photographed or microphotographed~~ photographed, microphotographed, or digitized under the regulations and

that, as a consequence, do not appear to have sufficient value to warrant their further preservation by the Government;

(2) lists of other records in the custody of the agency not needed by it in the transaction of its current business and that do not appear to have sufficient administrative, legal, research, or other value to warrant their further preservation by the Government; and

(3) schedules proposing the disposal after the lapse of specified periods of time of records of a specified form or character that either have accumulated in the custody of the agency or may accumulate after the submission of the schedules and apparently will not after the lapse of the period specified have sufficient administrative, legal, research, or other value to warrant their further preservation by the Government.

**§ 3303a. Examination by Archivist of lists and schedules of records lacking preservation value; disposal of records**

(a) The Archivist shall examine the lists and schedules submitted to ~~him~~ [the Archivist](#) under section 3303 of this title. If the Archivist determines that any of the records listed in a list or schedule submitted to ~~him~~ [the Archivist](#) do not, or will not after the lapse of the period specified, have sufficient administrative, legal, research, or other value to warrant their continued preservation by the Government, ~~he~~ [the Archivist](#) may, after publication of notice in the Federal Register and an opportunity for interested persons to submit comment thereon—

(1) notify the agency to that effect; and

(2) empower the agency to dispose of those records in accordance with regulations promulgated under section 3302 of this title.

(b) Authorizations granted under lists and schedules submitted to the Archivist under section 3303 of this title, and schedules promulgated by the Archivist under subsection (d) of this section, shall be mandatory, subject to section 2909 of this title. As between an authorization granted under lists and schedules submitted to the Archivist under section 3303 of this title and an authorization contained in a schedule promulgated under subsection (d) of this section, application of the authorization providing for the shorter retention period shall be required, subject to section 2909 of this title.

(c) The Archivist may request advice and counsel from ~~the Committee on Rules and Administration of the Senate and the Committee on House Oversight of the House of Representatives~~ [the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate](#) with respect to the disposal of any particular records under this chapter whenever ~~he~~ [the Archivist](#) considers that—

(1) those particular records may be of special interest to the Congress; or

(2) consultation with the Congress regarding the disposal of those particular records is in the public interest.

However, this subsection does not require the Archivist to request such advice and counsel as a regular procedure in the general disposal of records under this chapter.

(d) The Archivist shall promulgate schedules authorizing the disposal, after the lapse of specified periods of time, of records of a specified form or character common to several or all agencies if such records will not, at the end of the periods specified, have sufficient administrative, legal, research, or other value to warrant their further preservation by the United States Government.

(e) The Archivist may approve and effect the disposal of records that are in ~~him~~ [the Archivist](#) legal custody, provided that records that had been in the custody of another existing agency may not be disposed of without the written consent of the head of the agency.

(f) The Archivist shall make an annual report to the Congress concerning the disposal of records under this chapter, including general descriptions of the types of records disposed of and such other information as ~~he~~ [the Archivist](#) considers appropriate to keep the Congress fully informed regarding the disposal of records under this chapter.

**§ 3312. Photographs or microphotographs of records considered as originals; certified reproductions admissible in evidence**

~~Photographs or microphotographs of records~~ [Photographs, microphotographs of records, or digitized records](#) made in compliance with regulations under section 3302 of this title shall have the same effect as the originals and shall be treated as originals for the purpose of their admissibility in evidence. Certified or authenticated reproductions of the ~~photographs or microphotographs~~ [photographs, microphotographs, or digitized records](#) shall be admitted in evidence equally with the original ~~photographs or microphotographs~~ [photographs, microphotographs, or digitized records](#).

**§§ 3315-3324 of title 44, United States Codes, are repealed.**