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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1223, 1224, 1227, 1229, 1232, 1233, and 1239

[FDMS No. NARA-16-0001; NARA-2016-014]

RIN 3095-AB74

Records Management

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rules.

SUMMARY: NARA proposes to revise its records management regulations to reflect changes in technology, practice, and organizational structure. This is phase I of the revisions and includes changes to provisions in regulations on managing vital records, records disposition programs, general records schedules, emergency authorization to destroy records, transfer of records to records storage facilities, transfer, use, and disposition of records in a NARA Federal Records Center, and program assistance and inspections.

DATES: Submit comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 3095-AB74, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* Regulation_comments@nara.gov. Include RIN 3095-AB74 in the subject line of the message.
- *Fax:* 301-837-0319. Include RIN 3095-AB74 in the subject line of the fax cover sheet.

- *Mail* (for paper, disk, or CD-ROM submissions. Include RIN 3095-AB74 on the submission): Regulations Comment Desk (Strategy & Performance Division (SP)); Suite 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740-6001
- *Hand delivery or courier*: Deliver comments to front desk at the address above.

Instructions: All submissions must include NARA's name and the regulatory information number for this rulemaking (RIN 3095-AB74). We may publish any comments we receive without changes, including any personal information you include.

FOR FURTHER INFORMATION CONTACT: Laura McCarthy, by email at regulation_comments@nara.gov, or by telephone at 301-837-3023. You may also find more information about records management at NARA on NARA's website at <http://www.archives.gov/records-mgmt/>

SUPPLEMENTARY INFORMATION: The proposed revisions to the Federal records management regulations contained in 36 CFR Chapter XII, Subchapter B, affect Federal agencies' records management programs in the areas of managing essential (formerly referred to as "vital") records, records disposition programs, the General Records Schedules, emergency authorizations to destroy records, storage of records in records storage facilities, and NARA assistance and inspection programs. We are making administrative changes, such as updating office names and organizational codes, updating URLs, and adding new links to NARA's records management web pages. We are removing repetitive definitions sections from each part to a centralized definitions part (to come in part 1220) applying to all parts (streamlining under the Paperwork Reduction Act) and removing repetitive authorities sections from each part because authorities are noted under the table of contents (streamlining under the Paperwork

Reduction Act). We are making other minor editorial changes for consistency among parts and revising some language to comply with Plain Language requirements.

We are replacing references to the Standard Form 115 (SF 115), Request for Disposition Authority, with “records schedule” because we now use the Electronic Records Archives (ERA) for scheduling records and no longer accept SF 115s, except when special circumstances merit its use. We have made revision to incorporate use of the ERA throughout the records management regulations, including revising references to the SF 115.

Discussion of proposed rule revisions

Proposed Part 1223, Managing Vital Records

This part sets out the necessary actions that each agency must take to ensure proper and adequate documentation of continuing agency operations in the event of activation of an agency continuity plan. We have also changed the term “vital” records to “essential” records to mirror the term FEMA used in Federal Continuity Directive 1 (FCD-1, 2012). Certain Federal agencies were using the term “vital records” in another context with a different meaning, so we decided to change to “essential records” both to be parallel with FCD-1 and to reduce confusion among agencies.

Proposed Part 1224, Records Disposition Programs

This part specifies the elements of a records disposition program and the integration of records management into an agency’s business processes. Details for the program functions, such as scheduling, retention, and disposition of records are found in parts 1225, 1226, 1227, 1235, and 1236. We added records disposition provisions to part 1224 for circumstances where multiple agencies collaborate on a project or initiative.

Proposed Part 1227, General Records Schedules

This part explains General Records Schedules (GRS) and when the GRS must be used by agencies. We added the section for application of the GRS to records that have been transferred into the National Archives of the United States and subject to the provisions in 36 CFR 1235.34.

Proposed Part 1229, Emergency Authorization to Destroy Records

This part outlines the steps agencies must take when they discover records are a continuing menace to human health or life, or to property, or when destruction of records is necessary during a state of war or threatened war outside of the continental United States. We have added the requirement in § 1229.12(b) that if records are destroyed during a state of war or threatened war that agencies must provide NARA with a list of the destroyed records that can and will be reconstructed, the records used to reconstruct the destroyed records, and assurance that these records will be retained until after reconstruction.

Proposed Part 1232, Transfer of Records to Records Storage Facilities

This part provides procedures of the transfer of records to a NARA, agency-operated, or commercial records storage facility. There are no substantive changes from the existing part.

Proposed Part 1233, Transfer, Use and Disposition of Records in NARA Records Center

This part provide procedures that apply to the use of NARA's Federal Records Center Program. There are no substantive changes from the existing part.

Proposed Part 1239, Program Assistance and Inspections

The material in proposed part 1239 relating to program assistance NARA provides to agencies is drawn from the existing part 1239 with no substantive changes. We have proposed changes to material relating to inspections of records management programs has been changed to add two circumstances or conditions when NARA may inspect an agency: NARA may inspect to assess an agency's compliance with records management statutes and regulations, and may also

inspect an agency's implementation of records management policies, guidance, and principles. Timeframes for both NARA and agency actions have been changed to business days and NARA clarifies that agencies must report on their follow-up obligations no less frequently than semi-annually.

Regulatory analysis

Review under Executive Orders 12866 and 13563

Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (September 30, 1993), and Executive Order 13563, Improving Regulation and Regulation Review, 76 FR 23821 (January 18, 2011), direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This proposed rule is not "significant" under section 3(f) of Executive Order 12866 because it applies only to Federal agencies, and is updating the regulations, not establishing new programs. Although the proposed revisions change and add new requirements for agencies, the requirements are necessary to keep the existing regulations up-to-date and to ensure agencies are preserving records for the United States as well as possible. The Office of Management and Budget (OMB) has reviewed this regulation.

Review under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*)

This review requires an agency to prepare an initial regulatory flexibility analysis and publish it when the agency publishes the proposed rule. This requirement does not apply if the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (5 U.S.C. 603). NARA certifies, after review and analysis, that this proposed rule will not have a significant adverse economic impact on small entities.

Review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501*et seq.*)

This proposed rule does not contain any information collection requirements subject to the Paperwork Reduction Act.

Review under Executive Order 13132, Federalism, 64 FR 43255 (August 4, 1999)

Review under Executive Order 13132 requires that agencies review regulations for Federalism effects on the institutional interest of states and local governments, and, if the effects are sufficiently substantial, prepare a Federal assessment to assist senior policy makers. This proposed rule will not have any direct effects on State and local governments within the meaning of the Executive Order. Therefore, no Federalism assessment is required.

List of Subjects in 36 CFR Parts 1223, 1224, 1227, 1229, 1232, 1233, and 1239

Archives, Records, Records management.

For the reasons stated in the preamble, NARA proposes to amend 36 CFR parts 1223, 1224, 1227, 1229, 1232, 1233, and 1239, as follows:

PART 1223—MANAGING ESSENTIAL RECORDS

1. The authority citation for part 1223 is revised to read as follows:

Authority: 44 U.S.C. 3101; E.O. 12656, 53 FR 47491; 3 CFR, 1988 Comp., p. 585; E.O. 13231, 66 FR 53063, 3 CFR, 2001 Comp., p. 805.

2. Revise the part heading to read as set forth above.

3. Revise § 1223.1 to read as follows:

§ 1223.1 What authorities apply to this part?

(a) The authorities for this part, listed above, require the head of each agency to create and preserve records that contain adequate and proper documentation of the organization and to perform national security emergency preparedness functions.

(b) The regulations in this part also conform to guidance in National Security Presidential Directive (NSPD-51), Homeland Security Presidential Directive (HSPD-20), Federal Continuity Directive (FCD) 1, Federal Executive Branch National Continuity Program and Requirements, and FCD 2, Federal Executive Branch Mission Essential Function and Primary Mission Essential Function Identification and Submission Process.

4. Amend § 1223.2 by:

a. Removing paragraph (a) and the introductory text of paragraph (b) and adding introductory text to the section in their place.

b. Revising the definitions of “cycle” and “emergency operating records.”

c. Adding definitions for “essential records” and “essential records program” in alphabetical order.

d. Revising the definitions of “legal and financial rights records,” and “off-site storage.”

e. Removing definitions of “vital records” and “vital records program.”

The revisions and additions read as follows”

§ 1223.2 What definitions apply to this part?

In addition to the definitions in part 1220 that apply to all of subchapter B including this part, the following definitions apply only to part 1223:

Cycle means the recurring removal of obsolete copies of essential records and replacing them with current copies of essential records. This may occur daily, weekly, quarterly, annually or at other designated intervals.

Emergency operating records means a category of records essential to the continued functioning or the reconstitution of an organization during and after a continuity activation. Examples of these records are emergency plans and directives, orders of succession, delegations of authority, staffing assignments, and related policy or procedure records.

Essential records means information systems and applications, electronic and hardcopy documents, references, and records needed to support essential functions during a continuity event. The two basic categories of essential records are emergency operating records and legal and financial rights records.

Essential records program means the policies, plans, and procedures the agency develops and implements -- and the resources needed -- to identify, use, and protect essential records. This is a program element of an agency's emergency management function.

Legal and financial rights records are that category of essential records needed to protect the legal and financial rights of the Government and of the individuals directly affected by its activities. Examples include accounts receivable records, social security records, payroll records, retirement records, and insurance records. NARA formerly defined these records as “rights-and-interests” records.

Off-site storage means a facility other than an agency's normal place of business, including a facility maintained by a third party, where an agency keeps records until eligible for final disposition. Agencies may keep essential records at off-site storage to ensure that they are not damaged or destroyed should an emergency occur in an agency's normal place of business.

§§ 1223.3 and 1233.4 [Removed]

5. Remove §§ 1223.3 and 1223.4.

6. Revise § 1223.10 to read as follows:

§ 1223.10 What is the purpose of part 1223?

Part 1223 specifies policies and procedures an agency needs to identify, protect, and manage essential records as part of any agency’s continuity of operation plan designed to meet emergency management responsibilities.

7. Amend § 1223.12 by:

a. Revising the section heading.

b. Amending the introductory text to remove “A vital” and add in its place the words “An essential.”

c. Amend paragraph (a) by removing “It provides” and adding in its place “To provide” and removing the word “to” before the word “resume.”

d. Amend paragraph (b) by removing “It enables” and adding in its place “To enable” and removing the word “persons” and adding in its place the word “people.”

The revision reads as follows:

§ 1223.12 What are the objectives of an essential records program?

8. Revise §§ 1223.14, 1223.16, and 1223.18 to read as follows:

§ 1223.14 What elements must agencies include in essential records programs?

(a) To achieve compliance with this section, an agency must include in its essential records program all of the following elements:

(1) Specified agency staff responsibilities;

- (2) Methods to appropriately inform all staff about essential records;
- (3) Processes to ensure current and complete designation of essential records;
- (4) Adequate protections for the essential records;
- (5) Procedures to ensure access to and immediate use of the essential records when needed;
- (6) Annual review and testing of the program, and training for applicable staff; and
- (b) Additional Continuity of Operations guidance for essential records provided in the Federal Continuity Directive (FCD-1) is published by the Federal Emergency Management Agency (FEMA) and available on FEMA's website at <http://www.fema.gov/guidance-directives>.

§ 1223.16 How do agencies identify essential records?

Agencies identify essential records in the context of the emergency management function.

Essential records are those the agency needs to perform its most critical functions and those the agency needs to protect the legal and financial rights of the Government and the people affected by its actions. Essential records also include emergency plans and related records that specify how an agency will respond to an emergency. The informational content of records series and electronic records systems determines which records are essential. Only the most recent and complete sources of the information are essential records.

§ 1223.18 Must agencies maintain essential records in a particular form or format?

(a) Essential records can be original records or copies of records. Consult NARA records management guidance on essential records at <http://www.archives.gov/records-mgmt/vital-records/index.html> for further information.

(b) Agencies may maintain essential records on a variety of media, including paper, photographic film, microform, and electronic forms. In selecting the media (such as magnetic tape or optical disk), agencies must ensure that the hardware, software, and documentation it

needs to access records will be available following an emergency or disaster. The agency may store essential records it maintains electronically in shared data and computing services via the Internet or a Virtual Private Network.

9. Amend § 1223.20 by revising the section heading and the first sentence, to read as follows:

§ 1223.20 What are the requirements for accessing essential records during an emergency?

Agencies must establish procedures for retrieving and accessing essential records. ***

10. Revise §§ 1223.22 and 1223.24 to read as follows:

§ 1223.22 How must agencies protect essential records?

Agencies must take appropriate measures to ensure they protect and provide access to essential records or copies of essential records in case of an emergency.

(a) *Duplication.* Agencies may choose to duplicate essential records as the primary protection method. Duplication can be to the same medium as the original record or to a different medium. When agencies choose duplication as a protection method, they normally use the copy of the original essential record as the version stored off-site. The agency may store the original records off-site if their protection is necessary, or if the agency does not need to keep the original records at its normal place of business.

(b) *Dispersal.* Once agencies duplicate the records, they must disperse the copies to sites a sufficient distance away to avoid them being subject to the same emergency. Agencies may use other office locations, off-site locations, or storage facilities maintained by a third party as dispersal sites.

(c) *Storage considerations.* Copies of emergency operating records must be readily available for use within 12 hours following the activation of agency continuity plans. Agencies may not need copies of legal and financial rights records as quickly. When deciding where to store essential record copies, agencies must treat records that have the properties of both categories, that is, both emergency operating and legal and financial rights records, as emergency operating records.

(1) Agencies may store copies of legal and financial rights essential records at an off-site agency location or, in accordance with §1233.12, at a NARA records storage facility.

(2) In accordance with §1233.12, when using a NARA records storage facility for storing legal and financial essential records that are duplicate copies of original records, the agency must specify on the SF 135, Records Transmittal and Receipt, or equivalent that they are essential records (duplicate copies) and the medium on which they are maintained. The agency must also periodically cycle them by removing obsolete items and replacing them with the most recent versions in accordance with NARA's General Records Schedule (GRS) covering essential records.

§ 1223.24 When can agencies destroy essential records?

NARA-approved records schedules (see part 1225, Scheduling Records, of this subchapter) govern disposition of essential records that are original records. Agencies must not destroy original records that are not scheduled. Agencies may destroy duplicate copies it created and maintained for essential records purposes when they are superseded or obsolete, in accordance with NARA's GRS.

11. Revise part 1224 to read as follows:

PART 1224—RECORDS DISPOSITION PROGRAMS

Sec.

1224.10 What must agencies do to implement an effective records disposition program?

Authority: 44 U.S.C. 2111, 2902, 2904, 3102, and 3301.

§ 1224.10 What must agencies do to implement an effective records disposition program?

Agencies should integrate records management into business processes. As part of this effort, agencies should analyze records management requirements, integrate them into operating plans, and implement, review, and revise records management policies and procedures across the agency on a regular basis. To properly carry out the provisions of part 1220 of this subchapter, agencies must:

- (a) Schedule all records in accordance with part 1225 of this subchapter, implement records schedules in accordance with part 1226 of this subchapter, and transfer permanent records to NARA in accordance with part 1235 of this subchapter;
- (b) Transfer all permanent electronic records to NARA in electronic form to the greatest extent possible;
- (c) Promptly disseminate and implement NARA-approved agency records schedules, additions, and changes to the General Records Schedules (GRS) in accordance with parts 1226 and 1227 of this subchapter;
- (d) Regularly review agency-generated records schedules, and, if necessary, update them in accordance with part 1225 of this subchapter;
- (e) Incorporate records retention and disposition needs into the design, development, and implementation of new or revised recordkeeping systems. See part 1236 of this subchapter for electronic records management requirements;
- (f) Provide training and guidance to all employees on agency records disposition requirements and procedures and other significant aspects of the records disposition program.

When NARA approves a new or revised records schedule, provide specific guidance to employees responsible for applying the schedule; and

(g) When two or more Federal agencies collaborate on a common project or initiative, the participants must establish and agree to recordkeeping responsibilities and manage all records. This also applies to multi-agency endeavors that include private organizations, state, local, Tribal, or foreign governments.

12. Revise part 1227 to read as follows:

PART 1227—GENERAL RECORDS SCHEDULES

Sec.

- 1227.10 What are General Records Schedules (GRS)?
- 1227.12 When must agencies apply the GRS?
- 1227.13 May NARA apply the GRS to records transferred to the National Archives?
- 1227.14 How do I obtain copies of the GRS?

Authority: 44 U.S.C. 2107(2), 2909, and 3303a.

§ 1227.10 What are General Records Schedules (GRS)?

The Archivist of the United States issues General Records Schedules (GRS) for records common to several or all agencies. The GRS authorizes, after specified periods of time, agencies to destroy temporary records or to transfer permanent records to NARA.

§ 1227.12 When must agencies apply the GRS?

(a) Agencies should apply the disposition instructions in the following table.

When NARA issues a new or revised GRS, and	then
(1) Your agency does not create or maintain any of the records addressed by that GRS,	No action is required.
(2) The GRS disposition authority states that it must be followed without	Your agency must follow the disposition instructions of the GRS, whether or not your agency has existing records schedules.

exception,	
(3) Your agency has an existing records schedule for these records AND the GRS permits use of existing agency-specific schedules,	<p>(i) Your agency may follow the disposition instructions in either the GRS or the existing agency records schedule. If your agency chooses to follow its own schedule, then it must notify NARA within 120 calendar days of the issuance of the new or revised GRS. Notifications should be sent to GRS_Team@nara.gov or National Archives and Records Administration; Office of the Chief Records Officer (AC); Attention: GRS Team, Room 2100; 8601 Adelphi Road; College Park, Maryland 20740-6001.</p> <p>(ii) After reviewing your agency's notification, NARA may determine that your agency-specific schedule is no longer appropriate because of the passage of time, change in value of the records, or for other reasons. NARA will notify your agency's records officer of the notification's status within 90 calendar days.</p> <p>(iii) Agencies may also submit a new schedule to NARA with a justification for deviating from the GRS.</p>
(4) Your agency does not have an existing records schedule for these records,	Your agency must follow the disposition instructions of the GRS. If your agency's needs require a different retention period, then your agency must submit a records schedule to NARA in accordance with part 1225 of this subchapter, with a justification for the deviation.

(b) Except as provided in the table in paragraph (a) of this section, agencies must disseminate and implement any new or revised GRS within 6 months after NARA has issued a new GRS transmittal.

§ 1227.13 May NARA apply the GRS to records transferred to the National Archives?

NARA may, at its discretion, apply the provisions of the GRS to records in its legal custody, subject to the provisions of part 1235 of this subchapter.

§ 1227.14 How do I obtain copies of the GRS?

The GRS and instructions for its use are available online at <http://www.archives.gov/records-mgmt/grs/>. They are also available by contacting GRS_Team@nara.gov or writing to NARA at National Archives and Records Administration, Office of the Chief Records Officer (AC), Attention: GRS Team, Room 2100, 8601 Adelphi Road, College Park, MD 20740-6001.

13. Revise part 1229 to read as follows:

PART 1229—EMERGENCY AUTHORIZATION TO DESTROY RECORDS

Sec.

1229.1 What is the scope of this part?

1229.10 What steps must agencies take when records are a continuing menace to health, life, or property?

1229.12 What are the requirements during a state of war or threatened war?

Authority: 44 U.S.C. 3310 and 3311.

§ 1229.1 What is the scope of this part?

This part describes certain conditions under which agencies may destroy records without regard to the provisions of part 1226 of this subchapter.

§ 1229.10 What steps must agencies take when records are a continuing menace to health, life, or property?

When an agency identifies records that pose a continuing menace to human health or life, or to property, the records officer or other designee must immediately notify NARA in writing by mail at National Archives and Records Administration, Office of the Chief Records Officer (AC), 8601 Adelphi Road, College Park, MD 20740-6001, or by email at RM.Communications@nara.gov. The notification must describe the records, their location and quantity, the nature of the menace and, if appropriate, the steps taken to reconstruct the records using other records and sources of information.

(a) If NARA concurs that the records must be destroyed, NARA notifies the agency to immediately destroy them by an appropriate and safe disposal method.

(b) If NARA does not concur that the records must be destroyed, NARA advises the agency of alternative remedial action to address the menace.

§ 1229.12 What are the requirements during a state of war or threatened war?

(a) Destruction of records outside the territorial limits of the continental United States is authorized whenever, during a state of war between the United States and any other nation or when hostile action appears imminent, the head of the agency that has custody of the records determines that their retention would be prejudicial to the interests of the United States, or that they occupy space urgently needed for military purposes and are without sufficient administrative, fiscal, legal, historical, or other value to warrant their continued preservation. When it is not feasible for the head of the agency to make this determination, the agency's most senior official at the location of the records may do so.

(b) Within six months after the destruction of any records under this authorization, the agency official who directed the destruction must submit a written statement by mail to NARA at National Archives and Records Administration, Office of the Chief Records Officer (AC), 8601 Adelphi Road, College Park, MD 20740-6001, or by email at RM.Communications@nara.gov.

The statement must include the following:

- (1) An explanation of the reasons for the destruction;
- (2) A description of the records destroyed;
- (3) How, when, and where the records were destroyed;
- (4) A list of destroyed records that can and will be reconstructed using other records and sources of information; and
- (5) A list of the records used to reconstruct the destroyed records listed in paragraph (b)(4) of this section and assurance that the agency will retain these until it has reconstructed the records.

14. Revise part 1232 to read as follows:

PART 1232—TRANSFER OF RECORDS TO RECORDS STORAGE FACILITIES

Sec.

1232.10 Where may a Federal agency store records?

- 1232.12 Under what conditions may agencies store Federal records in records storage facilities?
- 1232.14 What requirements must an agency meet before it transfers records to a records storage facility?
- 1232.16 What must an agency document before transferring records to a records storage facility?
- 1232.18 What procedures must an agency follow to transfer records to an agency records center or commercial records storage facility?

Authority: 44 U.S.C. 2907 and 3103.

§ 1232.10 Where may a Federal agency store records?

Federal agencies may store records in the following types of records storage facilities, so long as the facilities meet the facility standards in part 1234 of this subchapter. Records transferred to a records storage facility remain in the legal custody of the agency.

- (a) NARA Federal Records Centers. NARA owns or operates records centers to store, process, and service records for Federal agencies (under authority of 44 U.S.C. 2907). These NARA records centers include a National Personnel Records Center that contains designated records of the Department of Defense, the Office of Personnel Management, and other records on former Federal civilian and military employees. For a list of NARA Federal Records Centers, consult NARA’s web site at <http://www.archives.gov/locations/index.html>.
- (b) Records centers operated by or on behalf of one or more Federal agencies other than NARA.
- (c) Commercial records storage facilities operated by private entities.

§ 1232.12 Under what conditions may agencies store Federal records in records storage facilities?

The following chart shows what records agencies can store in a records storage facility and the conditions that apply:

Type of record	Conditions
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(a) Permanent records	Any storage facility that meets the provisions of part 1234 of this subchapter.
(b) Unscheduled records	(1) Any storage facility that meets the provisions of part 1234 of this subchapter. (2) Also requires prior notification to NARA (see §1232.14(b)).
(c) Temporary records (excluding Civilian Personnel Records)	Any storage facility that meets the provisions of part 1234 of this subchapter.
(d) Essential records	Any storage facility that meets the provisions of parts 1223 and 1234 of this subchapter.
(e) Civilian Personnel Records	Textual must be transferred to the National Personnel Records Center (NPRC), St. Louis, MO (see part 1233 of this subchapter).

§ 1232.14 What requirements must an agency meet before it transfers records to a records storage facility?

An agency must comply with part 1234 of this subchapter and the following requirements before it transfers records to a records storage facility:

- (a) Non-paper-based media (e.g., film, audio tape, electronic media, etc.), especially those that are unscheduled or scheduled for long-term or permanent retention, require more stringent environmental controls (see parts 1236 and 1237 of this subchapter).
- (b) Notify NARA in writing prior to transferring unscheduled records to a records storage facility, by mail at National Archives and Records Administration; Office of the Chief Records Officer (AC); 8601 Adelphi Road; College Park, MD 20740-6001, or by email at RM.Communications@nara.gov. The notification must identify the records storage facility and include a copy of the information required by §1232.16(a).
- (c) For all records being transferred, create documentation sufficient to identify and locate files. (See §1232.16.)

(d) Adhere to NARA-approved retention periods and create and maintain records documenting final disposition actions (destruction or transfer to NARA).

§ 1232.16 What must an agency document before transferring records to a records storage facility?

(a) For each individual records series spanning one or more consecutive years, the agency must document the:

(1) Creating office;

(2) Series title;

(3) Description (provide for all transfers, and in the case of permanent or unscheduled records, the description must include a folder title list of the box contents or equivalent detailed records description). For more information on folder title lists, consult NARA's web site at <http://www.archives.gov/records-mgmt/accessioning/finding-aid.html>;

(4) Date span (provide both the inclusive start and end dates of the records; these indicate the dates on which the records started and stopped being created or accumulated);

(5) Physical form and medium of records (e.g., paper, motion picture film, sound recordings, photographs, digital images);

(6) Volume (assuming a standard-size records box equals approximately one cubic foot, provide the total number of boxes included in the transfer);

(7) Citation to NARA-approved records schedule or agency records disposition manual (unscheduled records must cite the date the agency notified NARA or, if available, the date the agency submitted the records schedule to NARA);

(8) Restrictions on access, if applicable;

(9) Disposition (“permanent,” “temporary,” or “unscheduled; records schedule pending”);

(10) Date of disposition action (transfer to NARA or destruction);

(11) Physical location, including name and address of facility; and

(12) Control number or identifier used to track the records.

(b) In the case of permanent and unscheduled records, provide copies of the documentation to NARA and advise NARA in writing of the new location whenever the records are moved to a new storage facility. For permanent records, mail the documentation to National Archives and Records Administration; Office of the Chief Records Officer (AC); 8601 Adelphi Road; College Park, MD 20740-6001, or send via email to RM.Communications@nara.gov, no later than 30 days after the agency transfers records to the agency records center or commercial records storage facility.

§ 1232.18 What procedures must an agency follow to transfer records to an agency records center or commercial records storage facility?

Federal agencies must use the following procedures to transfer records to an agency records center or commercial records storage facility:

(a) Incorporate into agreements with the storage facility the standards in part 1234 of this subchapter and allow for inspections by the agency and NARA to ensure compliance. An agency must promptly remove records from a facility if the facility does not correct deficiencies within six months of the inspection report identifying them;

(b) For temporary records, make available to NARA on request the documentation specified in § 1232.16;

(c) Retain temporary records until the expiration of their NARA-approved retention period and no longer, except as provided for in § 1226.18 of this subchapter;

- (d) Transfer permanent records that have met their retention period to NARA in accordance with part 1235 of this subchapter;
- (e) Ensure that the facility stores and maintains records that are restricted because they are security classified or exempt from disclosure by statute (including the Privacy Act of 1974, 5 U.S.C. 552a, as amended) or regulation in accordance with applicable laws, Executive Orders, or regulations;
- (f) Ensure that the agency destroys temporary records, including restricted records (security classified or exempted from disclosure by statute (including the Privacy Act of 1974) or regulation, in accordance with the requirements specified in § 1226.24 of this subchapter;
- (g) Ensure that emergency operating records, as defined in part 1223 of this subchapter, that are transferred to an agency records center or commercial records storage facility are available in accordance with § 1223.24 of this subchapter; and
- (h) Provide records access to appropriate NARA staff wherever the records are located in order to:
 - (1) Conduct an inspection in accordance with part 1239 of this subchapter; or
 - (2) Process a request for records disposition authority.

15. Revise part 1233 to read as follows:

**PART 1233—TRANSFER, USE, AND DISPOSITION OF RECORDS IN A NARA
FEDERAL RECORDS CENTER**

Sec.

- 1233.10 How does an agency transfer records to a NARA Federal Records Center (FRC)?
- 1233.12 How does an agency transfer essential records to a NARA Federal Records Center (FRC)?
- 1233.14 What personnel records must an agency transfer to the National Personnel Records Center (NPRC)?
- 1233.16 How does an agency transfer records to the National Personnel Records Center (NPRC)?

1233.18 What reference procedures do NARA Federal Records Centers (FRCs) use?

1233.20 How do NARA Federal Records Centers (FRCs) manage records disposal clearances?

Authority: 44 U.S.C. 2907 and 3103.

§ 1233.10 How does an agency transfer records to a NARA Federal Records Center (FRC)?

- (a) Agencies must meet the requirements for records storage described in other parts of this subchapter. NARA ensures that its records centers meet the facilities standards in 36 CFR part 1234, so using a NARA FRC meets the agency's obligations in § 1232.12 of this subchapter.
- (b) Agencies must use the designated NARA FRC(s) named in their agreement with NARA's Federal Records Centers Program (AF).
- (c) Before transferring records to a NARA FRC, an agency must prepare and submit a Standard Form (SF) 135, Records Transmittal and Receipt, or an electronic equivalent. Doing so meets the records description requirements in § 1232.14(c) of this subchapter, except the requirement for a folder title list. Agencies must provide NARA with folder title lists for all permanent and unscheduled records transfers and for records that the agency schedules for sampling or selection after transfer.
- (d) Agencies must submit a separate SF 135 or electronic equivalent for each individual records series having the same disposition authority and disposition date.
- (e) For further guidance on transferring records to a NARA FRC, consult the NARA Federal Records Centers Program (FRCP) web site at <http://www.archives.gov/frc/toolkit.html#transfer>. You may also request current NARA publications and bulletins by writing to NARA at National Archives and Records Administration; Federal Records Center Program (AF); 8601 Adelphi Road; College Park, MD 20740-6001, or by calling (301) 837-2950. Agencies may also contact

individual NARA FRCs (see <http://www.archives.gov/frc/locations.html> for contact information).

§ 1233.12 How does an agency transfer essential records to a NARA Federal Records Center (FRC)?

Essential records transfers are governed by the general requirements and procedures in this part and part 1223 of this subchapter. For assistance in selecting a NARA facility that best meets the needs of your agency, write to NARA at National Archives and Records Administration; Federal Records Centers Program (AF); 8601 Adelphi Road; College Park, MD 20740-6001, or by calling (301) 837-2950.

§ 1233.14 What personnel records must an agency transfer to the National Personnel Records Center (NPRC)?

(a) The GRS specifies which Federal civilian personnel, medical, and pay records agencies must centrally store at the National Personnel Records Center (NPRC) headquartered in St. Louis, MO.

(b) Agencies should transfer the following types of civilian and military medical treatment records to the NPRC:

(1) Inpatient (hospitalization) records created for all categories of patients (active duty military personnel, retirees, and dependents) receiving inpatient treatment and extended ambulatory procedures; and

(2) Outpatient medical treatment records for military retirees, dependents, and other civilians treated at military health care facilities (excludes active duty military personnel at time of military discharge or retirement).

§ 1233.16 How does an agency transfer records to the National Personnel Records Center (NPRC)?

Agencies must use the following procedures to transfer records to the NPRC:

- (a) *Civilian personnel files.* (1) Forward the official personnel folder (OPF) and the employee medical folder (EMF) to the NPRC at the same time;
- (2) Transfer EMFs and OPFs in separate folders;
- (3) Retire individual folders on the basis of the person's date of separation, within 90 to 120 days after the employee separates from Federal service;
- (4) For additional guidance, write to the Office of Personnel Management (OPM); 1900 E Street, NW; Washington, DC 20415, or call (202) 606-1800. The OPM publication, "The Guide to Personnel Recordkeeping," which includes procedures for transferring OPFs and EMFs, is available online at <http://www.opm.gov/feddata/recguide2008.pdf>.
- (b) *Military medical records.* Military health care facilities should contact their facility records managers for guidance on transferring medical records to NPRC. For additional guidance, consult the "Transactions with the National Personnel Records Center (NPRC), St. Louis, MO" section of the NARA FRCP web site at <http://www.archives.gov/frc/toolkit.html#transactions>.
- (c) *Other guidance.* For further guidance, consult the NPRC web site at http://www.archives.gov/facilities/mo/st_louis.html.

§ 1233.18 What reference procedures do NARA Federal Records Centers (FRCs) use?

- (a) Agency records transferred to a NARA FRC remain in the legal custody of the originating agency. NARA acts as the agency's agent to maintain the records. NARA discloses

the record only to the originating agency that retains legal custody, or under rules established by that agency that are consistent with existing laws.

(b) For general reference requests, agencies should use the Federal Records Centers Program (FRCP) electronic system or the Optional Form (OF) 11, Reference Request—Federal Records Centers, or its electronic equivalent. The agency and NARA jointly designate this form.

(c) For civilian personnel records requests, agencies must use the following forms:

(1) Standard Form 127, Request for Official Personnel Folder (Separated Employee), to request transmission of separated employee personnel folders stored at the National Personnel Records Center (NPRC). Additional instructions on requesting OPFs are available online at <http://www.archives.gov/st-louis/civilian-personnel/federal-agencies.html>.

(2) Standard Form 184, Request for Employee Medical Folder (Separated Employee), to request medical folders stored at the NPRC. Additional instructions on requesting EMFs are available online at <http://www.archives.gov/st-louis/civilian-personnel/federal-agencies.html>.

(3) Optional Form 11, Reference Request—Federal Records Center, to request medical records transferred to other NARA FRCs prior to September 1, 1984. The request must include the name and address of the agency's designated medical records manager. The form and additional instructions are available online at <http://www.archives.gov/frc/forms/of-11.pdf>.

(4) National Archives Form 14136, Request Pertaining to Civilian Conservation Corps (CCC) Personnel Records, to request records relating to the CCC. The form, as well as additional instructions, is available online at <http://www.archives.gov/st-louis/archival-programs/civilian-personnel-archival/cc-c-holdings-access.html>.

(5) National Archives Form 14137, Request Pertaining to Works Progress Administration (WPA) Personnel Records, to request records relating to the WPA. The form, as well as

additional instructions, is available online at <http://www.archives.gov/st-louis/archival-programs/civilian-personnel-archival/wpa-holdings-access.html>.

(d) For military personnel records requests, agencies and other requesters must use the following methods:

(1) Federal agencies must use Standard Form (SF) 180, Request Pertaining to Military Records, to obtain information from military service records in the NPRC (Military Personnel Records). The form is available online at <http://www.archives.gov/veterans/military-service-records/standard-form-180.html#sf>, or by writing to the National Personnel Records Center (Military Personnel Records); 1 Archives Drive; St. Louis, MO 63138. OMB Control Number 3095-0029 covers SF 180.

(2) Authorized agencies requesting the loan of a military personnel record may order records using eMilrecs (electronic equivalent of the SF 180). Access to eMilrecs and additional information is available online at <http://www.archives.gov/st-louis/military-personnel/agencies/ompf-fed-agency.html>.

(3) A military veteran or the next of kin of a deceased veteran may order military personnel records by submitting an SF 180 or an online records request. We may be permitted, under certain circumstances, to provide surviving next of kin greater access to a deceased veteran's records than a member of the general public. Additional information is available online at <http://www.archives.gov/veterans/military-service-records/>.

(4) Members of the public and non-governmental organizations may also request military personnel records by submitting an SF 180. To request information from another person's military personnel records, you must have the release authorization in Section III of the SF 180

signed by the member or legal guardian. If you cannot obtain the appropriate signature, we can only provide limited information.

(5) For guidance on requesting original medical treatment records, military hospitals and clinics should consult the “Medical Treatment Records” web page at <http://www.archives.gov/st-louis/military-personnel/other-medical-records.html>.

(e) For further guidance on requesting records from a NARA FRC, consult the NARA Federal Records Centers Program web site at <http://www.archives.gov/frc/toolkit.html#retrieval>. You may also request current NARA publications and bulletins by contacting the FRCP, or individual NARA Federal Records Centers (see <http://www.archives.gov/frc/locations.html> for contact information).

§ 1233.20 How do NARA Federal Records Centers (FRCs) manage records disposal clearances?

(a) The National Personnel Records Center destroys records covered by General Records Schedules (GRS) in accordance with those schedules without further agency clearance.

(b) For records not covered under a GRS, NARA FRCs destroy eligible Federal records only with the written concurrence of the agency having legal custody of the records.

(c) NARA FRCs maintain documentation on the final disposition of records, as required in § 1232.14(d) of this subchapter.

(d) When NARA approves an extension of retention period beyond the time authorized in the records schedule for records stored in NARA FRCs, NARA notifies the affected Federal Records Centers to suspend disposal of the records (see § 1226.18 of this subchapter for more specific guidance on when agencies may temporarily extend retention periods).

(e) For further guidance on records disposition, consult the NARA FRCP web site at <http://www.archives.gov/frc/toolkit.html#disposition>. You may also request current NARA publications and bulletins by contacting the FRCP or individual NARA Federal Records Centers (see <http://www.archives.gov/frc/locations.html> for contact information).

16. Revise part 1239 to read as follows:

PART 1239—PROGRAM ASSISTANCE AND INSPECTIONS

Sec.

Subpart A—General

1239.1 What is the scope of this part?

1239.3 What definitions apply to this part?

Subpart B—Program Assistance

1239.10 What program assistance does NARA provide?

1239.12 Who may agencies contact to request program assistance?

Subpart C—Inspections

1239.20 When does NARA inspect an agency?

1239.22 How does NARA notify the agency of the inspection?

1239.24 How does NARA conduct an inspection?

1239.26 What are an agency's follow-up obligations after it receives an inspection report?

Authority: 44 U.S.C. 2904 and 2906.

Subpart A—General

§ 1239.1 What is the scope of this part?

NARA's statutory authorities include assisting agencies to carry out their records management responsibilities and, when necessary, inspecting agency programs and reporting to Congress on those inspections. Part 1239 identifies the types of records management guidance and program assistance NARA provides to agencies under its 44 U.S.C. chapter 29 mandate; the conditions under which NARA invokes its inspection authority, also under chapter 29; and the requirements for agencies to cooperate fully in such inspections.

§ 1239.3 What definitions apply to this part?

In addition to the definitions in part 1220 that apply to all of Subchapter B including this part, the following definition applies only to part 1239:

Inspection means NARA's formal review and report on an agency's recordkeeping processes, under 44 U.S.C. 2904(c) and 2906(a). NARA's formal review and report focus on those practices that put records meeting one or more of the following criteria at risk:

- (1) Have a direct and high impact on legal rights or government accountability;
- (2) Are the subject of high profile litigation, Congressional attention, or widespread media coverage;
- (3) Have high research potential; or
- (4) Are permanent records with a large volume, regardless of format.

Subpart B—Program Assistance

§ 1239.10 What program assistance does NARA provide?

- (a) NARA publishes handbooks, conducts workshops and other training sessions, and furnishes information and guidance to agencies on creating, maintaining, using, and disposing of records. NARA may also conduct an assistance project in cooperation with an agency to address a serious records management issue in the agency.
- (b) For information on NARA handbooks and guidance, consult NARA's web site at <http://www.archives.gov/records-mgmt/>.
- (c) For information on NARA training, consult NARA's web site at <http://www.archives.gov/records-mgmt/training/>.

§ 1239.12 Who may agencies contact to request program assistance?

Agencies may write to NARA at National Archives and Records Administration; Office of the Chief Records Officer (AC); 8601 Adelphi Road; College Park, MD 20740-6001 for information or assistance related to any area covered by this subchapter.

Subpart C—Inspections

§ 1239.20 When does NARA inspect an agency?

- (a) NARA may inspect when it identifies risks through:
 - (1) An agency failing to address specific records management problems;
 - (2) Internal or external records management assessments;
 - (3) Reports in the media;
 - (4) Congressional inquiries;
 - (5) Allegations of unauthorized destruction;
 - (6) Reports issued by the GAO or an agency's Inspector General;
 - (7) Observations by NARA staff members; or
 - (8) An agency head, who then can request that NARA conduct an inspection.
- (b) NARA may also inspect to assess an agency's compliance with records management statutes and regulations.
- (c) NARA may also inspect an agency's implementation of records management policies, guidance, and principles to validate the following:
 - (1) Reports of unique or innovative methods;
 - (2) Low risk scores on assessments; or
 - (3) NARA staff members' observation of sound practices.
- (d) NARA reports to Congress and the Office of Management and Budget on inspections in accordance with 44 U.S.C. 2904.

§ 1239.22 How does NARA notify the agency of the inspection?

(a) Once NARA identifies the need for an agency inspection, the Archivist of the United States sends a letter to the head of the agency. If the agency is a component of a cabinet department, the Archivist also sends a copy to the head of the cabinet department. NARA also sends a copy to the agency's records officer. The letter includes:

- (1) Notice that NARA intends to conduct an inspection;
- (2) Which records management processes or procedures NARA is evaluating, and any specific issues;
- (3) A beginning date for the inspection that is no more than 30 business days after the date of the letter; and
- (4) A request for an agency point of contact to assist NARA as it conducts the inspection.

(b) If the agency does not respond to NARA's notification letter, NARA reports the matter to the agency's Congressional oversight committee and to the Office of Management and Budget, under its 44 U.S.C. 2904(c)(8) statutory authority.

§ 1239.24 How does NARA conduct an inspection?

(a) The NARA inspection team leader coordinates with the agency point of contact to arrange an initial meeting with the agency. The initial meeting addresses the scope of the inspection, including its parameters, any surveys or other inspection instruments, involved offices, and timing of site visits.

(b) NARA prepares a draft inspection report and transmits it to the agency no later than 45 business days after the last site visit or meeting. The report includes:

- (1) An executive summary;
- (2) Background and purpose of inspection;

- (3) Inspection methodology, including offices visited;
 - (4) Findings;
 - (5) Necessary corrective actions and other recommendations; and
 - (6) Any necessary appendices.
- (c) The agency must submit its comments on the draft report no later than 45 business days after receipt.
- (d) NARA incorporates any necessary corrections or revisions in the final report and issues the report to the head of the agency within 45 business days.

§ 1239.26 What are an agency's follow-up obligations after it receives an inspection report?

- (a) The agency must submit to NARA a plan of corrective action that specifies how the agency will address each inspection report recommendation, including a timeline for completion, and proposed progress reporting dates.
- (b) The agency must submit the plan of corrective action to NARA within 60 business days of the date of the final report.
- (c) NARA may take up to 60 business days to review and comment on the plan.
- (d) Once both NARA and the agency agree that the plan of corrective action is final, the agency must submit progress reports to NARA.
- (e) The agency submits the reports on a mutually agreed-upon schedule, but no less frequently than semi-annually, until it completes all actions.

Dated: March 2, 2016

DAVID S. FERRIERO

Archivist of the United States.

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