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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Part 1225

[FDMS No. NARA-24-0008; NARA-2024-026]

**RIN 3095-AC12**

#### **Federal Records Management: GAO Concurrence**

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Direct rule.

**SUMMARY:** The National Archives and Records Administration (NARA) is amending our records management regulations to limit the role of the Government Accountability Office (GAO) in approving certain deviations in agency records schedules. Under the updated regulation, Federal agencies will only require GAO approval for records schedules that propose retention periods for accountable officer records that are shorter than the retention periods provided in the General Records Schedule (GRS). 1.1, item 010 for Accountable Officer records. GAO approval will no longer be required for other deviations from the GRS. GAO approval will also not be required for records schedules that dispose of program records less than three years old. GAO has concurred with this change.

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

**ADDRESSES:** You may submit comments on this rule, identified by **RIN 3095-AC12**, by any of the following methods:

*Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

*Email:* [Regulation\\_comments@nara.gov](mailto:Regulation_comments@nara.gov). Include **RIN 3095-AC12** in the subject line of the message.

*Mail (for paper, disk, or CD-ROM submissions):* Send comments to Regulation Comments Desk (External Policy Program, Strategy & Performance Division (MP)); Suite 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740-6001.

*Hand delivery or courier:* Deliver comments to the front desk at 8601 Adelphi Road, College Park, MD, addressed to: Regulations Comments Desk, External Policy Program; Suite 4100.

**FOR FURTHER INFORMATION CONTACT:** Edward Germino, Strategy and Performance Division, by email at [regulation\\_comments@nara.gov](mailto:regulation_comments@nara.gov), or by telephone at 301-837-3758. Contact [rmstandards@nara.gov](mailto:rmstandards@nara.gov) with any questions on records management standards and policy.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Federal Records Act at 44 U.S.C. 3309 requires Government Accountability Office approval in situations where an agency seeks to dispose of records pertaining to claims and demands by or against the Government of the United States or to accounts in which the Government of the United States is concerned. NARA regulations have expanded the statutory requirement to require approval in two situations. First, agencies require GAO approval to dispose of agency program records that are less than three years old. Second, GAO approval is needed before an agency disposes of records in any way that deviates from what is provided in former General Records Schedule (GRS) 2-10. GRS 2-10 has been superseded by GRS 1.1, *Financial Management and Reporting Records*.

Practically, the current regulatory requirement to obtain GAO approval before the disposal of certain records means that agencies must seek GAO approval of numerous records schedules unrelated to GAO's mission. The required approval by GAO has created an additional burden on agencies requesting approval of these proposed records schedules and delays NARA's evaluation and approval processes .

NARA and GAO agree that the review required by this regulation is no longer necessary or appropriate. GAO review of records disposals under this regulation was originally established

to support GAO authority under 44 U.S.C. 3309, which provides that records related to claims and demands by or against the U.S. Government cannot be disposed of by the agency head unless they have been settled and adjusted by GAO. However, the General Accounting Office Act of 1996 and the Legislative Branch Appropriations Act of 1996 transferred the authority to settle accounts to the Executive Branch. However, GAO retained the authority to relieve accountable officers from their liability under 31 U.S.C. 3527. Therefore, NARA is amending its records management regulation to only require GAO approval of records schedules that would provide retention periods for records of accountable officers that are shorter than what is authorized in the GRS.

### **Regulatory analysis**

*Executive Order 12866, Regulatory Planning and Review, and Executive Order 13563*

*Improving Regulation and Regulation Review*

OMB has reviewed this rulemaking and determined it is not “significant” under section 3(f) of Executive Order 12866. It is not significant because it applies only to Federal agencies, updates the regulations due to a statutory requirement (to incorporate technological developments and to account for changing technology and agency practices), and is not establishing a new program. Although the proposed revisions change existing requirements and add new ones for agencies, the requirements are necessary to keep the existing regulations up-to-date, comply with the statute, and ensure agencies are preserving records for the United States.

*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 alongside the proposed rule. This requirement does not apply if the agency certifies that the rulemaking 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 rulemaking will not have a significant adverse economic impact on small entities.

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

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*) requires that agencies consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. This rulemaking does not impose additional information collection requirements on the public that are subject to the Paperwork Reduction Act.

#### *Executive Order 13132, Federalism*

Executive Order (E.O.) 13132 requires agencies to ensure that State and local officials have the opportunity for meaningful and timely input when those agencies are developing regulatory policies that may have a substantial, direct effect on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. If the effects of the rule on State and local governments are sufficiently substantial, the agency must prepare a Federal assessment to assist senior policymakers. This rulemaking will not have any effects on State and local governments within the meaning of the E.O. Therefore, no federalism assessment is required.

#### *Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4; 2 U.S.C. 1532)*

The Unfunded Mandates Reform Act requires that agencies determine whether any Federal mandate in the rulemaking may cause State, local, and Tribal governments, in the aggregate, or cause the private sector to expend \$100 million in any one year. NARA certifies that this rulemaking does not contain a Federal mandate that may result in such an expenditure.

#### **List of Subjects in 36 CFR Part 1225**

Archives and records, Records management, Records schedules, Scheduling records.

For the reasons discussed in the preamble, NARA amends 36 CFR part 1225 as follows:

#### **PART 1225—SCHEDULING RECORDS**

1. The authority citation for part 1225 continues to read as follows:

Authority: 44 U.S.C. 2111, 2904, 2905, 3102, and Chapter 33.

2. Amend § 1225.20 to read as follows:

**§ 1225.20 When do agencies have to get GAO approval for schedules?**

(a) If an agency requests a deviation from the GRS related to accountable officer records that would authorize a retention period shorter than the retention period provided in the GRS, the agency must obtain approval from the Comptroller General.

(b) This approval must be obtained before NARA will approve the proposed agency records schedule.

**Colleen J. Shogan,**

*Archivist of the United States.*

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