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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1236

[FDMS No. NARA-18-0003; NARA-2019-018]

RIN 3095-AB98

Electronic Records Management

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: We are revising our electronic records management regulation to include standards for digitizing temporary Federal records so that agencies may dispose of the original source records, where appropriate and in accordance with the Federal Records Act amendments of 2014.

DATES: This regulation is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Regulatory and External Policy Program, Strategy & Performance Division (MP); Suite 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740-6001.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, by email at regulation_comments@nara.gov, or by telephone at 301.837.3151. Contact acps@nara.gov with any questions on records management and digitization.

SUPPLEMENTARY INFORMATION:

Background

In 2014, the Federal Records Act at 44 U.S.C. 3302 was amended by Public Law 113-87 to require NARA to issue standards for reproducing records digitally ‘with a view toward the disposal of original records.’ The amendment applies to both temporary and permanent records. This rule sets standards for digitizing temporary records so that agencies may establish appropriate processes. Temporary records constitute the majority of Federal records; agencies retain them for a specific period of time, as established by records schedules. At the end of the scheduled retention period, agencies then destroy the temporary records. Digitization standards for temporary records ensure that agencies can continue to use the digital versions for the same purposes as the original records for the duration of that time period.

In this rulemaking, in addition to issuing digitization standards for temporary records, we are also removing 36 CFR 1236.1 because it restates the authorities already cited in the authority line.

Proposed rule and public comments

We published this rulemaking in the *Federal Register* as a proposed rule on September 10, 2018 (83 FR 45587) with a 60-day public comment period. We received 19 comments on the proposed rule. Several of them involved questions and requests for clarification regarding digitizing permanent Federal and Presidential records or asking about specific technical standards. However, this regulation does not cover such records. It covers only temporary Federal records. One comment asked that we specifically state that the new Subpart D does not apply to permanent records, but we feel that the title, “Digitizing Temporary Federal Records,” is sufficient to make that clear.

For temporary records, the standards will be as they are stated in this regulation. While permanent records require more rigorous quality standards for archival reasons, most temporary

records do not need to meet those standards. Because the needs and uses for temporary records differ vastly across the Government, it is not reasonable to set a single baseline image quality or other similar standards; different standards will serve to meet the business needs for different records. As a result, this regulation focuses on the uses of the digitized records as the benchmark for effective digitization and requires that agencies ensure the digitized records can be used for all the purposes of the original source records. In some cases, that may involve higher image quality than in other cases. We will be issuing FAQs and guidance to agencies on applying the requirements to certain categories of records, as appropriate.

Several other comments asked us to clarify the validation requirements and process, whether agencies may develop their own process, and whether validation requires submitting to NARA for approval. We have revised the validation section to clarify that agencies must validate that the digitized versions are able to be used for all the purposes of the original records, and may use their own process or a third-party process to check the validity of the digitized versions. We also clarified that agencies do not need to seek NARA approval as part of validation. NARA may, however, review agency documentation of the validation process.

In the course of responding to the comments, we realized there was confusion about records schedule retention periods and disposing of original source records. Original source records do not become non-record copies when they have been digitized. As a result, they must still be treated as Federal records. They become intermediary records and may then be destroyed or retained according to the appropriate records schedule (either General Records Schedule 5.2 for intermediary records or an agency-specific records schedule governing the digitized records).

We have noted this in the revised regulation as well.

A commenter asked if we would be addressing Employee Medical File System documents and setting digitization standards for these documents, including x-rays. The Employee Medical Folder (EMF) for the majority of agencies is under the recordkeeping authority of the Office of Personnel Management (OPM), not NARA. The Civilian Personnel Records Center/National Personnel Records Center (CPR/NPRC) stores and services the EMF for the owner of the record (OPM) and responds to requests for the documents. The EMF is currently retained to CPR/NPRC in paper form. OPM created a system in approximately 2007 to support an electronic Official Personnel Folder (OPF) but only the OPF is supported through that system. Because NARA will no longer accept paper/analog records for storage at a Federal records center after December 31, 2022, NARA has reached out to OPM to identify the impact to the paper EMF and recommend OPM consider the timeline needed to create an electronic EMF by that deadline. The x-ray will need to be addressed as part of the EMF. The dialogue continues with OPM concerning the electronic EMF under their recordkeeping authority. NARA will continue to store and service paper/analog records received by Federal records centers through December 31, 2022, until their scheduled disposition date. As a result, this regulation does not address EMFs or how NPRC would accept digital records. NARA will, of course, work with OPM on updating OPM/GOVT-10 EMFs as appropriate.

Another commenter asked that we clarify that the rule does not authorize an agency to destroy after digitization any records with a legal hold or that are subject to civil, criminal, or administrative proceedings. We have added clarifying language to address this comment.

One commenter asked that we add a definition of “information,” and another asked for a definition of “digitizing.” We feel there is no need for a definition of “information”; it has already been defined in many contexts, and we do not feel an additional one would be helpful.

However, we have added a definition of “digitizing,” because it is a new term within the records management arena. We have also made editorial revisions to make the revised rule easier to read and use.

Digitizing permanent records and electronic records rulemaking

We are currently developing standards for digitizing permanent records, which we will publish as an upcoming rulemaking. Until these standards are published as a rule, we recommend that agencies discuss digitization projects with their general counsel before disposing of any original permanent records.

While we develop the standards necessary for digitizing permanent Federal records, agencies should continue to follow the process in the General Records Schedule, 36 CFR § 1225.24, and NARA Bulletin 2010-04, Guidance Concerning Notifications for Previously Scheduled Permanent Records (<https://www.archives.gov/records-mgmt/bulletins/2010/2010-04.html>).

We are also working on revisions to the rest of 36 CFR 1236, regarding electronic records management, which will be reflected in future rulemakings.

Regulatory review information

This rule is not a significant regulatory action for the purposes of E.O. 12866 and a significance determination was requested from the Office of Management and Budget (OMB). As a result, this rule is also not subject to deregulatory requirements contained in E.O. 13771. It is also not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, we certify that this rule will not have a significant impact on a substantial number of small entities; it applies only to agency efforts to digitize temporary records. This rule also does not have any Federalism implications and does not contain any collections of information under the Paperwork Reduction Act.

List of Subjects in 36 CFR Part 1236

Archives and records, Electronic records, Records management.

For the reasons stated in the preamble, NARA amends 36 CFR part 1236 as follows:

PART 1236— ELECTRONIC RECORDS MANAGEMENT

1. Revise the authority citation for part 1236 to read as follows:

Authority: 44 U.S.C. 2904, 3101, 3102, 3105, 3301, 3302, and 3312.

§ 1236.1 [Removed]

2. Remove § 1236.1.

3. In § 1236.2, in paragraph (b), add a definition of “Digitizing” in alphabetical order to read as follows:

1236.2 What definitions apply to this part?

* * * * *

(b) * * *

Digitizing is the process of converting paper or analog records into electronic records.

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4. Add subpart D to read as follows:

Subpart D – Digitizing Temporary Federal Records

Sec.

1236.30 Requirements for digitizing temporary records.

1236.32 Digitization standards.

1236.34 Validating digitization.

1236.36 Disposing of original source records.

§ 1236.30 Requirements for digitizing temporary records.

(a) If an agency intends to digitally reproduce (digitize) temporary records in order to designate the digitized version as the recordkeeping copy and destroy the original source records,

the agency must: (1) digitize the record to the standards in § 1236.32; and (2) validate the digitization according to § 1236.34.

(b) When the agency designates the digitized version as the recordkeeping copy, the original source record becomes an intermediary record. Agencies may dispose of intermediary records according to § 1236.36.

§ 1236.32 Digitization standards.

When digitizing temporary records, agencies must meet the following standards:

- (a) Capture all information contained in the original source records;
- (b) Include all the pages or parts from the original source records;
- (c) Ensure the agency can use the digitized versions for all the purposes the original source records serve, including the ability to attest to transactions and activities;
- (d) Protect against unauthorized deletions, additions, or alterations to the digitized versions;
and
- (e) Ensure the agency can locate, retrieve, access, and use the digitized versions for the records' entire retention period.

§ 1236.34 Validating digitization.

- (a) Agencies must validate that the digitized versions are of suitable quality to replace original source records.
- (b) Agencies may establish their own validation process or make use of third-party processes to validate that the digitized versions comply with § 1236.32. The process may be project-based or agency-wide policy.
- (c) Agencies must document the validation process and retain that documentation for the life of the process or the life of any records digitized using that process, whichever is longer.

(d) NARA may review validation documentation as needed.

§ 1236.36 Disposing of original source records.

(a) When an agency has validated that the digitized versions meet the standards in § 1236.32, the agency may destroy the original source records pursuant to General Records Schedule (GRS) 5.2 (intermediary records) or an agency-specific records schedule that addresses disposition after digitization, subject to any pending legal constraint on the agency, such as a litigation hold.

(b) The agency must treat the digitized versions, now the recordkeeping versions, in the same way it would have treated the original source records. The agency must retain the digitized versions for the remaining portion of any retention period established by the applicable records schedule.

(c) Agencies do not need to obtain NARA approval to destroy scheduled temporary records they have digitized according to this part.

DAVID S. FERRIERO

Archivist of the United States.

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