

NARA Bulletin 2008-02

February 4, 2008

ATTENTION! This page has been superseded. The information listed below is no longer accurate. For NARA's current guidance please visit <http://www.archives.gov/records-mgmt/bulletins/2013/2013-03.html>. Please note that this page is available only as a technical and historical reference.

July 31, 2008

TO: Heads of Federal agencies

SUBJECT: Protecting Federal records and other documentary materials from unauthorized removal

EXPIRATION DATE: February 28, 2011

1. **What is the purpose of this bulletin?** The purpose of this bulletin is to remind heads of Federal agencies that official records must remain in the custody of the agency.

2. **What must heads of Federal agencies do to implement this bulletin?** Heads of Federal agencies must notify officials and employees that there are criminal penalties for the unlawful removal or destruction of Federal records (18 U.S.C. 2071 and 36 CFR 1228.102) and the unlawful disclosure of national security information (18 U.S.C. 793, 794, and 798). They must also provide guidance on the handling of records containing other information exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 522a) or other information restricted by law.

3. **Under what circumstances may officials remove records and documentary materials from Government custody?**

- a. Officials and employees must not remove Federal records from Government custody. Only the Archivist of the United States has the authority to approve the removal of Federal records from Government custody (44 U.S.C. Chapter 33). Under 36 CFR 1222.40 and 1222.42, agencies must develop procedures to ensure that departing officials and employees do not remove Federal records.
- b. Within agency guidelines, officials and employees may remove extra copies of records or other work-related, nonrecord materials when they leave the agency with the approval of a designated official of the agency, such as the agency's records officer or legal counsel.

1. Copies of records that are national security classified must remain under the control of the agency. If the agency permits removal, they must be transferred to a facility that has an appropriate level security storage area and safeguarded in accordance with Information Security Oversight Office requirements for national security classified materials (36 CFR 1222.42 and 32 CFR 2001.40 - 2001.53).
 2. Copies of records that are otherwise restricted (e.g., under the Privacy Act) must be maintained in accordance with the appropriate agency requirements.
- c. Officials and employees may remove documentary materials that are of a purely personal nature when they leave the agency. Personal materials include family and personal correspondence and materials documenting professional activities and outside business or political pursuits. However, in many cases, officials and employees intermingle their personal and official files. In those cases, the agency may need to review and approve the removal of personal materials to ensure that all agency policies are properly followed.

4. What materials are Federal records? As defined in 44 U.S.C. 3301, Federal records are documentary materials that agencies create and receive while conducting business that provide evidence of the agency's organization, functions, policies, decisions, procedures, and operations, or because they contain information of value. Records may be in paper, film, tape, disk, or other physical form. They may be generated manually, electronically, or by other means.

5. Are there Federal documentary materials that do not qualify as records? Materials such as extra copies of records kept solely for convenience of reference, library or museum materials, and stocks of publications and processed documents are excluded from the definition of "record" (44 U.S.C. Chapter 33). These work-related materials, though excluded from the definition of "record," nevertheless belong to and are controlled by the Government (36 CFR 1222.34(f)) and must not be removed unless approved as cited in par. 3.

6. How must officials and employees maintain records and documentary materials to distinguish and separate the different types of materials?

- a. Federal records must be maintained in agency files or electronic recordkeeping systems. Officials and employees must know how to ensure that records are incorporated into files or electronic recordkeeping systems, especially records that were generated electronically on personal computers. Only records needed for current operations, such as open case files, may be maintained at the official's or employee's desk.

- b. Depending on agency policies, agencies may permit officials and employees to keep extra copies for convenience of reference in their offices or workstations. However, officials and employees must obtain the agency's permission if they want to remove any of these materials from the agency (36 CFR 1222.42).

7. What do officials and employees do with records and other documentary materials that are no longer needed? Records are maintained in agency files and other recordkeeping systems. When a record is finalized, when a case file is closed, or at another appropriate time, the official or employee must follow established procedures for incorporating it into the appropriate recordkeeping system. Records must be maintained in recordkeeping systems so that they will be integrated, either physically or intellectually, with related records and where they will be accessible to all staff who may need them. Records must remain in the custody of the agency and may be removed only in accordance with the agency's guidelines.

8. What does an agency do if there is an unauthorized removal of records? If an agency knows of any actual or potential threat to records (e.g., removal, alteration, or destruction), it must contact the National Archives and Records Administration (NARA), as required by 36 CFR 1228.104. NARA will assist the agency in contacting the Attorney General for the recovery of any unlawfully removed records. It is also important to follow all agency internal reporting requirements, which may include reporting the threat to the agency's legal counsel and to its Inspector General.

9. Is further information available within my agency? Your agency's records officer has more information about the maintenance and disposition of records and extra copies of records. Your agency's records officer, legal counsel, or information security officer has more information about your agency's policies on the removal of extra copies of records and how to secure approval. The list of agency records officers is available online at <http://www.archives.gov/records-mgmt/agency/officers-lists.html>.

10. Is further information available from NARA?

- a. NARA's publication *Documenting Your Public Service* is available online at <http://www.archives.gov/records-mgmt/publications/documenting-your-public-service.html>.
- b. NARA's publication *Agency Recordkeeping Requirements* is available online at <http://www.archives.gov/records-mgmt/publications/agency-recordkeeping-requirements.html>.
- c. Information about NARA's records management regulations (36 CFR Chapter XII, Subchapter B), including the identification and protection of Federal records, is available online at <http://www.archives.gov/about/regulations/regulations.html>.

11. Is assistance available from NARA?

- a. NARA's Lifecycle Management Division provides assistance and advice to agency records officers in the Washington, DC, area. Your agency's records officer may contact the NARA appraiser or records analyst with whom your agency normally works. A list of the appraisal and scheduling work groups is posted on the NARA web site at <http://www.archives.gov/records-mgmt/appraisal/> The Records Management staff in NARA's regional offices provides assistance to records officers across the country. A complete list of NARA regional facilities may be found at <http://www.archives.gov/locations/>.
- b. Officials who wish to donate collections of personal papers and extra copies of records to a Presidential library may contact the National Archives and Records Administration, Office of Presidential Libraries (NL), Room 2200, 8601 Adelphi Road, College Park, MD 20740-6001, or by telephone at 301-837-3250.

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