

January 29, 2021

The Honorable David S. Ferriero
Archivist of the United States
National Archives and Records Administration
700 Pennsylvania Ave. NW
Washington, DC 20408

RE: The National Archives and Records Administration proposed rule concerning Federal Records Management: Digitizing Permanent Records and Reviewing Records Schedules

RIN 3095-AB99

Agency/Docket Numbers: FDMS No. NARA-20-0006 NARA-2021-001

Dear Mr. Ferriero,

The American Historical Association welcomes the opportunity to comment on the proposed rule, published in the Federal Register on December 1, 2020, “Federal Records Management: Digitizing Permanent Records and Reviewing Records Schedules” (RIN 3095-AB99). The AHA represents the interests of the professional historical community. We appreciate both the responsibility and challenges that the National Archives and Records Administration faces in selecting, preserving, and providing access to records that document the activities of federal agencies, as they relate to and reflect the lives of our diverse citizenry and communities.

We recognize that federal agencies need timelines and guidance in meeting federal records retention requirements; the proposed rule provides much needed specificity and direction. In particular, we appreciate NARA’s addition of a defined requirement that, every five years, agencies review records schedules which are ten or more years old. This will help ensure that new record forms and record keeping technologies are assessed as they are implemented by records creators and custodians. We therefore strongly support this requirement.

We, nevertheless, recommend that NARA integrate several methods into the proposed rule regarding records schedule reviews to ensure that this requirement results in effective reviews. For example, NARA must require the involvement of subject matter experts in each review process undertaken with an agency. This could be accomplished through deeper involvement of external, agency-specific records advisory boards in the reviews. We suggest that a review for subject expert involvement be considered by NARA as an amendment to 36 CFR part 1225, subparts 1225.12 and 1225.14. In addition, NARA should, as part of its own processes, regularly draw on the expertise of staff members throughout the agency who have appropriate subject backgrounds and training. Both of these steps would help federal agencies and NARA to better

identify and preserve records of permanent value, so that citizens might better understand and interpret critical events, trends, and actions documented in federal records.

We also, generally speaking, support the proposed additions to 36 CFR part 1236, Electronic Records Management. The definitions provided are clear and reflect best practices in the broader archival community, as well as standards that are typically accepted in non-federal archives. The specific requirements for administrative, descriptive, and technical metadata creation, as well as those for image quality and file formats, reflect community practices and will be sufficiently rigorous to ensure the discovery, renderability, and use of digitized materials, without imposing onerous requirements. In particular, we appreciate and support the requirement to ensure that associated records remain in relation to each other, so that the context of each individual record remains clear to future researchers. In addition, the quality management, inspection, project management, and validation requirements strike us as reasonable, understandable, thorough, and straightforward.

We note the following areas in which the proposed rule raises questions or issues needing further attention:

- It seems likely that federal agencies will have previously digitized some records for ease of access. We recommend that NARA establish a minimally acceptable baseline, so that such records might be considered for transfer. Otherwise, the foresight of those agencies to begin digitizing records prior to the development of the new standard may prevent or delay their transfer, particularly if the original paper copies have already been destroyed.
- The rule notes: “You may perform OCR during digitization to meet agency business needs and transfer the resulting files to NARA, but this subpart does not require OCR.” This strikes us as unwise. While OCR is not suitable for all record types, many typescript works can and should be provided optical character recognition at the time of scanning. This is a standard part of most digitization projects undertaken in non-federal archives. It also allows for better indexing and discovery of relevant research information.

Finally, we understand the need for these requirements, and that they are driven by the 2014 amendment of the Federal Records Act to require NARA to issue standards for reproducing records digitally “with a view to the disposal of the original records.” While we consider these standards effective in meeting that requirement, we also judge NARA to have exceeded the requirements of federal law by stating that records will be accepted *ONLY* in digital form. This reflects a fundamental change in NARA’s mission from the identification and protection of the permanently valuable records to the protection of images of records, from protection of originals to protection of facsimiles.

The rule is also being issued within a particular context, which makes it unlikely that either federal agencies or NARA will be able to effectively implement the standards of reproduction or to preserve access to digitized records, once they are transferred to NARA. In particular, NARA has inadequate infrastructure and staffing to take, preserve, and then make available such huge volumes of electronic records. The problem of dealing with classified or otherwise restricted documentation in the electronic environment is overwhelming and not addressed by these rules. As a result, this move to establish digitization standards potentially could effectively shut down access to records.

This point is doubly troubling when one considers some of the records that are affected. While many agencies have transferred, or will be transferring, by the 2022 deadline, either to the National Archives or to the FRCs, records dating into the 1990s and early 2000s, there are significant and crucial records that have not been, and will not be, transferred into the system by 2022. Examples include but are not limited to:

- Original Department of State SCI-level records (some dating back to the 1940s) and other high-level office files
- Original NRO records
- Most original NSA-held records of the NSA period (other than some relatively mundane files)
- Original CIA records dating back to the CIG period
- Original DOD/OSD SCI-level holdings
- Original DOD/DIA SCI-level holdings (as well as many other records)
- Many FBI files dating back to the 1920s (especially policy-type files that cover issues up to the present day)

Given the large volumes of such records, the part of the directive ordering agencies to retroactively digitize their permanent analog records is tantamount to an unfunded mandate, raising the distinct possibility that agencies will opt to either a) retain, rather than digitize and transfer, their records, or b) digitize them without meeting archival standards.

However well meaning, therefore, this directive could well delay, interrupt, or delay indefinitely the transfer of records. The result would be to jeopardize the records themselves while in long-term agency custody, making research into America's past more difficult and thereby depriving Americans of their history. The directive must therefore include both a cost-sharing formula to lessen the financial burden on the agencies, and the imposition of penalties for delaying the digitization and transfer processes.

Sincerely,

Sarah Weicksel
Director of Research and Publications
American Historical Association

Submitted via the Federal eRulemaking Portal: <http://www.regulations.gov> as per instructions in the Federal Register notice, RIN 3095-AB99