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Federal Agency Implementation of Records Schedules with Selection Criteria

Records Management Assessment Report

National Archives and Records Administration
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FEDERAL AGENCY IMPLEMENTATION OF
RECORDS SCHEDULES WITH SELECTION CRITERIA

INTRODUCTION

The National Archives and Records Administration (NARA), based on authority granted by 44 United States Code (U.S.C.) 2904(c)[1], is responsible for assessing the proper management of records in all media within federal agencies to protect rights, assure government accountability, and preserve and make available records of enduring value. Under this authority, NARA conducts records management oversight of federal agencies, including agency inspections, electronic system audits, and records management assessments. An assessment is a multi-agency evaluation of a specific topic, issue, or activity affecting records management (RM) processes, procedures, or policies.

All federal records, including those created or maintained for the government by a contractor, must be covered by a NARA-approved agency disposition authority or the NARA General Records Schedules. (36 CFR 1225.10). Basically records are determined to be either permanent and will become part of the holdings of the National Archives at some point in the future or are temporary and will be destroyed according to a time frame designated in the schedule. Agencies are responsible for identifying their records and submitting the requests for disposition authority. It is NARA's responsibility, per 36 CFR 1225, to approve the request. If the schedule no longer fits the agency's business processes or needs to be revised for other reasons, it is the agency's responsibility to submit the request to revise the schedule. (36 CFR 1225.22).

In FY 2022, NARA conducted an assessment of the implementation of federal agency records schedules containing records selection criteria. As this assessment report will detail, there are some record series that contain a mix of records that are both temporary and permanent and therefore require what is known as selection criteria. Selection criteria are often applied to records of voluminous scope, such as case files and research projects, and can include language instructing an agency program to select records based on historical or programmatic significance. Frequently, the criteria include language that has evolved into a standard set of criteria since NARA began reviewing and approving agency records schedules in the 1950s. Included in this common selection language are the following general categories:

- Records of national or regional significance
- Records that attracted widespread media attention
- Records that drew Congressional attention or scrutiny
- Records that resulted in significant controversy
- Records that changed agency policies or procedures
- Records that resulted in a legal decision of some kind
- Records designated by NARA or the agency to be historically significant

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[1] For all U.S.C. 44 citations: NARA Basic Laws and Authorities.

These criteria have developed over time, but agencies often develop selection criteria specifically suited to their needs in coordination with NARA appraisal archivists. Examples include major incident records, statistical selections, monetary selections, first of kind research and so on. These criteria are typically used to define dispositions for permanent records and will include dispositions for those records not selected as temporary items.

Schedule implementation can be a difficult process and those with selection criteria have an added layer of complexity. The selection process needs to be well defined, deliberate, and clearly articulated by agency guidance and procedures.

In conducting this assessment of these types of records schedules, NARA found a number of challenges that the majority of participating agencies had in common, as well as a few that were unique to a particular agency or record series.

ASSESSMENT SCOPE

The discussions for this assessment focused on how the agencies were implementing their selection criteria including staff guidance and procedures, and any challenges to implementation. This assessment did not include re-appraisal or the re-defining of existing selection criteria.

METHODOLOGY

NARA staff reviewed existing records schedules with selection criteria and asked participating agencies to submit related documentation including all policies, procedures or directives concerning the implementation of schedules with selection criteria. NARA then conducted interviews with each agency's records management and mission or program staff responsible for the records covered by the selection criteria. Questions focused on schedule implementation policies, business functions related to the records schedule, procedures, training for program staff on schedule implementation, challenges and suggestions for improvements.

PARTICIPANTS

Eight agencies participated in this assessment, each with varying types of selection schedules from traditional high profile or historically significant case selections to granular case or project selections.

- Department of Commerce/National Oceanic and Atmospheric Administration
- Department of Health and Human Services/Food and Drug Administration
- Department of Justice/Executive Office of the United States Attorneys
- Department of Homeland Security/United States Coast Guard
- Department of Homeland Security/Transportation and Safety Administration
- National Archives and Records Administration
- Nuclear Regulatory Commission
- Department of Labor/Wage and Hour Commission

KEY POINTS

NARA has been aware of agency difficulties implementing schedules with selection criteria for a considerable period of time. A number of these difficulties have surfaced while conducting records management program inspections, during transfers of permanent records to the National Archives or to Federal Records Centers for storage. For example, while interviewing agencies in a recent inspection of regulatory agencies,[2] it was found that several agencies had not correctly applied selection criteria to their records as defined in a NARA-approved records schedule. As a result, NARA could not accept transfers of permanent records because they contained a mix of permanent and temporary records. Efforts to correct these problems do force agencies to invest considerable time and resources to determine the proper disposition of records. This assessment report discusses several causes for this situation emphasizing the lack of procedures, guidance, or training on how to implement the schedule for the records creators and/or those responsible for transferring permanent records and disposing of temporary ones.

Another important factor is the criteria themselves. Criteria can be subjective, broadly defined, and poorly described. In other instances, criteria can be so granular as to make recordkeeping cumbersome or ineffective. Unfortunately, failure to adequately define or explain selection criteria can result in the "non-selection" of records by agency program personnel. This can cause staff to default to declaring all records in a series permanent or temporary. One choice presents the danger of retaining enormous amounts of unnecessary material as permanent and the other the loss of permanent records in the destruction of files designated incorrectly as temporary. The unfortunate consequence when an agency selection process is *ad hoc* or ignored is the need for intensive corrective actions to resolve legacy issues after the volume of records has grown to an unsustainable level. Often awareness of these issues is only triggered after permanent records transfers are rejected by NARA, office space issues arise, or the ability to respond to business unit needs such as Freedom of Information Act (FOIA) requests or legal discovery searches are impacted. While this sounds like an issue limited to analog records; the failure to apply selection criteria to electronic records results in overburdened servers, cloud storage costs or legacy records retained in "at-risk" storage environments such as shared drives or Sharepoint sites.

Based on the information provided by the participating agencies this report discusses the following key points:

- It is essential that selection criteria be adequately defined during schedule creation and described in agency records management guidance once the schedule is approved.
- Agency mission/program staff have a critical role when creating and implementing selection criteria.
- There are not any current policies, guidelines, and guidance in place for selection criteria.
- Implementation of selection criteria is often difficult, handled in an *ad hoc* fashion or not being done at all.
- Instead of reviewing and revising selection criteria that prove to be unworkable, agencies create workarounds or do not implement the criteria consistently.

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[2] Management of Permanent Regulatory Records Multi-Agency Inspection Report.

Records Schedule Development and Defining Criteria

Schedule Creation

The use of selection criteria in NARA-approved records schedules is a useful mechanism to separate significant permanent records from temporary records in voluminous records series. It is not practical or feasible for NARA to maintain thousands of case files, project files, or research records that agencies create each year when only a small percentage are permanently valuable. One single office interviewed closed 400 case files a week while another handled 16,000 cases a year. Not all of these records need to be retained permanently by NARA as many are routine, day to day case files or project files. Still, there may be a small percentage within these files that have historical significance that require their retention by the agency and NARA.

To separate important records from those of a routine nature, selection criteria categories are determined by agency records management programs in consultation with NARA appraisal archivists. These categories are listed in the NARA-approved records schedules but are frequently not defined or described in the schedule in any detail that clarifies how the criteria should be applied. This level of description of the records to be selected is typically left to the agencies to define through internal policy, procedures, or guidance. However, this important implementation activity is often neglected or inadequate.

Only one of the participating agencies provided descriptions and definitions of all records to be selected by the program implementing its schedule and even those criteria were being redefined due to difficulties using them as originally described. Another agency has a draft schedule defining selection criteria for agency personnel that provides examples of records to be selected. Most agencies simply referred program units back to the approved schedules with little or minimal guidance. In one instance an email was sent to program staff simply citing the selection criteria in the schedule and directing staff to review a large number of records transfers for significant case files with no further instructions. The consensus is that staff really do not know how to determine which files meet the criteria. Most of the agencies based the records selection decision on a 'we just know it when we see it' approach. While this might be somewhat accurate, that it is self-evident when a case file or project is significant, it is not an adequate or defensible procedure.

Stakeholders

It is important when creating any records schedule that the creators, users, and other agency stakeholders be consulted in order to fully understand the purpose of the records, the accountability they represent and any legal or statutory elements that determine retention. For selection criteria this is vitally important in determining appropriateness or adequacy of its use. Several participating agencies indicated that implementation challenges were due in part because the schedule was developed without the full input of impacted staff who then did not agree with or understand the criteria. It is crucial to involve program personnel who create or use the records in the scheduling process. The selection criteria should be reviewed by the impacted agency programs to ensure the descriptions match the terminology by the program, business or

function. Schedules citing specific programmatic criteria should involve the concerned program from the outset of the scheduling process for criteria to be clearly and accurately defined.

Schedule Implementation

In 1990, a NARA appraisal staff member noted that the inclusion of selection criteria in a schedule "matters naught, if the schedule is not correctly implemented by agency personnel." What was true then holds true today.

Procedures, Guidelines and Guidance

Most of the agencies asked to provide selection guidance and procedures for the assessment were unable to do so. Those that had the requested documents created them only after significant issues occurred when attempting to implement the approved records schedule. In one case the disposition of approximately ***one million cubic feet*** of records was halted because the approved schedule could not be implemented as written. As a result, the agency developed a procedure to retroactively identify permanent records as described in the schedule and is drafting a new schedule to revise their current selection criteria. In another case, a procedure was recently written independently by program staff to define a significant event in order to resolve their schedule issue. They did not coordinate with records management and did not address other events enumerated in the records schedule. In another instance, an agency developed extensive procedures regarding the selection of project case files for inclusion in an agency archive with no corresponding procedure for identifying permanent case files for future transfer to the National Archives. As a further example, an outdated procedure was maintained in a manual for records that no longer had a selection requirement. Most agencies indicated oral communication and consultation with concerned program personnel as the way selections were typically made instead of establishing procedures, guidelines or guidance.

Training

Training program staff responsible for records selection is essential to the success of the schedule. Interviews with program/mission staff were conducted by NARA. It was clear that program staff are not properly trained on how to implement selection either at the time of records creation, closure of the case file, or when a retention period has expired. Only one agency had training specifically associated with the implementation of its schedule. The other seven agencies relied on program area staff members to select significant records solely on their knowledge of their program or their place within the organization. Staff in these areas could be senior leaders, legal staff, subject matter experts, project directors, case managers or records managers. Frequently, the response to how a record was selected as permanent was "they just know when it is significant.". The actual definition of significance was not clear and had not been defined for staff nor was there training available to assist staff in making records selections.

Electronic Records and Electronic Information Systems (EIS)

The implementation of selection criteria in agency EIS presents difficulties particularly if a system was developed prior to the approval of a schedule or without full knowledge of an approved schedule. Agencies interviewed used EIS for case management or tracking in five instances. In four cases, it was indicated that the EIS could flag significant records but it was not clear if the systems were flagging according to the selection criteria in the approved records schedule or by opinion. One system did include a drop down menu that was based specifically on the selection criteria enumerated in the schedule. However, this was a tracking database and not a case management system. Another agency had a good flagging system but it did not correspond to the NARA-approved records schedule.

As agencies move toward a fully electronic environment, the implementation of selection criteria in EIS and electronic records management (ERM) systems becomes an increasingly pressing issue. The use of EIS to implement selection criteria presents agencies with a robust tool to designate permanent and temporary files according to their approved records schedules and track records more effectively and efficiently through their lifecycle. Assessment interviews, however, indicated that there is still a need for guidance and training in this area as agencies relied on users to "know" when a file was significant and then flag it in a system.

Determining Disposition

While all eight agencies indicated some challenges, two agencies interviewed discussed in detail the difficulties they encountered with the final disposition of their records. In one case the agency had to halt disposal and transfer activities to address selection issues while the other had to request program reviews to ensure that selections had been made on records proposed for disposal. In each case, the agency faced questions over the final disposition of thousands of case files and the possibility of questions regarding records disposals. Without an approved selection procedure in place both agencies place themselves at risk to charges of unauthorized disposals or, at the very least, inappropriate disposals. A review process of records during the routine course of business and prior to their final disposition could prevent this circumstance from occurring.

NARA as the selecting authority

Schedules with selection criteria sometimes grant NARA review authority to select historically significant records but rarely include a process to implement this authority. One agency interviewed that had this in its approved schedule noted that it was not clear when NARA would exercise its right of review during the records lifecycle as no process or procedure had been defined by the agency or NARA. Given that retentions of permanent records can call for the transfer of records to NARA 15-30 years or more after creation, completion, or close of a file, it is difficult for NARA staff, who may be unfamiliar with the agency's business processes or history, to make determinations about the significance of individual case files or groups of records. Both agencies and NARA should be careful to develop policies and procedures about when it is appropriate to include NARA in the decision making process for records selection

purposes. Schedules that grant NARA the right to review records for selection prior to transfer should clearly define specific parameters and pathways for this activity.

Selection Criteria Over Time

Regular Reviews of Criteria

Regardless of their age, records schedules with selection criteria require regular reviews by agency records management programs to ensure they are adequate to meet the needs of the impacted programs. 36 CFR 1225 covers records scheduling with 1225.12 delineating when schedules should be revised or re-submitted. Changes in program structures, missions, and even personnel can alter a records schedule and the application of selection criteria. The development of EIS can also have a significant impact on program records and should trigger a review of the records schedule and selection criteria.

In five of the participating agencies the selection criteria were outdated or no longer applied to the programs or records they described. After the assessment interviews, all of the agencies noted that they would review the schedules to determine if the selection criteria were still valid and update their schedules as necessary. One agency is currently rewriting its schedule with new criteria. In another case, the agency determined that although the schedule itself was outdated, the selection criteria were still valid to the program. That agency intends to rewrite the schedule to update it to reflect current formats and practices and will revisit the selection criteria. Additionally, one agency wants to review the current schedule to determine if the selection criteria are necessary at all. Conversely, one agency eliminated the selection criteria for a voluminous series of records resulting in the permanent retention of over 100,000 case files in a single EIS. Simply eliminating selection criteria in a schedule is not the answer to resolve difficult implementation issues, and should be discussed with NARA's appraisal staff. When thoughtfully created, defined, and implemented selection criteria avoid decisions to distinguish permanent records that are based arbitrarily on opinion or individual preference.

What if the selection criteria does not work?

Sometimes what is created in theory does not work in practice. Once a schedule is approved by NARA and implemented by the agencies it may not work as intended. When this is the case, there needs to be a method for correcting or refining the criteria. Interviews found a hesitancy to revisit approved schedules for a variety of reasons. The most common was that the schedule and appraisal process can be arduous and long, and the thought of revisiting it unappealing. Therefore, even when found to be unworkable, selection criteria are not being refined.

In two cases difficulties implementing the NARA-approved selection criteria were noted by the agencies either shortly after a schedule was approved or upon review of the implementation of the schedule by program personnel. In one case, the agency continued to use a superseded schedule because of the difficulties implementing the new schedule until ordered to halt by NARA. In another case the agency identified selection issues in 2015, but has not moved to correct them.

Adjusting agency schedules with selection criteria can be a difficult task, but allowing problems to go unaddressed can create serious difficulties, including legal risk and unexpected costs, for both the agency and NARA when records have not been properly identified and selected. If records are allowed to be retained because the selection criteria are not understood, unworkable or without any review as prescribed by the selection criteria, staff or program knowledge of the records can fade. The volume of records that need to be reviewed can become too cumbersome. Regardless of why the selection criteria are not being implemented, disposition is adversely impacted and there is a risk of the loss of permanent records. If schedules cannot be implemented as intended, the agency should alert NARA as soon as possible and discuss revisions.

RECOMMENDATIONS FOR FEDERAL AGENCIES

To be successful when using records schedules with selection criteria agencies should:

- Clearly list criteria to be applied in the records schedule when submitting the schedule for NARA approval.
- Develop clear written procedures, guidance and guidelines that provide descriptions and definitions of the individual selection criteria elements.
- Train staff working with records that require the application of selection criteria.
- Include flag fields or other methods within EIS based on the selection criteria for future determination of permanent records.
- Establish procedures for selecting potential permanent records at the time a case or project is closed and a review of selected cases when the selected permanent records are eligible for transfer to determine if the records still meet the criteria.
- Review schedules and selection criteria routinely to be sure they still meet business needs.
- Evaluate selection criteria implementation when a new EIS is being developed or an existing EIS is being updated.
- Verify selection criteria implementation prior to the disposal of records.
- Contact NARA for review of selection criteria when encountering significant difficulties implementing selection criteria.

WHAT CAN NARA DO?

- Develop a review process for schedules that impose selection criteria that is rigorous enough to ensure the criteria can be implemented by the agency.
- Develop a review process for schedules that remove all selection criteria from previously approved record series to verify the appropriateness of this decision.
- Consider requiring the submission of implementation plans or procedures as part of the appraisal process for schedules with selection criteria.
- Develop implementation policies, plans, and procedures with the concerned agency when NARA is included as a selecting authority or partner in a records schedule.
- Include selection criteria when appropriate during inspections of records management programs.

CONCLUSION

Record schedules that include selection criteria to separate permanent records from temporary records within the same record series require additional attention at the time of creation of the schedule as well as when final disposition occurs. In order to be implemented properly these schedules require detailed definitions, instructions, staff training and careful monitoring. Regardless of format, but particularly in EIS or tracking databases, it is critical that the selection criteria be built into routine practices to identify potentially permanent records. Separating potentially permanent records as early as possible in their lifecycle can prevent large backlogs and time consuming corrective efforts. It may also prevent the premature destruction of permanent records with temporary ones. The purpose of this assessment was to bring awareness to the special needs of this type of records schedule. Using the information provided by the participating agencies and the recommendations made by this assessment, agencies should be able to create and implement these types of schedules more effectively.

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