AN ACT

To amend title 44, United States Code, to require preservation of certain electronic records by Federal agencies, to require a certification and reports relating to Presidential records, and for other purposes.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Electronic Message Preservation Act”.

SEC. 2. PRESERVATION OF ELECTRONIC MESSAGES.

(a) REQUIREMENT FOR PRESERVATION OF ELECTRONIC MESSAGES.—

(1) IN GENERAL.—Chapter 29 of title 44, United States Code, is amended by adding at the end the following new section:

“§ 2911. Electronic messages

“(a) REGULATIONS REQUIRED.—Not later than 18 months after the date of the enactment of this section, the Archivist shall promulgate regulations governing agency preservation of electronic messages that are records. Such regulations shall, at a minimum—

“(1) require the electronic capture, management, and preservation of such electronic records in accordance with the records disposition requirements of chapter 33 of this title;

“(2) require that such electronic records are readily accessible for retrieval through electronic searches;

“(3) establish mandatory minimum functional requirements for electronic records management systems to ensure compliance with the requirements in paragraphs (1) and (2);
“(4) establish a process to certify that Federal agencies’ electronic records management systems meet the functional requirements established under paragraph (3); and

“(5) include timelines for agency compliance with the regulations that ensure compliance as expeditiously as practicable but not later than four years after the date of the enactment of this section.

“(b) COVERAGE OF OTHER ELECTRONIC RECORDS.—To the extent practicable, the regulations promulgated under subsection (a) shall also include requirements for the capture, management, and preservation of other electronic records.

“(c) COMPLIANCE BY FEDERAL AGENCIES.—Each Federal agency shall comply with the regulations promulgated under subsection (a).

“(d) REVIEW OF REGULATIONS REQUIRED.—The Archivist shall periodically review and, as necessary, amend the regulations promulgated under this section.

“(e) REPORTS ON IMPLEMENTATION OF REGULATIONS.—

“(1) AGENCY REPORT TO ARCHIVIST.—Not later than four years after the date of the enactment of this section, the head of each Federal agency shall submit to the Archivist a report on the agency’s
(2) Archivist report to Congress.—Not later than 90 days after receipt of all reports required by paragraph (1), the Archivist shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on Federal agency compliance with the regulations promulgated under this section.”.

(2) Clerical amendment.—The table of sections for chapter 29 of title 44, United States Code, is amended by adding after the item relating to section 2910 the following new item:

“2911. Electronic messages.”.

(b) Definitions.—Section 2901 of title 44, United States Code, is amended—

(1) by striking “and” at the end of paragraph (14);

(2) by striking the period at the end of paragraph (15) and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

“(16) the term ‘electronic messages’ means electronic mail and other electronic messaging sys-
tems that are used for purposes of communicating
between individuals; and

“(17) the term ‘electronic records management
system’ means a software system designed to man-
age electronic records within an information tech-
nology system, including by—

“(A) categorizing and locating records;
“(B) ensuring that records are retained as
long as necessary;
“(C) identifying records that are due for
disposition; and
“(D) the storage, retrieval, and disposition
of records.”.

SEC. 3. PRESIDENTIAL RECORDS.

(a) ADDITIONAL REGULATIONS RELATING TO PRESI-
DENTIAL RECORDS.—

(1) IN GENERAL.—Section 2206 of title 44,
United States Code, is amended—

(A) by striking “and” at the end of para-
graph (3);

(B) by striking the period at the end of
paragraph (4) and inserting “; and”; and

(C) by adding at the end the following:

“(5) provisions for establishing standards nec-
essary for the economical and efficient management
of Presidential records during the President’s term of office, including—

“(A) records management controls necessary for the capture, management, and preservation of electronic messages;

“(B) records management controls necessary to ensure that electronic messages are readily accessible for retrieval through electronic searches; and

“(C) a process to certify the electronic records management system to be used by the President for the purposes of complying with the requirements in subparagraphs (A) and (B).”.

(2) DEFINITION.—Section 2201 of title 44, United States Code, is amended by adding at the end the following new paragraphs:

“(5) The term ‘electronic messages’ has the meaning provided in section 2901(16) of this title.

“(6) The term ‘electronic records management system’ has the meaning provided in section 2901(17) of this title.”.

(b) CERTIFICATION OF PRESIDENT’S MANAGEMENT OF PRESIDENTIAL RECORDS.—
(1) Certification required.—Chapter 22 of title 44, United States Code, is amended by adding at the end the following new section:

“§ 2208. Certification of the President’s management of Presidential records

“(a) Annual Certification.—The Archivist shall annually certify whether the records management controls established by the President meet requirements under sections 2203(a) and 2206(5) of this title.

“(b) Report to Congress.—The Archivist shall report annually to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives on the status of the certification.”.

(2) Clerical amendment.—The table of sections for chapter 22 of title 44, United States Code, is amended by adding at the end the following new item:

“2208. Certification of the President’s management of Presidential records.”.

(c) Report to Congress.—Section 2203(f) of title 44, United States Code, is amended by adding at the end the following:

“(4) One year following the conclusion of a President’s term of office, or if a President serves consecutive terms one year following the conclusion of the last term, the Archivist shall submit to the Committee on Homeland
Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on—

“(A) the volume and format of Presidential records deposited into that President’s Presidential archival depository; and

“(B) whether the records management controls of that President met the requirements under sections 2203(a) and 2206(5) of this title.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect one year after the date of the enactment of this Act.

SEC. 4. PROCEDURES TO PREVENT UNAUTHORIZED REMOVAL OF CLASSIFIED RECORDS FROM NATIONAL ARCHIVES.

(a) IN GENERAL.—The Archivist of the United States shall prescribe internal procedures to prevent the unauthorized removal of classified records from the National Archives and Records Administration or the destruction or damage of such records, including when such records are accessed or searched electronically. The procedures shall include the following prohibitions:

(1) No person, other than personnel of the National Archives and Records Administration (in this section hereafter referred to as “NARA personnel”),
shall view classified records in any room that is not secure except in the presence of NARA personnel or under video surveillance.

(2) No person, other than NARA personnel, shall at any time be left alone with classified records, unless that person is under video surveillance.

(3) No person, other than NARA personnel, shall conduct any review of documents while in the possession of any cell phone or other personal communication device.

(4) All persons seeking access to classified records, as a precondition to such access, must consent to a search of their belongings upon conclusion of their records review.

(5) All notes and other writings prepared by persons during the course of a review of classified records shall be retained by the National Archives and Records Administration in a secure facility.

(b) DEFINITION OF RECORDS.—In this section, the term “records” has the meaning provided in section 3301 of title 44, United States Code.
SEC. 5. RESTRICTIONS ON ACCESS TO PRESIDENTIAL RECORDS.

Section 2204 of title 44, United States Code (relating to restrictions on access to presidential records) is amended by adding at the end the following new subsection:

“(f) The Archivist shall not make available any original presidential records to any individual claiming access to any presidential record as a designated representative under section 2205(3) if that individual has been convicted of a crime relating to the review, retention, removal, or destruction of records of the Archives.”.

Passed the House of Representatives July 9, 2008.

Attest:

Clerk.
AN ACT

H.R. 5811

110TH CONGRESS

To amend title 44, United States Code, to require preservation of certain electronic records by Federal agencies to improve the ability of Presidential records to be preserved, and for other purposes.