

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**36 CFR Parts 1220, 1222, 1228, and 1234**

RIN 3095-AA58

Electronic Mail Systems**AGENCY:** National Archives and Records Administration.**ACTION:** Final rule.

SUMMARY: The National Archives and Records Administration (NARA) is issuing standards for management of Federal records created or received on electronic mail (e-mail) systems in these amendments to 36 CFR Chapter XII. The standards will affect all Federal agencies.

On March 24, 1994, NARA published a notice of proposed rulemaking on standards for the management of e-mail records. In response to this notice NARA received 92 comments (comprising approximately 1500 pages) covering a wide range of issues from Federal agencies, private organizations, and interested individuals. NARA has revised its proposal to reflect many of the comments received and to clarify and focus the standards. The standards now being issued are framed in regulatory language, rather than as an appendix to 36 CFR Part 1234 as formerly proposed. The final rule places e-mail into its proper context in the appropriate parts of 36 CFR Chapter XII, including specifically creation and maintenance of records, regardless of media.

EFFECTIVE DATE: September 27, 1995.

FOR FURTHER INFORMATION CONTACT: James J. Hastings, Director, Records Appraisal and Disposition Division, National Archives at College Park (NIR), 8601 Adelphi Road, College Park, MD 20740-6001, or by telephone on 301-713-7110 ext. 274.

A complete set of the responses to the notice of proposed rulemaking that was published on March 24, 1994, is available for public inspection at the address listed above.

SUPPLEMENTARY INFORMATION:**Background**

Because nearly all Federal agencies now use e-mail to transact Government business, there is the need for Government-wide standards on managing e-mail records. NARA published a Notice of Proposed Rulemaking on standards for managing e-mail records on March 24, 1994 (hereafter referred to as the March standards). There was significant

response to this proposal, particularly on the part of those who will be affected more immediately by the rule—the Federal Government agencies. Ninety-two responses were received, of which 76 were from Federal agencies, 13 from other organizations, and three from the general public. The vast majority of comments from Federal agencies were critical of the March standards; most of the comments from other organizations were supportive.

In addition to the specific responses listed below, NARA has made two overall revisions that will clarify the coverage of the regulations and provide further guidance. The first of these changes is the framework of the standards. The March standards were written as an appendix to 36 CFR Part 1234. As an appendix to the regulations, the standards were not clearly understood because many of the provisions were duplicative of other sections of 36 CFR Subchapter B or were out of context. Accordingly, NARA now has revised various sections of 36 CFR Subchapter B to incorporate the records management standards for e-mail. Incorporating the provisions concerning e-mail in the appropriate sections will clarify coverage and accomplish the critical goal of placing e-mail in context with the creation, maintenance, and disposition of records in all media.

The second overall change NARA has made is to better focus the final regulations by eliminating references that were in the March standards to future e-mail systems, advantages of electronic recordkeeping, and other non-regulatory matters. These important considerations are more appropriately addressed by NARA, in consultation with other agencies and organizations, in separate guidance rather than in regulations. NARA will issue bulletins and publications concerning the application of the Federal Records Act to the modern office environment. These issuances will address electronic recordkeeping requirements and other matters relating to the effect of office automation on records management. NARA will continue to issue guidance, working with agencies and representatives of the computer industry, to assist agencies to adapt their recordkeeping requirements to the rapid developments in information technology.

The revised framework and the improved focus of the standards will clarify their purpose—to define requirements for proper identification and preservation of Federal records created or received on e-mail systems.

The regulations and guidance will allow agency officials to make decisions

about the most appropriate and effective use of e-mail, and, therefore, to make maximum use of its potential.

Comments and Response

The following are summaries of and responses to the major comments that were received. They are listed in descending order according to the percentage of respondents who addressed each issue.

1. Comment: The March Standards Would Be Too Expensive and Burdensome

Seventy percent of the agencies and 60% of all respondents commented that implementation of the requirements in the March standards would be too expensive and burdensome. Many of the agencies interpreted the regulations as requiring electronic maintenance of e-mail records. Most agencies, because their current e-mail systems were not designed to manage records, must maintain their e-mail records on paper and file them with other records. Few agencies currently have the technical capability or recordkeeping need to maintain e-mail records electronically for their full retention period. Most of the agencies that responded stated clearly that their systems do not have the capacity to maintain their e-mail electronically and that it would require unreasonable time and expense to modify or replace their systems. The burden would be particularly great because current off-the-shelf software products do not provide full records management functionality. Many agencies indicated that they are considering the benefits of electronic recordkeeping and plan to adopt it in the future, particularly when off-the-shelf software products are available. They objected strongly, however, to a regulatory requirement to do so.

Response: While the proposed standards encouraged agencies to consider the benefits of electronic recordkeeping, neither the standards nor the Federal Records Act require electronic recordkeeping. NARA recognizes that agency e-mail systems have different characteristics and that agencies have varying recordkeeping requirements and procedures. Accordingly, the final standards have been revised to clarify that they apply to e-mail messages that meet the definition of record in the Federal Records Act, regardless of the media on which they are preserved, and to provide realistic requirements that agencies can meet immediately. As indicated above, guidance that is to be issued by NARA will address how agencies can use electronic

recordkeeping to meet their recordkeeping requirements and will describe the advantages of automated records management.

Other areas that agencies considered too costly and burdensome concerned training and monitoring the proper management of e-mail records. For a summary and response to these comments, see #11, below.

Many agencies observed that implementing the proposed standards would be so burdensome that it would violate the spirit and intent of the President's National Performance Review initiative to streamline Government and reduce regulations. E-mail affords the opportunity for very efficient communications within agencies, with other organizations, and with the citizenry as a whole. The burden of implementing the standards as proposed would make e-mail more cumbersome and would place obstacles in the way of a streamlined Government.

NARA recognizes that e-mail has a major role in the efficiency of communications; widespread and easy use of e-mail has made it an important tool for the conduct of Government business. Accordingly, agencies should ensure that e-mail messages that document their policies, programs, and functions are appropriately preserved. Therefore, agencies must put into place policies and procedures that ensure that e-mail records are identified and preserved. The final standards now being issued afford discretion as to how agencies will fulfill this responsibility but do not allow agencies the discretion as to whether they will accomplish it. If agencies are creating or receiving e-mail messages that meet the definition of records in the Federal Records Act, and most agencies that commented agreed that they are, then they must have a program in place that preserves these records for the appropriate period of time.

2. Comment: Clarification Needed Between Record and Nonrecord E-mail

Nearly 45% of the Federal agencies and more than 40% of the non-Federal respondents expressed concerns about making the distinction between record and nonrecord e-mail. Most indicated that under the March standards too many e-mail messages would be determined to be records, thus clogging the system with unimportant messages. Of particular concern was the paragraph that stated that all copies of e-mail messages must be evaluated as to whether they are records or not. Respondents believe that this would lead to needless retention of many

duplicates of messages. Agencies requested NARA to clarify what constitutes the record copy. Furthermore, the language and examples that were used in the proposed standards would result in all but the most ephemeral messages being considered records. Many of the agencies also expressed concern about the treatment of drafts in the proposed standards. They commented that the March standards exaggerated the importance of drafts.

Response: NARA believes the final standards now being issued will put e-mail into its proper context and provide for preservation of only those messages that are required for agencies to fulfill their obligation under the law for adequate and proper documentation of agency organization, functions, policies, decisions, procedures, and essential transactions. Agencies have long been required to have in place recordkeeping requirements that specify what records are to be created and how they are to be preserved. By placing the e-mail provisions in context with the overall requirements agencies already have for appropriate creation, maintenance, and disposition of Federal records, NARA has stressed the importance of recordkeeping requirements regardless of media and, at the same time, reinforced the need to consider e-mail as an important tool for records creation and receipt. E-mail records are no more and no less important than other records. Agency personnel must apply the same decision-making process to e-mail that they apply to other documentary materials regardless of the media used to create them. Proper implementation of these regulations will result in thorough documentation of agency activities.

The provision in the March standards concerning multiple copies of messages potentially being records was simply a restatement of long-established NARA policy. The policy is that multiple copies of the same document *may* meet the definition of records if each of them is used to transact agency business. Copies that have such record status are usually filed in different recordkeeping systems and are used for different purposes. Not all copies, therefore, would necessarily be considered records. This provision was included in the March standards to ensure that agencies understood that it applied to e-mail just as it has applied for many years to records in other formats. The final regulations continue to have a provision concerning multiple copies. It is now placed in 36 CFR 1222.34, Identifying Federal Records, so it will be in context with other categories of

materials that must be evaluated to determine their record status.

The purpose of including the provisions on drafts in the March standards was to highlight the point that e-mail systems are often used to circulate draft documents and, as specified in 36 CFR 1222.34, drafts may meet the definition of Federal record. The preservation of drafts, including those circulated on e-mail systems, could be necessary for an agency to meet its recordkeeping requirements. Draft documents or working papers that propose or evaluate high-level policies or decisions and provide unique information that contributes to the understanding of major decisions of the agency should be preserved as Federal records. Agencies should apply the same criteria specified in 36 CFR 1222.34 to drafts that are circulated on e-mail systems as they apply to drafts circulated by other means. The final regulations now being issued continue to stress that drafts and other working papers that are circulated on e-mail systems may be records. The provision for this has been placed in 36 CFR 1234.24, in the context of an agency's overall responsibility for managing electronic mail records.

3. Comment: Further NARA Guidance is Needed

Almost one half of the Federal agencies indicated in their comments that more overall guidance is needed from NARA before they could meet the broader requirements they believed the March standards implied. In addition, many agencies requested that NARA work with agencies and vendors to help develop off-the-shelf software that will accomplish the goals of electronic recordkeeping, encryption and authentication functions, and other specific features that will be required when agencies convert from paper to electronic recordkeeping.

Response: As indicated previously, NARA agrees that there is a need for work in these areas and it has a major responsibility in the development of this guidance. The regulations, however, must be limited to basic requirements; other issuances will provide guidance that explains the requirements and will offer suggestions for compliance. Future guidance from NARA, including a revision of the "Managing Electronic Records" handbook, will address electronic recordkeeping requirements in the office automation environment, and provide guidance for the identification of e-mail records and other information that will prove useful to agencies as they progress to more sophisticated technologies.

One specific area of confusion has been addressed in these regulations. Agencies expressed concern about the difference between electronic *records* systems and electronic *recordkeeping* systems. To clarify the distinction, the term "electronic records system" has been changed to "electronic information system" in 36 CFR 1234.2. The term "electronic information system" is more inclusive than "electronic recordkeeping system" and would include any automated system that contains and provides access to data whether or not it provides records management functions; the term "electronic recordkeeping system" is limited to those electronic information systems that are designed to organize, categorize, and otherwise control the creation, maintenance, and disposition of records. The definitions of electronic recordkeeping system and electronic information system have been added to the regulations to clarify this distinction (See 36 CFR 1234.2). Most e-mail systems currently in use are not designed for the preservation, use, and appropriate disposition of records so they are electronic information systems, not electronic recordkeeping systems. See 36 CFR 1234.24 (b)(2) for instructions to agencies for preserving e-mail records in recordkeeping systems.

4. Comment: The March Standards Would Have a Chilling Effect on the Use of E-mail

Approximately 40% of the Federal agency respondents expressed concerns that implementing NARA's proposed standards would bring about a chilling effect that would limit the use and usefulness of e-mail systems. Some felt that monitoring individual mailboxes would be unnecessarily invasive and far beyond what is done with paper or records in other media. Others indicated that the informal nature of e-mail messages is the main attraction of the system and NARA's proposed standards would inappropriately formalize the communications and, in this way, inhibit use. Still others commented that the obligation placed on users to consider the record status of every message and to take appropriate actions to preserve those that have been determined to be records would place unreasonable burdens on staff, would reduce productivity, and would destroy rapid communication, the most important feature of e-mail.

Response: The majority of the agencies in their comments agreed that Federal records are being created on their e-mail systems. Because of this, a number of agencies already have in place records management requirements

pertaining to e-mail. These requirements provide simple instructions for staff to follow about what materials may be created on e-mail systems and the categories that may constitute Federal records. There is no indication that these instructions have had a chilling effect on the use of e-mail. Agencies that lack guidance, however, may not be creating and preserving adequate records and may not be taking advantage of the full benefits of e-mail. Clear guidance will allow agency staff to make decisions about the most appropriate and effective use of e-mail, and, therefore, make maximum use of its potential.

The final standards now being issued put the obligation to identify e-mail records in the context of 36 CFR Part 1222 Creation and Maintenance of Federal Records, which provides instructions on creation and maintenance of records in all media. This context should reassure those agencies who feared that the standards would inhibit use because the requirements are the same for records in all media. If e-mail is used for records creation or receipt, 36 CFR Part 1222 applies.

5. Comment: The Proposed Standards Overly Emphasized the Importance of E-mail

More than 30% of the Federal agencies said that the March standards overly emphasized e-mail because of the extraordinarily detailed and stringent requirements for managing e-mail compared to other records. Agencies expressed the concern that such lengthy standards for e-mail inflated the value of e-mail. They stressed that e-mail is a delivery system only and the value comes from the content of the message and not the mechanism used to send it. Many of the agencies pointed out that regulations for paper records do not reach the same level of detail, which they consider unnecessary. The level of control that would be required for e-mail would impose costly and burdensome measures regardless of the relative importance of the messages.

A major subset of the comments in the category of misplaced emphasis advocated that NARA place e-mail in context with other electronic records rather than singling e-mail out for special treatment. These agencies stressed the importance of managing all categories of electronic records and suggested that the strong emphasis on e-mail in the proposed standards diverted attention from the overall goal of agencies to properly manage records in all media.

Some agencies and professional organizations expressed the concern that the emphasis on e-mail was misplaced because it focused on only one type of record and not on the larger issue of whether agency policies, functions, transactions, and decisions are being properly documented, as required by law and regulation. They suggested that NARA attend to its responsibility to direct agencies on creation and maintenance of records documenting their activities and give agencies the discretion on how to accomplish that goal.

Response: NARA understands that the lengthy standards proposed in March could lead to the conclusion that e-mail is more important than other records. As indicated above, the final standards now being issued will put e-mail in the proper context with all other records and, therefore, respond to the concerns of those who objected to an over-emphasis on e-mail. NARA also agrees that more emphasis should be placed on recordkeeping requirements to ensure that proper records are created and maintained. If agencies fail to create and maintain on another format full documentation of their policies and activities under clear and specific recordkeeping requirements, e-mail could assume an inflated importance. Agencies have the opportunity and responsibility to put e-mail in its proper context by issuing, where they are lacking, recordkeeping requirements that clearly state what records are to be created and maintained and on what medium. The standards on e-mail now being issued should be used by agencies as they develop or revise their own recordkeeping requirements.

6. Comment: The March Standards are Confusing and Poorly Worded

More than 30% of the respondents, primarily Federal agencies, said that the proposed standards were unclear, inconsistent, or redundant. These comments concerned most sections of the March standards, including the guidance on drafts, scheduling, copies, recordkeeping systems, definition of records, calendars, preserved records, transmission and receipt data, backups, nonrecord materials, appropriate for preservation, monitoring, and permanent and temporary records.

Response: The final standards have been revised to eliminate redundancy and, as noted above, will put the requirements for e-mail in the context of overall records management responsibilities. These changes were made in response to the requests to clarify and focus the standards.

7. Comment: There is a Need for a Schedule for Implementation of the March Standards

Approximately 30% of the Federal agencies expressed very serious concerns about the schedule for implementation of the March standards. These concerns were mainly based in the belief that NARA was imposing electronic maintenance of e-mail records, which would require expenditure of millions of dollars in some agencies to purchase the hardware and software required to appropriately maintain e-mail records electronically. The level of expense is significantly increased by the fact that, as agencies pointed out, off-the-shelf products that meet the requirements for electronic recordkeeping are not yet available. Accordingly, many agencies said that they would need several years to implement the proposed standards.

Response: As indicated in the March standards, NARA recognizes that the variety of automated systems in Federal agencies have different characteristics and agencies have differing recordkeeping requirements. Agencies must determine whether their needs require electronic recordkeeping (rather than paper recordkeeping) and, if so, when to implement it. The essential point remains, however, that Federal agencies are obliged to identify and preserve their e-mail records. This obligation originates in the Federal Records Act, not in NARA standards. The final standards are intended to amplify the statute and improve the current regulations by focusing more on how agencies can fulfill their responsibility to preserve their records appropriately.

8. Comment: There are Difficulties Related to the Preservation of Transmission and Receipt Data

A key component of an e-mail message is the information about who sent it, who received it, and the date. Approximately 30% of the Federal agencies expressed concern about whether their systems could capture and preserve transmission and receipt data with the record and whether their systems had the capacity to store it. Some agencies said their systems do not provide the full name of individuals so users will have to annotate the message to ensure that all necessary information is preserved. Agencies stressed that they should have discretion in determining what information is necessary for them to preserve as an adequate record; they believe that the requirements for preserving transmission and receipt data

with e-mail records should be the same as apply to paper records.

Response: The standards now being issued include fundamentally the same language on transmission and receipt data as was proposed in the March standards. E-mail records must identify who sent and received the message and the date. Otherwise, their usefulness as records will be greatly diminished because the context will not be understood. The body of the text has little value if the reader does not know who was involved in the communication and when it occurred. Agencies must take reasonable measures to preserve transmission data with their current electronic information systems and they should ensure that any new electronic information systems automatically include adequate transmission data on a paper printout, and, where electronic recordkeeping is used, that they preserve transmission data electronically. Agencies that are concerned about preserving receipt data should note that the revised standards direct agencies that have an electronic mail system with a receipt feature to issue instructions to staff on when to request receipts and how to preserve them. If systems do not have this feature or if it is impossible for agencies to preserve receipts, users should be instructed accordingly. The language on receipt data provides discretion to agencies on when such information should be requested. Only if it is needed for recordkeeping purposes should it be preserved with the record.

9. Comment: The Proposed Standards Do Not Address Privacy/FOIA Considerations

Twenty-two agencies (nearly 30%) believe that the March standards had Privacy and Freedom of Information Act implications. They suggested that staff members have the expectation of privacy or confidentiality when they send messages, and this would be violated if the messages were preserved as records and released to the public.

Response: Agencies must determine what constitutes appropriate use of e-mail systems by staff members and what expectations of privacy may be assumed. This is not a NARA policy determination. For this reason, the standards now being issued have not been changed to reflect the Privacy/FOIA comments of agencies. Some of the comments suggest a misunderstanding of the distinction between personal materials and Federal records. For guidance in this area, see NARA's management guide, "Personal Papers of Executive Branch Officials."

10. Comment: The Provisions Concerning Backups are Confusing

The March standards included a section on the suitability of backup tapes for use as a recordkeeping system. Several agencies found the discussion of system and security backups to be confusing and the distinction between the two irrelevant. Some also indicated that the proposal could lead to expensive changes to backup procedures.

Response: The purpose of addressing backups in the standards was to stress that backups are not suitable recordkeeping systems. Their purpose is for recovery of data or systems in case of loss; their purpose is not efficient preservation, use, retrieval, and disposition of active records. Since this issue is part of the overall consideration of requirements for electronic recordkeeping systems, guidance on backups will be included in the future revision of "Managing Electronic Records" and/or other guidance from NARA. Therefore, only one reference has been included in the standards pertaining to backups, and it has been placed in a paragraph concerning appropriate recordkeeping systems (36 CFR 1234.24(c)).

11. Comment: The Training and Monitoring Provisions are Unrealistic

Twenty Federal agencies reacted to the provisions in the March standards that called for training all staff members on identification, maintenance, and disposition of e-mail records. Some agencies expressed the concern that it is unrealistic to expect records managers to train all agency employees or monitor staff determinations of the record status of every e-mail message. They indicated that it is impossible to ensure the effectiveness of the standards because of the huge number of users of e-mail and the responsibility that individual users must have for determining which messages are Federal records. Many were particularly concerned about the cost of monitoring, which several agencies estimated would require one records manager for every 100 agency employees. No agency can afford to have a staff of hundreds of records managers monitoring e-mail determinations. All respondents who addressed this issue highlighted its excessive and unrealistic expectations. Agencies did not entirely object to any training and monitoring; they recognize that they have the responsibility to carry out both of these responsibilities. They objected, however, to what they concluded are the excessively burdensome and unrealistically detailed

requirements specified in the March standards.

Response: NARA agrees that training and monitoring of e-mail determinations must be reasonable and within the administrative and fiscal capabilities of the agencies. Monitoring of record status determinations is an essential part of periodic overall reviews of the implementation of an agency's records management program. A specific reference to monitoring record status determinations of e-mail messages has been added to place this responsibility in its proper context within 36 CFR 1220.42, Agency internal evaluations. The same approach has been taken for training requirements. 36 CFR 1222.20 previously required agencies to train agency personnel on recordkeeping requirements and identification of records. This part now includes an amended sentence that stresses that training must pertain to all materials, regardless of media. Again, this puts training for e-mail in the context of existing responsibility. Agencies will be able to fulfill their responsibility to ensure proper management of e-mail records without significant additional burdens or expense if they include e-mail training and reviews as part of their ongoing programs.

12. Comment: NARA Cannot Impose Upon Agencies the Format on Which They Preserve Their Records

The agency concerns about format centered on the expense and burden of maintaining e-mail electronically. As indicated in comment number one, above, they strongly stated that they are not in the position to preserve their e-mail electronically, and NARA should not impose this on them. Some respondents representing researchers advocated that e-mail should be preserved in electronic format because of the electronic format's enhanced use.

Response: NARA concurs with both of these seemingly contradictory positions. Electronic records that are appraised as permanent in schedules approved by NARA that are preserved in an electronic format will have enhanced usefulness for future research. This enhancement will accrue only if the records are preserved in an electronic recordkeeping system with records management functionality that allows for sorting, retrieving, and manipulating the records. This enhancement could also be advantageous for agencies while the records remain in their custody, and NARA encourages agencies to consider the benefits of electronic recordkeeping systems with full records management capabilities. However, the prospective interests of future researchers cannot be

used to force agencies to do the impossible nor can these interests dictate to agencies how they should preserve their records for their own use. Agencies must create and maintain records to conduct Government business and account for their activities. Only the agency can determine what format best serves these purposes. Some agencies, or components of agencies, may determine that paper recordkeeping will continue to be adequate and cost-effective for the documentation of their transactions. In addition, it is clear from the agency responses that the lack of commercial off-the-shelf technology and the expense of custom developed solutions make electronic preservation of all e-mail records of the volume produced by the Federal Government impossible at the present time. For many agencies to fulfill their responsibilities immediately under the Federal Records Act they *must* print their e-mail records because no alternative currently exists. The final standards are designed to clarify this point. NARA guidance documents that are being issued will assist agencies as they consider making the transition from paper to electronic preservation. Meanwhile, agencies cannot wait until they have the technology to preserve their records electronically to apply these records management standards to their electronic records. E-mail records must be preserved in accordance with the provisions of the law and the capabilities of the agencies. Format concerns must not divert the agencies from this essential requirement.

13. Comment: There are Difficulties Concerning the Maintenance of Distribution Lists

Maintaining the names of staff members on distribution lists presents numerous technical and administrative problems, according to the agencies. The dynamic nature and significant length of distribution lists make their preservation problematic for agencies.

Response: Transmission data is necessary to understand the context of records in any media. Because in some cases e-mail is sent to individuals who are only identified on a distribution list, information page, or other screen that shows the names of individuals who received messages, agencies should make reasonable attempts to have this information available for the same amount of time as the record itself is retained. Those agencies that have limited technical capabilities to preserve distribution lists are not required to preserve them with each specific record. The purpose of this provision is to make the agency realize

that for its own recordkeeping needs it must have a record available of the names of individuals who have received records. The information could consist of staff rosters maintained in a personnel office, electronic lists maintained in ADP offices, or lists that are automatically attached to the e-mail records. As with other format issues, NARA is not dictating how the lists are to be maintained.

14. Comment: The Standards are Not Necessary

The agencies that stated that the proposed standards were not needed indicated that the existing law and regulations already require preservation of records, regardless of format. Some indicated that the need was for more guidance on specific issues such as functional requirements and adequacy of documentation.

Response: NARA agrees that the current law and regulations apply to e-mail. The standards, however, are intended to highlight agency responsibilities as they use this relatively new technology for creation and receipt of records. The final rule provides the necessary context to underscore these responsibilities. In addition, as previously indicated, future guidance will respond to the requests for assistance from NARA in the other areas.

15. Comment: The Coverage of Calendars in E-mail Standards is Misleading

Numerous agencies and other respondents expressed concern about the provisions in the March standards on calendars. Some agencies indicated that their calendars were not part of their e-mail system. Others indicated that their calendars were not shared. A public respondent advocated that NARA provide specific guidance to agencies about identifying and managing electronic calendars that are records.

Response: Some confusion has resulted from including instructions on calendars in proposed standards on e-mail. While some e-mail systems include calendars, providing extensive instructions on calendars in regulations governing e-mail was misunderstood by some. The final regulations continue to stress that calendars on e-mail systems, just as calendars on other media, may be records and, if so, General Records Schedule 23 applies. As noted in GRS 23, Federal records of high-level officials must be specifically scheduled to allow NARA appraisal.

16. Comment: Other Revisions or Clarifications are Necessary

Many other comments requested clarification or revision of the March standards. There were numerous suggestions for alternative language and questions on adequacy of documentation, external systems, conflicts with existing laws and authorities, and the security of systems.

Response: NARA revised the standards to reflect many of these comments, as explained above. Many of the other concerns are addressed in the NARA guidance publications that will be issued.

17. Comment: Concur with the Proposed Standards

A few agencies and several representatives of the research community indicated their concurrence with the March standards. They believed that the standards were timely and necessary for the preservation of important e-mail records.

Response: NARA believes that the final regulations continue to reflect the intent and spirit of the March standards that these respondents endorsed. Compliance with the regulations set forth in this rule will result in the identification and preservation of e-mail messages that constitute Federal records. Those that are appraised as permanent will be available in the future for historians and others who have expressed their interest and concern. Agencies will better understand their responsibilities under the final standards. Consequently, these standards will result in the preservation of messages that are Federal records and should continue to meet with the approval of those who concurred with the March standards.

Conclusion

Federal agencies are using office automation to conduct significant activities. This challenges the agencies and NARA to ensure that records of the Federal government that are created through office automation are identified and appropriately preserved. NARA will continue to work with agencies to develop policies and practices that ensure the preservation of the content, context, and structure of records that are produced through office automation.

As agencies become more and more accustomed to conducting their business electronically, they may find that automated records management provides a number of advantages that assists them in accomplishing their mission more efficiently and effectively. Electronic recordkeeping systems may

be the best means to preserve the content, structure, and context of electronic records. In addition, an automated system may be more easily searched and manipulated than paper records. The electronic format may also allow simultaneous use by multiple staff members and may provide a more efficient method to store records. Furthermore, when they are no longer needed by the creating agency, access by future researchers to permanently valuable electronic records would be enhanced by electronic preservation. NARA will work closely with agencies as they pursue the next phase of office automation—comprehensive automated records management.

To assist in the process of determining records status, NARA recommends that when agencies consider acquiring automated records management systems they include a feature that helps users identify records. For example, agencies may want their systems to allow users to tag documents as record or nonrecord material. Another option would be to install an automated records management system that analyzes the contents of a message according to specified rules in order to prompt the user with a suggested categorization.

As agencies consider automated records management of their office automation records they should include in their deliberations the following broad functional requirements for recordkeeping systems:

1. Recordkeeping systems must allow for the grouping of related records, to ensure their proper context.
2. Recordkeeping systems must make records accessible to authorized staff, to ensure their usefulness to the agency.
3. Recordkeeping systems must preserve records for their authorized retention period, to ensure their availability for agency use, to preserve the rights of the Government and citizens, and to allow agencies to be held accountable for their actions.

When agencies take the next step in office automation, they should do so with the assurance that their records will be appropriately preserved and accessible. NARA and the agencies will work together to ensure that recordkeeping policies and programs for records that are produced through office automation serve the needs of the agencies and the needs of future researchers.

This rule is contained in NARA's Regulatory Plan and is a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993. As such, it has been reviewed by the Office of Management and Budget.

As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

List of subjects in 36 CFR parts 1220, 1222, 1228, and 1234

Archives and records; Computer technology.

For the reasons set forth in the preamble, 36 CFR Chapter XII of the Code of Federal Regulations is amended as follows:

SUBCHAPTER B—RECORDS MANAGEMENT

PART 1220—FEDERAL RECORDS; GENERAL

1. The authority for part 1220 continues to read as follows:

Authority: 44 U.S.C. 2104(a) and chs. 29 and 33.

2. Section 1220.14 is amended by removing the definition for "Information system" and adding the following definition in alphabetical order:

§ 1220.14 General definitions.

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Recordkeeping system is a manual or automated system in which records are collected, organized, and categorized to facilitate their preservation, retrieval, use, and disposition.

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3. Section 1220.42 is revised to read:

§ 1220.42 Agency internal evaluations.

Each agency shall periodically evaluate its records management programs relating to records creation and recordkeeping requirements, maintenance and use of records, and records disposition. These evaluations shall include periodic monitoring of staff determinations of the record status of documentary materials, including electronic mail, and implementation of these decisions. These evaluations should determine compliance with NARA regulations in subchapter B of this chapter and assess the effectiveness of the agency's records management program.

PART 1222—CREATION AND MAINTENANCE OF FEDERAL RECORDS

4. The title of part 1222 is revised to read as set forth above.

5. The authority citation for part 1222 continues to read:

Authority: 44 U.S.C. 2904, 3101, and 3102.

6. Section 1222.20 is amended by revising paragraphs (b)(1) and (b)(5) to read as follows:

§ 1222.20 Agency responsibilities.

* * * * *

(b) * * *

(1) Assign to one or more offices of the agency the responsibility for the development and implementation of agency-wide programs to identify, develop, issue, and periodically review recordkeeping requirements for records for all agency activities at all levels and locations in all media including paper, microform, audiovisual, cartographic, and electronic (including those created or received using electronic mail);

* * * * *

(5) Ensure that adequate training is provided to all agency personnel on policies, responsibilities, and techniques for the implementation of recordkeeping requirements and the distinction between records and nonrecord materials, regardless of media, including those materials created by individuals using computers to send or receive electronic mail.

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Subpart C—Standards for Agency Recordkeeping Requirements

7. In § 1222.30 paragraph (b) is revised to read:

§ 1222.30 Purpose.

* * * * *

(b) Although many agencies regularly issue recordkeeping requirements for routine operations, many do not adequately specify such requirements for documenting policies and decisions, nor do they provide sufficient guidance on distinguishing between records and nonrecord materials, and maintaining records created or received on electronic mail systems.

8. In § 1222.32, the introductory text is revised to read as follows:

§ 1222.32 General requirements.

Agencies shall identify, develop, issue, and periodically review their recordkeeping requirements for all agency operations and for records in all media, including those records created or received on electronic mail systems. Recordkeeping requirements shall:

* * * * *

9. In § 1222.34, paragraph (d) is redesignated as paragraph (f), and new paragraphs (d), (e), and (g) are added to read as follows:

§ 1222.34 Identifying Federal records.

* * * * *

(d) *Record status of copies.* The determination as to whether a particular

document is a record does not depend upon whether it contains unique information. Multiple copies of the same document and documents containing duplicative information, including messages created or received on electronic mail systems, may each have record status depending on how they are used to transact agency business. See paragraph (f)(2) of this section concerning the nonrecord status of extra copies.

(e) *Electronic mail messages.*

Messages created or received on electronic mail systems may meet the definition of record in 44 USC 3301.

* * * * *

(g) *Agency responsibilities.* Agencies shall take appropriate action to ensure that all staff are capable of identifying Federal records. For electronic mail systems, agencies shall ensure that all staff are informed of the potential record status of messages, transmittal and receipt data, directories, and distribution lists.

10. In § 1222.50 paragraph (a) and paragraph (b)(2) are revised; paragraphs (b)(3) through (b)(8) are redesignated as paragraphs (b)(4) through (b)(9); newly redesignated paragraphs (b)(4), (b)(6), and (b)(8) are revised; and new paragraph (b)(3) is added to read as follows:

§ 1222.50 Records maintenance.

(a) Agencies shall prescribe an appropriate records maintenance program so that complete records are filed or otherwise identified and preserved, records can be found when needed, the identification and retention of permanent records are facilitated, and permanent and temporary records are physically segregated or, for electronic records, segregable.

(b) * * *

* * * * *

(2) Formally specify official file locations for records in all media and prohibit the maintenance of records at unauthorized locations;

(3) Formally specify which officials are responsible for maintenance and disposition of electronic records and which computer systems are used for recordkeeping;

(4) Standardize reference service procedures to facilitate the finding, charging out, and refiling of paper, audiovisual, and cartographic and architectural records, and to ensure that reference to electronic records minimizes the risk of unauthorized additions, deletions, or alterations;

* * * * *

(6) Review its records maintenance program periodically to determine its

adequacy; audit a representative sample of its paper, audiovisual, electronic, cartographic, and architectural files for duplication, misclassification, or misfiles;

* * * * *

(8) Establish and implement procedures for maintaining records and nonrecord materials separately; ensure that record materials generated electronically are clearly identified as records and protected from unauthorized change or deletion for the length of their scheduled retention period; and

* * * * *

PART 1228—DISPOSITION OF FEDERAL RECORDS

11. The authority citation for part 1228 is revised to read as follows:

Authority: 44 U.S.C. chs. 21, 29, and 33.

12. Section 1228.1 is amended by adding new paragraph (e) as follows:

§ 1228.1 Scope of part.

* * * * *

(e) The material was created or received on an electronic mail system and it meets the definition of record. For specific instructions on the disposition of records created or received on electronic mail systems, see 36 CFR 1234.32.

PART 1234—ELECTRONIC RECORDS MANAGEMENT

Subpart A—General

13. The authority citation for part 1234 continues to read:

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

14. Section 1234.1 is revised to read as follows:

§ 1234.1 Scope of part.

This part establishes the basic requirements related to the creation, maintenance, use, and disposition of electronic records. Electronic records include numeric, graphic, and text information, which may be recorded on any medium capable of being read by a computer and which satisfies the definition of a record. This includes, but is not limited to, magnetic media, such as tapes and disks, and optical disks. Unless otherwise noted, these requirements apply to all electronic information systems, whether on microcomputers, minicomputers, or main-frame computers, regardless of storage media, in network or stand-alone configurations. This part also covers creation, maintenance and use, and disposition of Federal records

created by individuals using electronic mail applications.

15. Section 1234.2 is amended by removing the definitions for "electronic records system" and "information system" and adding the following definitions in alphabetical order:

§ 1234.2 Definitions.

* * * * *

Electronic information system. A system that contains and provides access to computerized Federal records and other information.

Electronic mail system. A computer application used to create, receive, and transmit messages and other documents. Excluded from this definition are file transfer utilities (software that transmits files between users but does not retain any transmission data), data systems used to collect and process data that have been organized into data files or data bases on either personal computers or mainframe computers, and word processing documents not transmitted on an e-mail system.

Electronic mail message. A document created or received on an electronic mail system including brief notes, more formal or substantive narrative documents, and any attachments, such as word processing and other electronic documents, which may be transmitted with the message.

Electronic recordkeeping system. An electronic system in which records are collected, organized, and categorized to facilitate their preservation, retrieval, use, and disposition.

* * * * *

Transmission and receipt data.

(1) *Transmission data.* Information in electronic mail systems regarding the identities of sender and addressee(s), and the date and time messages were sent.

(2) *Receipt data.* Information in electronic mail systems regarding date and time of receipt of a message, and/or acknowledgment of receipt or access by addressee(s).

* * * * *

Subpart B—Program Requirements

16. In § 1234.10 paragraphs (e) through (l) are redesignated (f) through (m); the term "electronic records system" is revised to read "electronic information system" in paragraph (d) and redesignated paragraphs (f), (g), (h), and (m); and a new paragraph (e) is added to read as follows:

§ 1234.10 Agency responsibilities.

* * * * *

(e) Ensuring that adequate training is provided for users of electronic mail

systems on recordkeeping requirements, the distinction between Federal records and nonrecord materials, procedures for designating Federal records, and moving or copying records for inclusion in an agency recordkeeping system;

* * * * *

Subpart C—Standards for the Creation, Use, Preservation, and Disposition of Electronic Records

§§ 1234.20 and 1234.22 [Amended]

17. In § 1234.20 (a) and (b) the term "electronic records system" is removed, and the term "electronic information system" is added in its place, and in § 1234.22 (a) and (b) the term "electronic records system" is removed, and the term "electronic recordkeeping system" is added in its place.

§§ 1234.24, 1234.26, 1234.28, 1234.30 and 1234.32 [Redesignated as §§ 1234.26, 1234.28, 1234.30, 1234.32 and 1234.34]

18. Sections 1234.24, 1234.26, 1234.28, 1234.30, and 1234.32 are redesignated as §§ 1234.26, 1234.28, 1234.30, and 1234.32 and a new 1234.24 is added to read as follows:

§ 1234.24 Standards for managing electronic mail records.

Agencies shall manage records created or received on electronic mail systems in accordance with the provisions of this chapter pertaining to adequacy of documentation, recordkeeping requirements, agency records management responsibilities, and records disposition (36 CFR parts 1220, 1222, and 1228).

(a) Agency instructions on identifying and preserving electronic mail messages will address the following unique aspects of electronic mail:

(1) Some transmission data (names of sender and addressee(s) and date the message was sent) must be preserved for each electronic mail record in order for the context of the message to be understood. Agencies shall determine if any other transmission data is needed for purposes of context.

(2) Agencies that use an electronic mail system that identifies users by codes or nicknames or identifies addressees only by the name of a distribution list shall instruct staff on how to retain names on directories or distributions lists to ensure identification of the sender and addressee(s) of messages that are records.

(3) Agencies that use an electronic mail system that allows users to request acknowledgments or receipts showing that a message reached the mailbox or inbox of each addressee, or that an addressee opened the message, shall

issue instructions to e-mail users specifying when to request such receipts or acknowledgments for recordkeeping purposes and how to preserve them.

(4) Agencies with access to external electronic mail systems shall ensure that Federal records sent or received on these systems are preserved in the appropriate recordkeeping system and that reasonable steps are taken to capture available transmission and receipt data needed by the agency for recordkeeping purposes.

(5) Some e-mail systems provide calendars and task lists for users. These may meet the definition of Federal record. Calendars that meet the definition of Federal records are to be managed in accordance with the provisions of General Records Schedule 23, Item 5.

(6) Draft documents that are circulated on electronic mail systems may be records if they meet the criteria specified in 36 CFR 1222.34.

(b) Agencies shall consider the following criteria when developing procedures for the maintenance of electronic mail records in appropriate recordkeeping systems, regardless of format.

(1) Recordkeeping systems that include electronic mail messages must:

(i) Provide for the grouping of related records into classifications according to the nature of the business purposes the records serve;

(ii) Permit easy and timely retrieval of both individual records and files or other groupings of related records;

(iii) Retain the records in a usable format for their required retention period as specified by a NARA-approved records schedule;

(iv) Be accessible by individuals who have a business need for information in the system;

(v) Preserve the transmission and receipt data specified in agency instructions; and

(vi) Permit transfer of permanent records to the National Archives and Records Administration (see 36 CFR 1228.188 and 36 CFR 1234.32(a)).

(2) Agencies shall not store the recordkeeping copy of electronic mail messages that are Federal records only on the electronic mail system, unless the system has all of the features specified in paragraph (b)(1) of this section. If the electronic mail system is not designed to be a recordkeeping system, agencies shall instruct staff on how to copy Federal records from the electronic mail system to a recordkeeping system.

(c) Agencies that maintain their electronic mail records electronically shall move or copy them to a separate

electronic recordkeeping system unless their system has the features specified in paragraph (b)(1) of this section. Because they do not have the features specified in paragraph (b)(1) of this section, backup tapes should not be used for recordkeeping purposes. Agencies may retain records from electronic mail systems in an off-line electronic storage format (such as optical disk or magnetic tape) that meets the requirements described at 36 CFR 1234.30(a). Agencies that retain permanent electronic mail records scheduled for transfer to the National Archives shall either store them in a format and on a medium that conforms to the requirements concerning transfer at 36 CFR 1228.188 or shall maintain the ability to convert the records to the required format and medium at the time transfer is scheduled.

(d) Agencies that maintain paper files as their recordkeeping systems shall print their electronic mail records and the related transmission and receipt data specified by the agency.

19. The heading of newly redesignated § 1234.32 is revised, the term "electronic records system" is

revised to read "electronic information system" in paragraph (a), and a new paragraph (d) is added to read as follows:

§ 1234.32 Retention and disposition of electronic records.

* * * * *

(d) Electronic mail records may not be deleted or otherwise disposed of without prior disposition authority from NARA (44 U.S.C. 3303a). This applies to the original version of the record that is sent or received on the electronic mail system and any copies that have been transferred to a recordkeeping system. See 36 CFR part 1228 for records disposition requirements.

(1) *Disposition of records on the electronic mail system.* When an agency has taken the necessary steps to retain the record in a recordkeeping system, the identical version that remains on the user's screen or in the user's mailbox has no continuing value. Therefore, NARA has authorized deletion of the version of the record on the electronic mail system under General Records Schedule 20, Item 14, after the record has been preserved in a recordkeeping

system along with all appropriate transmission data.

(2) *Records in recordkeeping systems.* The disposition of electronic mail records that have been transferred to an appropriate recordkeeping system is governed by the records schedule or schedules that control the records in that system. If the records in the system are not scheduled, the agency shall follow the procedures at 36 CFR part 1228.

20. Newly redesignated § 1234.34 is amended by adding a new paragraph (c) to read as follows:

§ 1234.34 Destruction of electronic records.

* * * * *

(c) Agencies shall establish and implement procedures that specifically address the destruction of electronic records generated by individuals employing electronic mail.

Dated: August 14, 1995.

John W. Carlin,

Archivist of the United States.

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