

§ 51.317 [Corrected]

2. On page 69666, third column, paragraph (g)(3), the words "paragraphs (1)" are corrected to read "paragraphs (g)(1)".

§ 51.318 [Corrected]

3. On page 69667, second column, paragraph (i)(e), the words "paragraphs (1)" are corrected to read "paragraphs (i)(1)".

Dated: December 20, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02-32805 Filed 12-27-02; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**36 CFR Part 1228**

RIN 3095-AB03

Expanding Transfer Options for Electronic Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is amending the regulations for the transfer of permanent records to NARA by permitting two additional electronic records transfer methods, File Transfer Protocol (FTP) and Digital Linear Tape IV (DLTtape IV). NARA is introducing these transfer methods to reduce the media and shipping costs of electronic records transferred from Government agencies, improve record and file integrity, and expand the options for transfer methods. This rule will affect Government agencies transferring permanent electronic records to the National Archives of the United States.

EFFECTIVE DATE: January 29, 2003. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of January 29, 2003.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis Heaps at telephone number 301-837-1801, or fax number 301-837-0319.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the June 26, 2002, **Federal Register** (67 FR 43069) for a 60-day public comment period. NARA notified Federal records officers and historical, archival, and records management organizations of the availability of the proposed rule. A copy of the proposed rule was also posted on the NARA web site.

NARA received seven responses to the proposed rule, six from Federal agencies and one from a private sector commenter.

File Transfer Protocol

FTP is a media-less transfer method that can be used to transfer electronic records. FTP operates by using special software located at the sending and receiving sites. This software, in combination with a telecommunications network, provides the means for transferring electronic records. The agency may send any documentation in electronic format to NARA via FTP as part of the transfer of the electronic records or through any other acceptable method of transfer as specified in 36 CFR 1228.270.

Three comments raised questions concerning the security of FTP for transferring records. One agency asked whether files transferred by FTP would be sent encrypted because there is no mention of this in the proposed rule. Another agency and the non-Federal commenter expressed similar concern about FTP as an insecure method of transferring sensitive files and asked whether provisions have been made to secure the transfer and receipt of files by FTP. NARA is only accepting unclassified, uncompressed, unrestricted, and unencrypted files via FTP. We have made provisions to secure the transfer and receipt of electronic files transferred by FTP.

One agency asked whether there are risks to data integrity when transferring electronic records via FTP. The non-Federal commenter claimed that FTP is deficient for logging, or tracking and recording, transfers, for authenticating senders and receivers, and for reliability. During NARA's pilot testing of alternatives to media-based transfer methods, NARA has continued to evaluate various secure file transfer applications to ensure that we have a reliable system that maintains data integrity, authenticity, usability, traceability, and reliability. Any transfer application NARA uses at any time will also enforce security during the transfer of permanent scheduled electronic records.

One agency asked how data transferred by FTP will be verified for accuracy. All electronic files, not just those sent via FTP, go through an evaluation and validation review process before the accessioning process is completed.

One agency asked what specific telecommunication network, for example web site or dial-up modem, is required to transfer data via FTP. NARA's response is that the transfer of

files using FTP can be accomplished in a variety of ways. The most common methods are dial-up modems and high-speed or broadband Internet connections. NARA works closely with each individual agency in arranging its specific FTP transfers to ensure that the agency has an appropriate secure means of transferring the records by FTP.

DLTtape IV

DLTtape IV cartridge tape is a high-density magnetic cartridge tape that can store up to 40 gigabytes of information on each cartridge. DLTtape IV tapes are used by selected tape drive units produced by several companies. DLTtape IV tape preparation will follow existing cartridge tape specifications.

One agency commented that requiring the format to be uncompressed reduces some of the viability of DLT media for file transfer and asked NARA to reconsider this requirement. NARA did not adopt this comment because compression can risk losing record information.

One agency asked whether NARA will provide further guidance on using these transfer methods. Yes, agencies seeking further guidance for specific transfers of records should contact NARA's Electronic and Special Media Records Services Division (NWME) as cited in §§ 1228.270(c)(1)(iii) and 1228.270(c)(3)(iii).

Other Transfer Methods and Media

NARA has only used media-based transfer methods in the past, but has been testing other methods as well as additional media. Three agencies commented that NARA should continue to consider other methods, media, and formats for the transfer of permanent electronic records. One of these agencies mentioned that DLT tapes are evolving to SDLT tapes that have 100/200GB densities. This agency expressed concern that although some SDLT tape drives claim to be backward compatible with the ability to read from DLT tapes of lesser densities, it is unknown whether that will hold as the SDLT technology matures. One agency commented that the new emerging standard for software and data storage is DVD and asked NARA to consider adding DVD to the approved media cited at § 1228.270(c)(2). NARA did not adopt this comment. While DVD may prove to be an emerging standard, it does not currently have significant presence in the industry for data storage. DVD lacks widespread standardization, market placement, and compatibility with various drive types. By comparison, DLT has established standardization, market placement, and

multi-drive compatibility. In addition, DLT has greater storage capacity. A DLT tape has up to a 40 GB capacity; DVD has less than 5GB capacity. We intend to periodically review additional methods for the transfer of permanent electronic records and will add them to the CFR where appropriate.

Although this final rule does not address the format of electronic records described in paragraph (d), NARA is exploring the acceptance of formats other than ASCII and EBCDIC as part of its E-Government initiative. Any proposed changes in this area will be addressed in a separate rulemaking.

Documentation

One agency asked whether NARA will require agencies to submit hardcopy documentation, such as codebooks, record layouts, and data dictionaries, with each FTP or DLT transfer. Paragraph (e) of § 1228.270, which was not modified in this rulemaking, states a preference for submission of required documentation in electronic form, but NARA will accept in hardcopy, electronic form, or both.

File Naming

One agency commented that limiting the file name to the 8.3 naming convention specified in ISO 9660–1990 is unnecessarily restrictive. The agency said that the Joliet extension to ISO 9660 allows file and folder names to be extended to 64 characters and other desirable features that many current operating systems use. NARA agrees that agencies may use the Joliet extension if they comply with certain restrictions, using letters, numbers, dashes, and underscores in the file and directory names with a slash used to indicate directory structures. This change has been made at § 1228.270(c)(3)(i).

Other Changes in This Final Rule

The proposed rule indicated at § 1228.270(c)(1)(iii) that a Tape Archive (TAR) utility would be the mechanism to group files and directories onto DLT cartridge tapes. After the publication of the proposed rule, NARA continued earlier work with DLT on a pilot basis and is changing the TAR requirement to an option, in favor of broader file transfer guidance. TAR-type utilities have been developed for many different electronic environments. There are several standards of TAR in the industry. However, these standards are subject to vendor implementation variances and changes. A restriction on receiving files in only a TAR format may pose a compliance burden on agencies. In addition, NARA has not had

extensive experience with using multiple TAR utilities on DLT for various file sizes and types.

In addition, NARA is making an editorial clarification in § 1228.224(a) concerning publications incorporated by reference for subpart K of part 1228.

This final rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it applies only to Federal agencies. This regulation does not have any federalism or tribalism implications. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

List of Subjects in 36 CFR Part 1228

Archives and records, Incorporation by reference.

For the reasons set forth in the preamble, NARA amends Part 1228 of Title 36, Code of Federal Regulations, as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for Part 1228 continues to read as follows:

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

2. Amend § 1228.224 by revising paragraph (a) to read as follows:

§ 1228.224 Publications incorporated by reference.

(a) *General.* The following publications cited in this section are hereby incorporated by reference into this subpart K of part 1228. They are available from the issuing organizations at the addresses listed in this section. They are also available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. These materials are incorporated as they exist on the date of approval, and a document indicating any change in these materials will be published in the **Federal Register**.

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3. Amend § 1228.270 by revising paragraphs (a), (b), (c) and by adding paragraph (f) to read as follows:

§ 1228.270 Electronic records.

(a) *Timing of transfers.* Each agency is responsible for the integrity of the permanent records it transfers on

physical media to the National Archives of the United States. For records transferred by a media-less method, NARA works with the agency to ensure integrity of the records during the transfer process. To ensure that permanent electronic records are preserved, each Federal agency must transfer electronic records to NARA promptly in accordance with the agency's records disposition schedule. Furthermore, if the agency cannot provide proper care and handling of the media (*see* part 1234 of this chapter), or if the media are becoming obsolete and the agency cannot migrate the records to newer media, the agency must contact NARA to arrange for timely transfer of permanent electronic records, even when sooner than provided in the records schedule.

(b) *Temporary retention of copy.* Each agency must retain a second copy of any permanent electronic records that it transfers to the National Archives of the United States until it receives official notification from NARA that the transfer was successful and that NARA has assumed responsibility for continuing preservation of the records.

(c) *Transfer media.* This paragraph covers the transfer of permanent records to the National Archives; it does not apply to the use or storage of records in agency custody. *See* 36 CFR 1234.30 for the requirements governing the selection of electronic records storage media for current agency use. The agency must use only media that is sound and free from defects for transfers to the National Archives of the United States; the agency must choose reasonable steps to meet this requirement. The approved media and media-less transfer forms are open reel magnetic tape, magnetic tape cartridge; Compact-Disk, Read Only Memory (CD-ROM); and File Transfer Protocol (FTP) as described in paragraphs (c) (1), (2) and (3) of this section.

(1) *Magnetic tape.* Agencies may transfer electronic records to the National Archives on magnetic tape as follows:

(i) Open-reel magnetic tape must be on ½ inch 9-track tape reels recorded at 1600 or 6250 bpi that meet ANSI X3.39–1986, American National Standard: Recorded Magnetic Tape for Information Interchange (1600 CPI, PE) or ANSI X3.54–1986, American National Standard: Recorded Magnetic Tape for Information Interchange (6250 CPI, Group Coded Recording), respectively.

(ii) Tape cartridges may be 18-track 3480-class cartridges. The 3480-class cartridge must be recorded at 37,871 bpi that meet ANSI X3.180–1990, American National Standard: Magnetic Tape and

Cartridge for Information Interchange—18-Track, Parallel, 1/2 inch (12.65 mm), 37871 cpi (1491 cpmm), Group-Coded—Requirements for Recording. The data must be blocked at no more than 32,760 bytes per block.

(iii) Tape cartridges may be DLTtape IV cartridges that must be recorded in an uncompressed format. Agencies interested in transferring scheduled electronic records using a Tape Archive (TAR) utility should contact NARA's Electronic and Special Media Records

Services Division (NWME), 8601 Adelphi Rd., College Park, MD 20740-6001 or by email to cer@nara.gov to initiate transfer discussions. The data must be blocked at no more than 32,760 bytes per block and must conform to the standards cited in the table as follows:

If you are copying the records on then, the standard below applies.
DLTtape IV With a DLT 4000 drive	ISO/IEC 15307:1997, First edition, December 1, 1997, Information technology—Data interchange on 12,7 mm 128-track magnetic tape cartridges—DLT 4 format (20 GB native, 40 GB compressed, 1.5 MB/sec).
DLTtape IV with a DLT 7000 drive	ISO/IEC 15896:1999, First edition, December 15, 1999, Information technology—Data interchange on 12,7 mm 208-track magnetic tape cartridges—DLT 5 format (35 GB native, 70 GB compressed, 5.0 MB/sec).
DLTtape IV with a DLT 8000 drive	ISO/IEC 16382:2000, First edition, May 15, 2000, Information technology—Data interchange on 12,7 mm 208-track magnetic tape cartridges—DLT 6 format (40 GB native, 80 GB compressed, 6.0 MB/sec).

(2) Compact-Disk, Read Only Memory (CD-ROM). Agencies may use CD-ROMs to transfer electronic records scheduled to be preserved in the National Archives. The files on such a CD-ROM must comply with the format and documentation requirements specified in paragraphs (d) and (e) of this section.

(i) CD-ROMs used for this purpose must conform to ANSI/NISO/ISO 9660-1990, American National Standard for Volume and File Structure of CD-ROM for Information Exchange.

(ii) Permanent electronic records must be stored in discrete files. The CD-ROMs transferred may contain other files, such as software or temporary records, but all permanent records must be in files that contain only permanent records. Agencies must indicate at the time of transfer if a CD-ROM contains temporary records and, if so, where those records are located on the CD-ROM. The agency must also specify whether NARA should return the CD-ROM to the agency or dispose of it after copying the permanent records to an archival medium.

(iii) If permanent electronic records that an agency disseminates on CD-ROM exist on other media, such as magnetic tape, the agency and NARA will mutually agree on the most appropriate medium for transfer of the records to the National Archives of the United States.

(3) *File Transfer Protocol*. Agencies may use File Transfer Protocol (FTP) to transfer electronic records scheduled for preservation at the National Archives of the United States. The files transferred via FTP must comply with the format and documentation requirements specified in paragraphs (d) and (e) of this section.

(i) FTP file structure may use the 64-character Joliet extension naming convention only when letters, numbers, dashes (-), and underscores () are used in the file and/or directory names, with a slash (/) used to indicate directory structures. Otherwise, FTP file structure must conform to an 8.3 file naming convention and file directory structure as cited in ANSI/NISO/ISO 9660-1990, American National Standard for Volume and File Structure of CD-ROM for Information Exchange.

(ii) Permanent electronic records must be stored in discrete files, separate from temporary files. All permanent records must be transferred in files that contain only permanent records.

(iii) When permanent electronic records may be disseminated through other types of mechanisms (e.g., magnetic tape, CD-ROM), the agency and NARA will mutually agree on the most appropriate medium for transfer of the records to the National Archives and will select the appropriate files for FTP transfer. Several important factors may limit the use of FTP as a transfer method, including the number of records, record file size, and available bandwidth. NARA will retain approval for appropriateness of FTP as the selected mechanism for each scheduled records transfer based on certain criteria (file size, FTP transfer rate, record classification, etc.). Agencies interested in sending electronic records scheduled for transfer to NARA through FTP must contact NARA's Electronic and Special Media Records Services Division (NWME), 8601 Adelphi Rd., College Park, MD 20740-6001 or by email to cer@nara.gov to initiate the transfer discussions.

(iv) Each permanent electronic records transfer must be preceded with

a signed Agreement to Transfer Records to the National Archives of the United States (Standard Form 258) sent to the Office of Records Services—Washington, DC (NWME), 8601 Adelphi Road, College Park, MD 20740-6001.

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(f) *Incorporation by reference*. The following publications cited in this section are available from the American National Standards Institute (ANSI), 25 West 43rd Street, 4th floor, New York NY 10036 or electronically at <http://www.ansi.org/>. All these standards are also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, D.C. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**.

ANSI X3.39-1986, American National Standard: Recorded Magnetic Tape for Information Interchange (1600 CPI, PE).

ANSI X3.54-1986, American National Standard: Recorded Magnetic Tape for Information Interchange (6250 CPI, Group Coded Recording).

ANSI X3.180-1990, American National Standard: Magnetic Tape and Cartridge for Information Interchange—18-Track, Parallel, 1/2 inch (12.65 mm), 37871 cpi (1491 cpmm), Group-Coded—Requirements for Recording.

ANSI/NISO/ISO 9660-1990, American National Standard for Volume and File Structure of CD-ROM for Information Exchange.

ISO/IEC 15307:1997, First edition, December 1, 1997, Information technology—Data interchange on 12.7

mm 128-track magnetic tape cartridges—DLT 4 format.

ISO/IEC 15896:1999, First edition, December 15, 1999, Information technology—Data interchange on 12.7 mm 208-track magnetic tape cartridges—DLT 5 format.

ISO/IEC 16382:2000, First edition, May 15, 2000, Information technology—Data interchange on 12.7 mm 208-track magnetic tape cartridges—DLT 6 format.

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Dated: October 25, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02-32818 Filed 12-27-02; 8:45 am]

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DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 1, 2 and 3

[Docket No. 2003-T-005]

RIN 0651-AB58

Correspondence With the United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule; Technical Corrections Act of 2002 Rules Change.

SUMMARY: The United States Patent and Trademark Office (“USPTO”) is revising its rules of practice to simplify the requirements for: (1) Filing an application for registration based on a foreign registration under 15 U.S.C. 1126(e); and (2) designation of a domestic representative by a party who is not domiciled in the United States. These changes implement the changes to the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.*, made by the Technical Corrections in Trademark Law Act, title III, subtitle B, sec. 13207 of Pub. L. 107-273, 116 Stat. 1758. The USPTO is also making some minor technical corrections to the rules of practice.

EFFECTIVE DATE: December 30, 2002.

FOR FURTHER INFORMATION CONTACT:

Mary E. Hannon, Office of the Commissioner for Trademarks, by telephone at (703) 308-8910, extension 137, by e-mail at mary.hannon@uspto.gov, or by facsimile at (703) 872-9280.

SUPPLEMENTARY INFORMATION: The Technical Corrections in Trademark Law Act of 2002, Pub. L. 107-273, 116 Stat. 1758 (“Technical Corrections Act”), amended section 44(e) of the Trademark Act, 15 U.S.C. 1126(e), to

eliminate the requirement that a foreign applicant who seeks registration in the United States based on a registration in the applicant’s home country (country of origin) submit a certification or certified copy of the foreign registration. As amended, section 44(e) requires that the applicant submit “a true copy, a photocopy, a certification, or a certified copy of the registration in the country of origin of the applicant.”

The Technical Corrections Act also amended sections 1(e), 8(f), 9(c), and 10 of the Trademark Act, 15 U.S.C. 1051(e), 1058(f), 1059(c) and 1060, to eliminate the requirement that an applicant or registrant who is not domiciled in the United States designate the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark (“domestic representative”). As amended, these sections provide that the applicant or registrant “may” designate a domestic representative, and that if the applicant or registrant does not designate a domestic representative (or if the person designated cannot be found at the address in the designation), then notices or process in proceedings affecting the mark may be served on the Director of the USPTO (“Director”). In other words, the designation of a domestic representative in trademark proceedings is now optional, not mandatory.

The Technical Corrections Act is effective November 2, 2002.

Discussion of Specific Rules

The USPTO is amending rules 1.4(d)(1)(iii)(A), 2.6(b)(8), 2.18, 2.24, 2.33(b)(2), 2.34, 2.119(d), 2.161(h), 2.183, 3.31(a), and 3.61.

Section 1.4(d)(1)(iii)(A) is amended to delete the requirement that a party who signs a trademark document electronically print, sign, date and maintain a paper copy of the electronic submission. It is burdensome and inefficient for parties who file electronically to maintain both paper and electronic records of the filings. Paper records are unnecessary because electronic records would be sufficient proof of filing if a document filed electronically were to become lost within the USPTO.

Section 2.6(b)(8) is amended to delete “T-Search” in both places in which it appears, and substitute “X-Search.”

This merely updates the references to the USPTO’s electronic search system.

Section 2.18 is amended to provide that if an applicant, registrant or party to a proceeding who does not reside in the United States has not appointed a domestic representative and the application or proceeding is not being

prosecuted by an attorney, the USPTO will send correspondence directly to the applicant, registrant or party, unless the applicant, registrant or party has designated a different address to which correspondence should be sent. The rule previously stated that the USPTO would send correspondence to the domestic representative unless the application was being prosecuted by an attorney, in which case the USPTO would send correspondence to the attorney. The amendment is necessary because designation of a domestic representative is no longer mandatory.

Section 2.24 is amended to provide that an applicant not residing in the United States may designate a domestic representative, and that if the applicant does not designate a domestic representative (or if the person designated cannot be found at the address given in the designation), then notices or process in proceedings affecting the mark may be served on the Director of the USPTO. This incorporates the amendment of 15 U.S.C. 1051(e), and 1060.

Section 2.33(b)(2) is amended to require that an application under 15 U.S.C. 1051(b) or 15 U.S.C. 1126 include an allegation that the applicant believes it is entitled to use the mark “in commerce”. This corrects an oversight in the rule (which previously omitted the language “in commerce”), and makes it consistent with 15 U.S.C. 1051(b)(3)(A), which requires an allegation that the applicant believes itself “to be entitled to use the mark in commerce”. This amendment does not change current practice.

Section 2.34(a)(2)(i) is amended to provide that in an application based on the applicant’s bona fide intention to use the mark in commerce under 15 U.S.C. 1051(b), the “applicant” must verify that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. The rule previously required verification by the “trademark owner”, but this was inconsistent with 15 U.S.C. 1051(b)(3), which requires verification by the “applicant”. An intent-to-use applicant who has not yet used a mark in commerce is not the “owner” of the mark. This amendment does not change current practice.

Section 2.34(a)(3)(i) is amended to provide that in an application based on registration of a mark in a foreign applicant’s country of origin under 15 U.S.C. 1126(e), the “applicant” must verify that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. The rule