

enforcement agencies, and from Federal and State probation and judicial offices and it is administratively impossible to ensure that the records comply with this provision. It would also require that law enforcement information be continuously reexamined even where the information may have been collected from the record subject.

(8) From subsection (g) to the extent that this system is exempted from other provisions of the Act.

Dated: February 13, 2006.

**Paul R. Corts,**

*Assistant Attorney General for Administration.*

[FR Doc. 06-1549 Filed 2-17-06; 8:45 am]

BILLING CODE 4410-05-P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Part 1234

RIN 3095-AB39

#### Records Management; Electronic Mail; Electronic Records; Disposition of Records

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Final rule.

**SUMMARY:** NARA is revising our regulations to provide for the appropriate management and disposition of very short-term temporary e-mail, by allowing agencies to manage these records within the e-mail system.

**DATES:** This rule is effective March 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Stadel-Bevans at telephone number 301-837-3021 or fax number 301-837-0319.

#### SUPPLEMENTARY INFORMATION:

##### Background

On November 3, 2004, at 69 FR 63980, NARA published a proposed rule pertaining to the disposition of electronic mail records with short retention periods. In response, we received comments from nine Federal agencies and two public interest groups.

##### Discussion of Comments Received

Five of the Federal agencies concurred without further comment.

One Federal agency concurred and requested that we not limit the definition of short-term to 180 days or less, but extend it to up to 3 years. As this rule is meant to apply only to records of fleeting value, we will not amend the definition to include records retained beyond 180 days.

Another Federal agency concurred and asked that we provide a definitive cut-off for short-term. We accepted this recommendation and have set the cut-off at 180 days.

Two Federal agencies and both public interest groups disagreed with our proposed rule.

One Federal agency and one public interest group raised the concern that this regulatory change could unintentionally result in the destruction of important e-mail records with long-term or permanent value. The commenters did not dispute that, in a perfect world, this rule is both legally permissible and potentially harmless. Their concern was that, in the words of one commenter, this new rule will "help foster the attitude that e-mail generally is a disposable, 'off-the-record' category of communication whose loss or destruction is of little concern to NARA or to the public." They pointed out, and NARA recognizes, that many agencies and their employees do not properly maintain all e-mail records for their prescribed retention period, such that valuable records are being lost prematurely. The solution, they believe, is that all Federal employees must be required to print and file or copy to an electronic recordkeeping system every e-mail record, to diminish the possibility that long-term records will be automatically deleted as transitory.

NARA fully agrees with these commenters' objective of wanting to improve the Government's retention of e-mail records for their full duration. However, based on long consideration and experience, NARA does not believe that the commenters' recommended solution will have that result. To require the creation of a record copy of all of these e-mail messages is not only extremely costly and burdensome, but may also be partly responsible for any current non-compliance with existing e-mail retention requirements: *i.e.*, the largely pointless exercise of expending significant time and effort to print and file hundreds of transitory e-mail messages every week may be a contributing factor to what leads many Government employees to forego printing any of their e-mail messages.

NARA has concluded that Government employees are more likely to take seriously their responsibility of retaining e-mail records of long-term or permanent value, either by printing and filing or by investing in electronic recordkeeping systems to retain a smaller percentage of e-mail records, if they do not have to spend time on the very high volume of transitory and very short-term e-mail records that cross their desktops every day. Accordingly,

NARA believes that this regulation, as further modified, will serve to improve the Government's retention and preservation of important e-mail records.

NARA wishes to emphasize, however, that this regulatory change is intended to be narrowly construed, *i.e.*, the waiver of the requirement to print out or otherwise electronically save very short term e-mail records (with dispositions of 180 days or less) is to be limited to records covered under the categories listed in General Record Schedule (GRS) 23, Item 7, or in file series in agency schedules with similarly short term disposition periods. In other words, longer term temporary or permanent e-mail records on agency e-mail systems must still be printed out or saved electronically in accordance with current regulations. For the convenience of readers, the text of GRS 23, Item 7, is reproduced at the end of this Supplementary Information.

One Federal agency expressed concern that the proposed rule will place too much of a burden on Federal employees. Federal employees are currently responsible for maintaining these records. For the reasons given in the previous paragraphs, we believe that the new rule will ease the burden on Federal employees.

One Federal agency stated that both e-mail and paper records of a transitory nature should be treated the same. We agree, and that is the basis for our revisions. General Record Schedule 23, Item 7, applies to a variety of transitory records, regardless of the media on which they were created, including paper records and, with the recent changes, electronic records. Agency records schedules may include other transitory records, which now may be managed similarly in both paper and electronic form.

Two Federal agencies stated that the proposed rule will require a technology solution, such as a records management application (RMA). We disagree. This rule allows agencies to manage transitory e-mail messages within the e-mail system. It removes the requirement that transitory records be placed in a separate recordkeeping system (printed and filed or moved to an RMA). We believe that this rule allows greater flexibility. It reduces costs by not requiring that every e-mail message be printed and also reduces the amount of time spent filing.

We received one comment from a Federal agency asking why these records needed to be kept under a freeze if they are truly transitory. Federal agencies have an ongoing obligation to comply with legal demands such as

court orders requiring the preservation of documents as evidence in a particular litigation; agencies must continue to take reasonable steps to freeze the disposition of any and all records as specified in court orders or other legal process.

One public interest group asked if this rule pertains to private companies. NARA's regulations apply only to Federal executive branch agencies. Private companies must follow the regulations that are appropriate for their industry.

We received one comment from a public interest group asking for the technical definition of e-mail for this rule. "Electronic mail message" is defined in 36 CFR 1234.2 as 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."

One public interest group asked about the criteria needed to determine " \* \* \* special cases where e-mail is important to retain for some official purpose; for example, e-mails that require a receipt, or those that contain a digital signature, or where the function of e-mail is to serve as a time stamp." This rule applies only to transitory e-mail messages, which, by definition, are required only for a minimal amount of time for business needs or accountability. 36 CFR 1234.24(a) specifies that it is the responsibility of each agency to ensure that the proper metadata (e.g., receipt data) is captured as part of the record when it is required.

One public interest group asked about attachments to messages. Attachments must also be managed as records. If the attachment meets the definition of transitory, then it too may be deleted from the e-mail system without producing a recordkeeping copy. If it is not transitory, then the attachment must be copied to an RMA or printed and filed. E-mail messages and attachments must be considered together to determine if one provides context for the other before either is determined to be transitory.

Only one substantial change was made between the proposed rule and the final rule. In the proposed rule, "short-term" was not a set period of time. The final rule defines "short-term" as 180 days or less. For clarity, minor wording changes were made to §§ 1234.24(b)(3)(i) and 1234.32(d)(1).

NARA wishes to point out that this final rule is part of NARA's larger effort to assist agencies with proper management of their records in

electronic and other forms. Through the Records Management Initiatives (RMI), NARA is developing strategies to support records management within agencies. As part of this effort, NARA has developed updated policies and strategies for a variety of topics, including flexible scheduling and pre-accessioning of permanent electronic records. More information may be found on NARA's Web site at <http://www.archives.gov/records-mgmt/initiatives/rm-redesign-project.html>.

NARA also is continuing its work with the Office of Management and Budget (OMB) to implement the President's Management Agenda for expanding electronic government (E-Gov) through the Electronic Records Management (ERM) Initiative. As part of this project, NARA has issued guidance for the transfer of permanent electronic records to NARA in six electronic formats not previously accepted by NARA for preservation. In addition, NARA has released guidance for evaluating Capital Planning and Investment Control (CPIC) proposals and on developing agency-specific functional requirements for ERM systems and continues to work on further guidance. More information on NARA's E-Gov ERM Initiative and the completed products is available on NARA's Web site at <http://www.archives.gov/records-mgmt/initiatives/erm-overview.html>.

#### **Text of General Records Schedule 23, Item 7**

As noted earlier in this preamble, we are setting out the text of the revised GRS 23, Item 7, for the convenience of readers. The revision was issued on September 1, 2005, and is available online at <http://www.archives.gov/records-mgmt/ardor/grs23.html>.

#### *Transitory Records*

Records of short-term (180 days or less) interest, including in electronic form (e.g., e-mail messages), which have minimal or no documentary or evidential value. Included are such records as:

- Routine requests for information or publications and copies of replies which require no administrative action, no policy decision, and no special compilation or research for reply;
- Originating office copies of letters of transmittal that do not add any information to that contained in the transmitted material, and receiving office copy if filed separately from transmitted material;
- Quasi-official notices including memoranda and other records that do not serve as the basis of official actions,

such as notices of holidays or charity and welfare fund appeals, bond campaigns, and similar records;

- Records documenting routine activities containing no substantive information, such as routine notifications of meetings, scheduling of work-related trips and visits, and other scheduling related activities;
- Suspense and tickler files or "to-do" and task lists that serve as a reminder that an action is required on a given date or that a reply to action is expected, and if not received, should be traced on a given date.

Destroy immediately, or when no longer needed for reference, or according to a predetermined time period or business rule (e.g., implementing the auto-delete feature of electronic mail systems).

#### *Regulatory Analysis and Review*

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 (OMB). As required by the Regulatory Flexibility Act, it is hereby certified that this final rule will not have a significant impact on a substantial number of small entities because this rule applies to Federal agencies. This final rule does not have any federalism 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 1234**

Archives and records, Computer technology.

- For the reasons set forth in the preamble, NARA amends chapter XII of title 36 of the Code of Federal Regulations as follows:

#### **PART 1234—ELECTRONIC RECORDS MANAGEMENT**

- 1. The authority citation for part 1234 is revised to read as follows:

**Authority:** 44 U.S.C. 2904, 3101, 3102, 3105, and 3303.

- 2. Amend § 1234.24 by revising paragraph (b)(2) and adding paragraph (b)(3) to read as follows:

#### **§ 1234.24 Standards for managing electronic mail records.**

\* \* \* \* \*

- (b) \* \* \*
- (2) Agencies may elect to manage electronic mail records with very short-term NARA-approved retention periods (transitory records with a very short-term retention period of 180 days or less as provided by GRS 23, Item 7, or by a NARA-approved agency records

schedule) on the electronic mail system itself, without the need to copy the record to a paper or electronic recordkeeping system, provided that:

(i) Users do not delete the messages before the expiration of the NARA-approved retention period, and

(ii) The system's automatic deletion rules ensure preservation of the records until the expiration of the NARA-approved retention period.

(3) Except for those electronic mail records within the scope of paragraph (b)(2) of this section:

(i) Agencies must not use an electronic mail system to store the recordkeeping copy of electronic mail messages identified as Federal records unless that system has all of the features specified in paragraph (b)(1) of this section.

(ii) If the electronic mail system is not designed to be a recordkeeping system, agencies must instruct staff on how to copy Federal records from the electronic mail system to a recordkeeping system.

\* \* \* \* \*

■ 3. Amend § 1234.32 by revising paragraph (d) 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).

(1) *Electronic mail records with very short-term (transitory) value.* Agencies may use the disposition authority in General Records Schedule 23, Item 7, or on a NARA-approved agency records schedule for electronic mail records that have very short-term retention periods of 180 days or less. (See § 1234.24(b)(2)).

(2) *Other records in an electronic mail system.* When an agency has taken the necessary steps to retain a record in a scheduled recordkeeping system (whether electronic or paper), the identical version that remains on the user's screen or in the user's electronic mailbox has no continuing value. Therefore, NARA has authorized deletion of the version of the record in 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. If the records in the recordkeeping system are not scheduled, the agency must follow the procedures at 36 CFR part 1228.

(3) *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 recordkeeping system are not scheduled, the agency must follow the procedures at 36 CFR part 1228.

Dated: September 14, 2005.

**Allen Weinstein,**

*Archivist of the United States.*

**Note:** This document was received at the Office of the Federal Register on February 17, 2006.

[FR Doc. 06-1545 Filed 2-17-06; 8:45 am]

**BILLING CODE 7515-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**42 CFR Part 83**

**Procedure for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act of 2000**

**AGENCY:** Department of Health and Human Services.

**ACTION:** Interim final rule; extension of comment period.

**SUMMARY:** The Department of Health and Human Services (DHHS) is extending the comment period for the interim final rule making amendments to procedures for designating classes of employees as members of the Special Exposure Cohort under the Energy Employees Occupational Illness Program Act (EEOICPA), which was published in the *Federal Register* on Thursday, December 22, 2005.

**DATES:** Any public written comments on the interim final rule published on December 22, 2005 (70 FR 75949) must be received on or before March 23, 2006.

**ADDRESSES:** Address written comments on the notice of proposed rulemaking to the NIOSH Docket Officer electronically by e-mail to: [NIOCINDOCKET@CDC.GOV](mailto:NIOCINDOCKET@CDC.GOV).

Alternatively, submit printed comments to NIOSH Docket Office, Robert A. Taft Laboratories, MS-C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

**FOR FURTHER INFORMATION CONTACT:** Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS-C-46, Cincinnati, Ohio 45226, Telephone 513-533-6800 (this is not a toll-free number). Information requests may also be submitted by e-mail to [OCAS@CDC.GOV](mailto:OCAS@CDC.GOV).

**SUPPLEMENTARY INFORMATION:** On December 22, 2005, HHS published an interim final rule with request for

comments amending the procedures for designating classes of employees as members of the Special Exposure Cohort under EEOICPA, [See *FR Vol. 70, No. 245, 75949*]. The rule included a public comment period that was to end on February 21, 2006. On January 26, 2006, the Advisory Board on Radiation and Worker Health initiated its review of the interim final rule. The Board requested that the comment period be extended by 30 days, for a total of 90 days, to provide the Board with adequate time to complete its review and submit comments to HHS. HHS would appreciate the comments of the Board and is now providing for a 90-day comment period to accommodate the Board's request. This extension of the comment period may also assist any members of the public who require additional time to comment on the rule.

Dated: February 15, 2006.

**Michael O. Leavitt,**

*Secretary.*

[FR Doc. 06-1588 Filed 2-17-06; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 041126332-5039-02; I.D. 021406B]

**Fisheries of the Exclusive Economic Zone Off Alaska; Non-Community Development Quota Pollock with Trawl Gear in the Chinook Salmon Savings Areas of the Bering Sea and Aleutian Islands Management Area**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for non-Community Development Quota (CDQ) pollock with trawl gear in the Chinook Salmon Savings Areas of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2006 limit of chinook salmon caught by vessels using trawl gear while directed fishing for non-CDQ pollock in the BSAI.

**DATES:** Effective 12 noon, Alaska local time (A.l.t.), February 15, 2006, through 12 noon, A.l.t., April 15, 2006, and from 12 noon, A.l.t., September 1, 2006, through 12 midnight, A.l.t., December 31, 2006.