

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: Proposed rule.

SUMMARY: NARA is seeking comments from Federal agencies and the public on a proposed revision to 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: Submit comments on or before January 3, 2005.

ADDRESSES: NARA invites interested persons to submit comments on this proposed rule. Please include "Attn: RIN 3095-AB39" and your name and mailing address in your comments. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* Send comments to comments@nara.gov. If you do not receive a confirmation that we have received your e-mail message, contact Cheryl Stadel-Bevans at 301-837-3021.

- *Fax:* Submit comments by facsimile transmission to (301) 837-0319.

- *Mail:* Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001.

- *Hand Delivery or Courier:* Deliver comments to 8601 Adelphi Road, College Park, MD.

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

SUPPLEMENTARY INFORMATION:

Background on Proposed Regulation Changes

As part of NARA's Records Management Initiatives to redesign Federal records management, NARA has determined that Federal agencies should be allowed to dispose of short-term temporary electronic mail (e-mail) records (e.g., those with a retention period of 90, 120, or 180 days), without requiring the creation of a separate

paper or electronic recordkeeping copy. Rather, such short-term e-mail records could reside on a live e-mail system, provided that (1) users do not delete the messages before the expiration of the NARA-approved retention period, and (2) the system's automatic deletion rules ensure preservation of the records until the expiration of the NARA-approved retention period. Agencies are reminded that disposition authorities for records, including e-mail records, that have been requested under FOIA or that are the subject of current or imminent audit, investigation, or litigation may need to be placed in suspense or "frozen" until the matter is resolved. In such cases, an agency always should obtain appropriate legal advice tailored to the circumstances before proceeding with disposition.

Allowing agencies to dispense with creating separate recordkeeping copies of such documents will reduce the records management burden on agencies and will serve to encourage agency staff to create recordkeeping copies of the relatively small proportion of e-mail records that warrant longer-term or permanent retention. The records covered by this change are limited to transitory Federal records covered by GRS 23, Item 7, or Federal records scheduled on a NARA-approved agency records schedule with a very short-term retention (e.g., 90, 120, or 180 days).

Minor changes to General Record Schedule (GRS) 23, Records Common to Most Offices within Agencies, will be necessary. GRS 23, Item 7 will be changed to read:

Transitory Records

Records of short-term interest, including those 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).

In a **Federal Register** notice appearing elsewhere in this edition, we invite comment on the proposed GRS 23 change.

NARA proposes to implement this change in advance of developing the final revised regulatory framework that was proposed in 60 FR 12100 (March 15, 2004). We have determined that this approach to managing transitory e-mail will greatly assist agencies and should not wait for development of the regulations implementing the revised framework.

This proposed 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 proposed rule will not have a significant impact on a substantial number of small entities because this rule applies to Federal agencies. This proposed rule does not have any federalism implications.

List of Subjects in 36 CFR Part 1234

Archives and records, Computer technology.

For the reasons set forth in the preamble, NARA proposes to amend 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.

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(b) * * *

(2) Agencies may elect to manage electronic mail records with very short-term NARA-approved retention periods (transitory records covered by GRS 23, Item 7, or records scheduled on a

NARA-approved agency records schedule with a very short-term retention) 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 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.

(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.

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3. Amend § 1234.32 by revising paragraph (d) to read as follows:

§ 1234.32 Retention and disposition of electronic records.

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(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 for electronic mail records that have very short-term retention periods (e.g., 90, 120, or 180 days). (see 36 CFR 1234.24(b)(2)).

(2) *Other records on the electronic mail system.* When an agency has taken the necessary steps to retain the record in a scheduled 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. 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: July 29, 2004.

John W. Carlin,

Archivist of the United States.

[FR Doc. 04-24403 Filed 11-2-04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R07-OAR-2004-IA-0004; FRL-7833-8]

Approval and Promulgation of State Implementation Plan; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Iowa state implementation plan (SIP) for the purpose of revising open burning rules. This revision includes a provision that allows the Iowa Department of Natural Resources to require the submittal of additional information when a variance from open burning rules is requested, reemphasizes the state's obligation to protect the National Ambient Air Quality Standards (NAAQS) with regard to open burning, clarifies National Emissions Standards for Hazardous Air Pollutants (NESHAP) guidance for disaster rubbish, updates guidance for training fires, and provides clarification to the existing open burning rules covering agricultural structures.

DATES: Comments on this proposed action must be received in writing by December 3, 2004.

ADDRESSES: Comments may be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the Addresses section of the direct final rule which is located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551-7039, or by e-mail at hamilton.heather@epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the

Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: October 26, 2004.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 04-24531 Filed 11-2-04; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL MARITIME COMMISSION

46 CFR Part 531

[Docket No. 04-12]

RIN 3072-AC30

Non-Vessel-Operating Common Carrier Service Arrangements

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes an exemption from the tariff publication requirements of the Shipping Act of 1984 for service arrangements made by non-vessel-operating common carriers, subject to the conditional filing requirements set forth in this new Part.

DATES: Submit an original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 10, Microsoft Word 2003, or earlier versions of these applications, no later than November 19, 2004.

ADDRESSES: Address all comments concerning this proposed rule to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573-0001, Secretary@fmc.gov.