

ELECTRONIC MAIL MESSAGES

The purpose of this guidance is not to require the preservation of every E-mail message sent or received. Rather, its purpose is to alert you to the requirement to preserve those messages that document agency policies, programs, and activities. E-mail message creators must decide whether a particular message is appropriate for preservation. In making these decisions, all personnel should exercise the same judgment they use when determining whether to retain and file paper records.

A complete e-mail message consists of the message text, transmission information (identities of the sender and recipient(s) and the date of transmission), and any attachments, acknowledgments of message receipt, or other messages (e.g., an incoming e-mail request) providing context for the message.

If the message qualifies as a federal record, the entire message must be printed out and filed in the appropriate paper files. Once the message has been printed out and filed, it can be deleted from the e-mail system. If the printout does not contain the necessary transmission information, the missing information should be added by hand, together with the date and initials of the person making the annotation.

SUMMARY

All government employees and contractors are required by the Federal Records Act (FRA) to make and preserve records which document the organization, functions, policies, decisions, procedures, and essential transactions of the Agency. In addition, Federal regulations provide that these records must be properly stored and preserved, available for retrieval, and subject to appropriate approved disposition schedules.

For FRA purposes, agency information may be either records or nonrecord personal materials; personal material is not subject to APHIS's records disposition schedules. If an electronic mail message meets the definition of a record under the FRA, it is required to be retained in accordance with APHIS records disposition schedules.

Electronic mail messages also may constitute agency records under FOIA. If an electronic mail message is an agency record for FOIA purposes, it must be disclosed where responsive to a FOIA request, unless protected from disclosure under a FOIA exemption.

OBLIGATIONS UNDER THE FEDERAL RECORDS ACT

Definition of record under the FRA.

Before determining the appropriate disposition of an electronic mail message, one must ascertain whether the message is a record for FRA purposes. Whether electronic mail messages (or, for that matter, any other documentary materials) are record or nonrecord

materials is a function of the use of the document/message, not of the medium upon which it is recorded. E-mail is a federal record if:

1. the message was made or received by APHIS or in connection with the transaction of public business; *and*
2. the message was preserved or appropriate for preservation by APHIS as evidence of the agency's organization, functions, policies, decisions, procedures, operations, or other activities of APHIS or because of the informational value of data in it.

"Preserved" in the context of the APHIS's electronic mail systems means that the data are deliberately filed, stored, or otherwise systematically maintained for future use by the Agency.

"Appropriate for preservation" has not been defined for the Agency as a whole; rather, each program office is responsible for making the determination. Generally, offices should preserve those documents which would enable persons reviewing the files to trace the development of policies, decisions, procedures, etc.

Thus, under FRA regulations (36 CFR 1222.38), the principal categories of materials, including e-mail, that are to be preserved are:

- records that document the formulation and execution of basic policies and decisions and the taking of necessary actions;
- records that document important meetings;
- records that facilitate action by agency officials and their successors in office;
- records that make possible a proper scrutiny by the Congress or other duly authorized agencies of the Government; and
- records that protect the financial, legal, and other rights of the Government and of persons directly affected by the Government's actions.

Examples of e-mail messages that **may** constitute Federal records include:

- E-mail providing key substantive comments on a draft action memorandum, if the e-mail message adds to a proper understanding of the formulation or execution of agency action;
- E-mail providing documentation of significant agency decisions and oral commitments (person to person, by telecommunications, or in conference) not otherwise documented in agency files; and
- E-mail conveying information of value on important agency activities if the e-mail message adds to the proper understanding of agency operations and responsibilities.

Nonrecord Materials

Certain types of materials created within APHIS are considered "nonrecord" because they do not meet the FRA definition of "record" or because they are excluded by statute from the status of records. Some examples include:

- stocks of agency publications and blank forms, and
- extra copies of items maintained solely for convenience of reference.

A common subcategory of nonrecord materials is personal documents. The National Archives and Records Administration (NARA) has defined "personal papers" to include:

- documents created before entering government service;
- private materials brought into, created or received in the office that were not created or received in the course of transacting government business; or
- work-related personal documents that are not used in the transaction of government business.

36 C.F.R. 1222.36

Documents created by government officials as reminders and personal observations on work-related topics are generally considered personal papers. Cover notes, routing slips and other transitory notes (and their electronic equivalents) that do no more than facilitate the flow of a document from one party to another are generally considered personal documents.

OBLIGATIONS UNDER THE FREEDOM OF INFORMATION ACT (FOIA)

The Freedom of Information Act, 5 U.S.C. 552, requires release of agency records within the scope of a FOIA request unless the records fall within one of FOIA's exemptions or exclusions. Agencies responding to FOIA requests are responsible only for "agency records". The FOIA definition of "agency record" is broader than the concept of records under the FRA. While the FRA focuses on records appropriate for preservation, FOIA requires only that the record be (1) either created or obtained by an agency, and (2) under agency control at the time of the FOIA request.

REMOVAL AND DESTRUCTION OF E-MAIL

As with paper records, copies of electronic mail messages which constitute government records may not be removed from APHIS. Additionally, e-mail which are records under the FRA or which are the subject of a FOIA request received by the agency may not be destroyed except as authorized in an approved records disposition schedule.