

5 FAM 440 ELECTRONIC RECORDS, FACSIMILE RECORDS, AND ELECTRONIC MAIL RECORDS

5 FAM 441 ELECTRONIC RECORDS MANAGEMENT

(TL:IM-19; 10-30-95)

These requirements apply to all electronic records systems: microcomputers; minicomputers; and mainframe computers in networks or stand-alone configurations, regardless of storage media.

a. Electronic Data files.

(1) Those employees who are responsible for designing electronic records systems that produce, use, or store data files, shall incorporate disposition instructions for the data into the design plan.

(2) System Administrators must maintain adequate and current technical documentation for electronic records systems that produce, use, or store data files. At a minimum, include:

(a) a narrative description of the system (overview);

(b) a records layout that describes each field, its name, size, starting or relative position;

(c) a description of the form of the data (e.g., alphabetic, zoned decimal, packed decimal or numeric) or a data dictionary. Include the equivalent information and a description of the relationship between data elements in the data bases when associated with a data base management system; and

(d) any other technical information needed to read or process the records.

(3) Electronic data bases that support administrative or housekeeping functions and contain information derived from hard copy records authorized for disposal may be deleted if the hard copy records are maintained in official files.

(4) Data in electronic form that is not preserved in official hard copy files or supports the primary program or mission of an office, even if preserved in official hard copy files, may not be deleted or destroyed except through authorities granted as prescribed in sections h. and i. below.

b. Documents.

(1) Electronic records systems that maintain the official file copies of documents shall provide a capability for the disposition of the documents. This includes the requirements for transferring permanent records to the National Archives, when necessary.

(2) Electronic records systems that maintain the official file copy of documents shall identify each document sufficiently to enable authorized personnel to retrieve, protect, and carry out the disposition of documents in the system. Appropriate identifying information may include: office of origin, TAGS/Terms, subject line, addressee (if any), signatory, author, date, security classification, and authorized disposition.

(3) Electronic records systems that maintain the official file copy of documents shall provide sufficient security to ensure document integrity.

(4) Documents such as letters, messages, memorandums, reports, handbooks, directives, and manuals recorded on electronic media may be deleted if the hard copy record is maintained in official files.

(5) Documents such as letters, messages, memorandums, reports, handbooks, directives, and manuals recorded and preserved on electronic media as the official file copy shall be deleted in accordance with authorized disposition authorities for the equivalent hard copy. If the authority does not exist, the documents in electronic form may not be deleted or destroyed except through authorities granted as prescribed in sections h. and j. below.

c. Spreadsheets.

(1) Spreadsheets recorded on electronic media may be deleted when no longer needed to update or produce hard copy if the hard copy record is maintained in official files.

(2) Spreadsheets recorded and preserved on electronic media shall be deleted in accordance with authorized disposition authorities for the equivalent hard copy.

d. Electronic records are acceptable as evidence in federal courts. Rule 803 (6), Federal Rules of Evidence, has been interpreted to include computer records. Further under Rule 1006, summary electronic records may be provided to limit the quantity of information considered during judicial proceedings. The courts must believe that records admitted before it are "trustworthy" that is, they must clearly and accurately relate the facts as originally presented or in summary form.

e. Administrators of electronic records systems shall ensure that only authorized personnel have access to electronic records.

f. Administrators of electronic records systems shall provide for the backup and recovery of records.

g. Administrators of electronic records systems shall make certain that storage media meet applicable requirements prescribed in 36 CFR 1234.28. These requirements are also contained in FIRMR Bulletin B-1 and are discussed in the RMH, 5 FAH-4 H-219 .

h. Retention of electronic records.

(1) The information in electronic records systems and related documentation and indexes must be scheduled for disposition no later than one year after the implementation of the system.

(2) Procedures must be established for systematically backing up, copying, reformatting, and providing other necessary maintenance for the retention and usability of electronic records throughout their prescribed life cycles.

i. Destruction of electronic records.

(1) Electronic records may be destroyed only in accordance with a records disposition authority approved by the Archivist of the United States. This authority is obtained through the Records Management Branch (OIS/RARD).

(2) This process is exclusive, and records of the United States Government, including electronic records, may not be alienated or destroyed except through this process.

(3) Electronic records scheduled for destruction must be disposed of in a manner that ensures protection of any sensitive, proprietary or national security information. Magnetic recording media are not to be reused if the previously recorded information can be compromised in any way. Refer to 12 FAM for requirements regarding the security of magnetic media.

j. All automated information systems (AIS) or facsimile machines used to process or store electronic records must comply with the security regulations contained in 12 FAM.

5 FAM 442 FACSIMILE RECORDS

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The use of facsimile (FAX) equipment in appropriate and cost-effective circumstances is encouraged in the Department. Facsimile transmissions have the same potential to be Federal records as any other documentary materials received in Federal offices. The method of transmitting a document does not relieve sending or receiving offices of the responsibility for

adequately and properly documenting official actions and activities and for ensuring the integrity of records. See the RMH, 5 FAH-4 , for more guidance on facsimile records. See 5 FAM 561 for policies on FAX transmissions, including use of secure FAX equipment and using FAX equipment to send correspondence to members of Congress.

5 FAM 442.1 Facsimile Label

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The Records Management Branch (OIS/RA/RD) has designed a facsimile transmission label (Form DS-1905), to be affixed to facsimile equipment. The label serves as a reminder to users of the responsibility to file record copies of facsimiles and to photocopy record copies of thermal paper facsimiles onto plain paper for filing. The labels are available from OIS/RA/RD.

5 FAM 442.2 FAX Transmittal Forms

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a. Form DS-1890, Unclassified Facsimile Transmittal Cover Sheet, and Form DS-1890A, Classified Facsimile Transmittal Cover Sheet, are Department forms that are available for use in transmitting documents. Their use is not mandatory. These forms are available on the INFOFORMS disk, which is part of the Department's INFOEXPRESS application. At a minimum, the transmittal form which is used by an office, should contain the following information:

—date of transmittal

—sending and receiving office information (symbol, name, voice & fax telephone numbers)

—subject information, including TAGS/Terms to help properly file the documents

—any comments regarding the transmission

—appropriate security classification, when using a secure fax machine.

b. Transmittal cover sheets containing substantive comments are to be filed with related record material. Those containing informal messages can be destroyed upon receipt or when no longer needed.

5 FAM 443 ELECTRONIC MAIL (E-MAIL) RECORDS

5 FAM 443.1 Principles Governing E-Mail Communications

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a. All Government employees and contractors are required by law to make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency (Federal Records Act, or "FRA," 44 U.S.C. 3101 et seq). In addition, Federal regulations govern the life cycle of these records: they must be properly stored and preserved, available for retrieval, and subject to appropriate approved disposition schedules.

b. As the Department's information modernization program goes forward, new forms of electronic communications have become increasingly available within the Department and between the Department and overseas posts. One example of the improvements that modernization has brought is the automatic electronic preservation of departmental telegrams. Employees are reminded that under current policy departmental telegrams should be used to convey policy decisions or instructions to or from posts, to commit or request the commitment of resources to or from posts, or for official reporting by posts.

c. Another important modern improvement is the ease of communication now afforded to the Department world-wide through the use of E-mail. Employees are encouraged to use E-mail because it is a cost-efficient communications tool. All employees must be aware that some of the variety of the messages being exchanged on E-mail are important to the Department and must be preserved; such messages are considered Federal records under the law. The following guidance is designed to help employees determine which of their E-mail messages must be preserved as Federal records and which may be deleted without further authorization because they are not Federal record materials.

5 FAM 443.2 Which E-Mail Messages are Records

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a. E-mail messages are records when they meet the definition of records in the Federal Records Act. The definition states that documentary materials are Federal records when they:

—are made or received by an agency under Federal law or in connection with public business; and

—are preserved or are appropriate for preservation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government, or because of the informational value of the data in them.

b. The intention of this guidance is not to require the preservation of every E-mail message. Its purpose is to direct the preservation of those messages that contain information that is necessary to ensure that departmental policies, programs, and activities are adequately documented. E-mail message creators and recipients 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.

c. Under FRA regulations (36 CFR 1222.38), 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.

d. For example, just like paper records, E-mail messages that may constitute Federal records include:

(1) 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 Department action;

(2) E-mail providing documentation of significant Department decisions and commitments reached orally (person to person, by telecommunications, or in conference) and not otherwise documented in Department files;

(3) E-mail conveying information of value on important Department activities, e.g. data on significant programs specially compiled by posts in response to a Department solicitation, if the E-mail message adds to a proper understanding of Department operations and responsibilities.

5 FAM 443.3 How to Preserve E-Mail Records

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For those E-mail messages and attachments that meet the statutory definition of records, it is essential to ensure that the record documentation include the E-mail message, any attachments, and essential transmission data (i.e. who sent the message, the addressees and any other recipients, and when it was sent). In addition, information about the receipt of messages should be retained if users consider it necessary for adequately documenting Department activities. If transmission and necessary receipt data is not printed by the particular E-mail system, the paper copies must be annotated as necessary to include such data. Until technology allowing archival capabilities for long-term electronic storage and retrieval of E-mail messages is available and installed, those messages warranting preservation as records (for periods longer than current E-mail systems routinely maintain them) must be printed out and filed with related records. Instructions for printing and handling of Federal records for most of the Department's existing E-mail systems have been prepared and will be available through bureau Executive Offices

5 FAM 443.4 Records Management Reviews

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The Department's Records Management Office (OIS/RA/RD) conducts periodic reviews of the records management practices both at headquarters and at overseas posts. These reviews ensure proper records creation, maintenance, and disposition by the Department. These periodic reviews now will include monitoring of the implementation of the Department's E-mail policy.

5 FAM 443.5 Points to Remember About E-Mail

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—Department E-mail systems are for official use only by authorized personnel.

—The information in the systems is Departmental, not personal. No expectation of privacy or confidentiality applies.

—Before deleting any E-mail message, apply these guidelines to determine whether it meets the legal definition of a records and if so, print it.

—Be certain the printed message kept as a record contains the essential transmission and receipt data; if not, print the data or annotate the printed copy.

—File the printed messages and essential transmission and receipt data with related files of the office.

—Messages that are not records may be deleted when no longer needed.

—Certain E-mail messages that are not Federal records may still be subject to pending requests and demands under the Freedom of Information Act, the Privacy Act, and litigation and court orders, and should be preserved until no longer needed for such purposes.

—Classified information must be sent via classified E-mail channels only, with the proper classification identified on each document.

—When E-mail is retained as a record, the periods of its retention is governed by records retention schedules. Under those schedules, records are kept for defined periods of time pending destruction or transfer to the National Archives.

5 FAM 443.6 Future Technology

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a. The Department is actively working to develop systems that will enable those E-mail messages that are official records to be preserved electronically.

b. These regulations are in compliance with those set forth by the National Archives and Records Administration.

c. The Department and all posts are requested to bring these regulations to the attention of all Department employees and contractors and to begin its implementation immediately.

5 FAM 444 THROUGH 449 UNASSIGNED