

Reclamation Manual

Directives and Standards

Subject: Electronic Mail (E-Mail) Messages as Official Records

Purpose: Establishes a directive requiring the proper use and management of e-mail as a record.

Authority: Federal Records Act, 44 U.S.C. Chapter 21, 29, 31, and 33; 36 CFR, Chapter XII, Subpart B, Parts 1220, 1222, 1228, 1234, Federal Records Management Regulations; 5 U.S.C. 552, Freedom of Information Act, as amended (1996); and Departmental Authorities: 380 DM 1, *Records Management Program and Responsibilities*; 385 DM 7, *Electronic Mail Systems*; IRM Bulletin No. 96-06, *Policy and Guidance for Managing the Creation, Retention, and Disposition of Electronic Mail Documents*; and IRM Bulletin No. 1997-002, *Department-Wide Standards for the Retention of Electronic Mail (e-mail) "System" Messages and E-mail System Backup Tapes*.

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1. Introduction.

- A. **E-Mail as an Official Record.** 44 U.S.C. 3101 requires that each Federal agency create and preserve records containing adequate and proper documentation of agency activities and functions. Reclamation e-mail is being used daily to facilitate agency business, and therefore in accordance with the U.S.C., 36 CFR 1222 and 1230, and the Departmental Manual, e-mail messages and attachments should be treated the same as records created in paper format.
- B. **E-Mail Appraisal.** E-mail messages and attachments transmitted or received during the normal course of business must be appraised for their record value. This appraisal, or decisionmaking process, is critical for documenting Reclamation activities and functions as required by Federal regulations and laws and for future engineering, operations and maintenance, legal, and historical purposes. To ensure that e-mail messages and attachments are retained for the appropriate period of time, users should accurately describe the content in the subject line as with any other form of correspondence.
- C. **Scope.** This Directive applies only to e-mail messages and e-mail system back-up tapes. It does not apply to other electronic-based records systems that manipulate or store data for specific program applications and have different legal retention requirements.

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2. E-Mail System Use.

- A. **Appropriate Use.** E-mail system use is limited to official Government business except those approved uses as prescribed in the Department IRM Bulletin No 1996-006, 36 CFR 1222 and 1230, and 44 U.S.C. 3101 and is the responsibility of the user.
- B. **E-Mail is Government Property.** E-mail messages transmitted or received in the course of performing assigned duties, job description activities, and regular Government business are the property of the Federal Government, Department of the Interior, Bureau of Reclamation. E-mail messages transmitted in this system are not private communications and are subject to the Freedom of Information Act (FOIA), and other public access laws.

PENALTIES MAY BE IMPOSED ON EMPLOYEES WHO ENGAGE IN THE UNAUTHORIZED DESTRUCTION OF FEDERAL RECORDS.

- C. **E-Mail Composition.** E-mail messages should be written in a professional manner and prepared with language appropriate to the workplace. Messages should not include language, personal opinion, or other matters that will cause embarrassment to the sender, recipient, or Reclamation. In addition, messages should not transmit harassing, derogatory, or obscene materials, chain letters or similar communications, or items which promote religious, political, or personal agendas that do not relate to official business. Users should be aware that all copyright restrictions, FOIA, Privacy Act, slander, and libel laws apply to the use of this system.

3. Management of E-Mail Messages.

- A. **Official Records.** The Federal Records Act defines a record as “all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical format or characteristics, made or received by an agency of the United States Government...in connection with the transaction of public business and appropriate for preservation by that agency...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.”
- (1) In accordance with this definition, any materials that document agency business, including those created in a machine readable format, are considered to be records regardless of the medium on which they are created or stored.

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- (2) In addition to this definition, e-mail messages must include the transmission data (metadata), all attachments, and complete text of the message to meet the criteria for official records as defined by case law and court decisions.

B. Employee Responsibilities. The above referenced authorities are not arbitrary and penalties may be imposed on employees who engage in the unauthorized destruction of official Government records as stated in 18 U.S.C. 2071.

- (1) All Reclamation employees and contractors providing contractual services to the agency are responsible for managing records in accordance with Federal laws, Departmental Directives, and the Reclamation Manual. This includes all information or data, sent or received, in the form of e-mail messages created in the course of conducting agency business.
- (2) Employees and contractors are responsible for distinguishing between record and non-record materials. Not all e-mail messages are considered official records. Those that do not meet the criteria of an official record should be deleted immediately upon being read. If not deleted in accordance with established policy they are subject to FOIA requests, and are admissible in court as documentary evidence for litigation regardless of the implied intent.
- (3) It is the responsibility of the employee or contractor to determine if the electronic message and accompanying attachments are an official record. If **any** of the following questions are true, then the e-mail message must be considered a record and the appropriate action taken.
 - (a) If the information in the e-mail message had been received in the form of a paper memorandum or letter would it have been filed in the official file?
 - (b) Was the message and attachment created to facilitate agency business; communicate information, guidance, or policy; assist in the decisionmaking process; provide timely information on an assigned project or program; request action; or solicit opinions?
 - (c) Does the e-mail message establish procedures or request services to be performed by or between individuals, other agencies, or contractors?
 - (d) Does the message commit significant resources or employee/contractor services?
 - (e) Does the e-mail message respond to a request for information or data concerning a specific program, project, or assignment?

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- (f) Is the message or attachment, or any part thereof, used as a source document for reference by other employees or contractors?
 - (g) Does any part of the message or attachment contain critical information or data for use in other reports or program management?
 - (h) Is the message the only record of a Reclamation decision or does it document an oral agreement or understanding not documented by any other means?
 - (i) Does the message provide comments on a draft document that may significantly change the original intent, findings, or concepts?
 - (j) Does the e-mail message clarify or add substantially to the understanding regarding the actions to be taken by Reclamation employees/contractors?
- (4) Some examples of non-record e-mail messages:
- (a) "All-employee" distributions received throughout the agency or office.
 - (b) Duplicate copies of materials maintained solely for reference.
 - (c) Personal work-related materials such as diaries, journals, calendars, or schedules.
 - (d) Messages that do not relate to official Reclamation functions or activities, i.e., lunch appointments, after work social events, or the bowling league schedule.
 - (e) The unofficial first draft of a report being prepared by a co-worker for your comment and revision.

C. **Supervisor Responsibilities.** Supervisors are responsible to ensure employees adhere to the requirements regarding proper use of e-mail systems and accepted records management practices. In addition, the supervisor should review the e-mail and electronic files of employees who are leaving Reclamation employment. E-mail and electronic files that document agency business and are required for normal operations, emergency situations, or historical review must be retained in accordance with records management instructions defined in the Information Management Handbook (IMH). It is the supervisor's responsibility to ensure proper retention of such materials for employees exiting the agency.

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- D. **Retention and Disposition.** E-mail messages determined to be official records must be printed along with all attachments and the transmission data (GroupWise “Properties” screen). The “Properties” screen identifies the originator and all recipients of the message, the date sent and opened, etc. The attachments and transmission data are a legal part of the official record and must be retained with the message. Once the message, attachments, and transmission data have been printed they should be assigned a classification code from the IMH and filed in the appropriate case or subject file along with other official records. The e-mail message should then be deleted. Normal retention and disposition will be applied to the entire file folder for that project or program function.
- E. **E-Mail Retention Standards.** Reclamation retention and automatic deletion of e-mail from the e-mail system will occur on a 120-day basis, which adheres to policy established in Department of the Interior IRM Bulletin No. 1997-002. This includes:
- (1) **In-Box.** Messages in the IN-BOX will be automatically deleted 120 days after date of receipt, but only if they have been opened.
 - (2) **Out-Box.** Messages in the OUT-BOX will be automatically deleted when 120 days old.
 - (3) **Shared Messages Areas.** If your e-mail system supports Bulletin Boards or discussion areas, messages in these areas will be automatically deleted when they are 120 days old.
 - (4) **Personal Folders.** Messages and attachments stored in personal folders will be automatically deleted when 120 days old.
 - (5) **Appointments, Tasks, and Notes.** Items stored under these functions will be automatically deleted when 120 days old.
 - (6) **Trash.** Messages and attachments stored in trash will be automatically deleted when 10 days old.
 - (7) **Archiving.** Automated archiving is not activated. Archiving of official records must adhere to paragraph 3C above. Manual archiving of e-mail can be achieved for those messages deemed important for future reference but are not record material. The sender and receiver must decide if the message is an official record or simply informational.
 - (8) **Automatic Deletion.** Automatic deletion will occur 120 days after an e-mail message is received. Messages opened the day before scheduled deletion will

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automatically be deleted the following day, or on the scheduled 120-day anniversary. Messages opened for the first time after the 120-day period will be deleted the same day they are opened.

- F. **Backup Tapes.** Backup tapes are not official records and are maintained only to restore the e-mail system should a catastrophic failure occur. Backup tapes will be maintained in accordance with Department of the Interior IRM Bulletin No. 1997-002.
- (1) **Daily System Backup Tapes** will be maintained for 1 week and reused. Monday's tape will be used the next Monday, Tuesday's, the next Tuesday, and so on. Daily backups will be an incremental backup unless an incremental backup does not complete a full backup of the e-mail system. In this case a full backup should be done each day.
 - (2) **Weekly System Backup Tapes** will be maintained for 1 month and reused. One day of the week will be designated the weekly backup. This weekly backup will **ALWAYS** be a **FULL** system backup. Week 1 will be retained until week 1 of the next month. Week 2 will be retained until week 2 of the next month, and so on.
 - (3) **Monthly System Backup Tapes** will be maintained for 90 days prior to the current month. Tapes older than 90 days will be recycled.
- G. **FOIA Considerations.**
- (1) **Deletion of E-Mail.** Any e-mail message, including any messages on a backup tape, that is involved in an active FOIA request or appeal **cannot be deleted** until either:
 - (a) The message (including transmission and receipt of information, and any attachments) has been appropriately preserved in an official recordkeeping system (either hardcopy or electronic), or
 - (b) The request or appeal has been completed, even if destruction of the message would otherwise be authorized by an approved records retention schedule.
 - (2) **Electronic Searches.** 5 U.S.C. 552(a)(3)(C) provides that "In responding...to a (FOIA) request for records, an agency shall make reasonable efforts to search for the records in electronic form, or format, except when such efforts would significantly interfere with the operation of the agency's automated information system." If employees are careful to preserve e-mail messages

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that meet the definition of official records, and transfer these records to hardcopy format, they will minimize the potential burden on the agency to conduct lengthy electronic searches under FOIA. Furthermore, such practices will reduce the storage of excessive numbers of backup tapes which could lead to additional liability and litigation.

H. **Litigation Considerations.** Upon formal notification of legal action by the Solicitor's Office, the Records Management Team will coordinate activation of the archiving process to achieve proper documentation for review during the discovery phase of litigation.

(1) Rule 1001(1) of the *Federal Rules of Evidence* defines e-mail messages as:

Writings and recordings. "Writings" and "recordings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) Record and non-record e-mail messages, including those on backup tapes, that concern the litigation, **cannot be deleted** until the court has rendered a decision regarding the document production phase and all documents and records regardless of media have been reviewed for legal action.

(3) When informed by the Solicitor's Office of official litigation, LAN Administrators need to immediately begin the archiving process. To achieve archiving for litigation purposes complete the following:

Turn Automatic deletion - OFF
Turn Automatic archiving - OFF

(4) The Solicitor's Office will inform Reclamation when normal systems operations may resume.