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Part II

National Archives and Records Administration

36 CFR Part 1234

Records Management; Electronic Text Documents; Proposed Rule

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1234

RIN 3095–AB05

Records Management; Electronic Text Documents

AGENCY: National Archives and Records Administration (NARA).

ACTION: Advance notice of proposed rulemaking; request for comment.

SUMMARY: NARA is seeking comments from Federal agencies and the public on a petition for rulemaking we received from the Public Citizen Litigation Group (Public Citizen). The petition requested that the Archivist amend NARA rules concerning the management, scheduling and preservation of text documents created in electronic form. This advance notice of proposed rulemaking (ANPRM) seeks comments on the issues raised in the first and third proposals in the petition. The comments will assist NARA in determining whether a regulatory amendment should be proposed, whether some other action should be taken (e.g., issuance of guidance to Federal agencies in a NARA Bulletin), or whether no changes should be made to NARA's regulations and other issuances.

DATES: Comments are due by January 8, 2002.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–713–7270. You may also comment via the Internet to comments@nara.gov. Please submit Internet comments within the body of your email message or attach comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: 3095–AB05'' and your name and return address in your email message. If you do not receive a confirmation that we have received your email message, contact the Regulation Comment Desk at 301–713–7360, ext. 226.

An electronic copy of the Public Citizen petition for rulemaking is available for review at http:www.nara.gov/nara/petition.html. A paper copy of the petition is available by contacting the person listed in **FOR FURTHER INFORMATION CONTACT.** The exhibits submitted with the petition for rulemaking are available for review at the Textual Research Room, National Archives at College Park (Archives II), 8601 Adelphi Rd., College Park, MD 20740–6001 during hours that the research room is open (see 36 CFR 1253.2).

FOR FURTHER INFORMATION CONTACT: Nancy Allard at telephone number 301–713–7360, ext. 226, or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION:

Background on Petition

Public Citizen submitted a petition for rulemaking under 5 U.S.C. 553(e) to the Archivist of the United States on October 31, 2000, requesting that the Archivist amend NARA regulations in 36 CFR Part 1234, Electronic Records Management. The petition proposed three amendments and suggested regulatory text to accomplish these amendments.

NARA responded formally in writing to the petition on January 18, 2001. That response stated NARA's intent to solicit the views of other Federal agencies and the public on two of Public Citizen's proposals contained in the petition prior to determining further action. The NARA response declined to act on the second proposal in the petition to phase out the application of General Records Schedule 20 to agency program records. As we explained in the response to Public Citizen, we are evaluating alternatives to GRS 20 for disposition authority as part of a comprehensive review of the policies and procedures for scheduling and appraisal of records in all formats. NARA has concluded that acting on Public Citizen's second proposal now would be inconsistent with our consideration of other alternatives as part of our study.

Description of Proposal 1

Public Citizen's first proposal was:

> **1. The regulations should make explicit that recordkeeping systems that preserve electronic text documents must preserve the entire content, structure and context of the electronic original, a requirement that the Archivist's attorneys have stated is already part of GRS 20, although the text of GRS 20 contains no such language.** [Bold in petition document.]
>
> We suggest that this be accomplished by amending 36 C.F.R. § 1234.30 to establish requirements for all recordkeeping systems that maintain text documents and include, as the first of these requirements, the requirement that the recordkeeping system preserve the content, structure and context of the original text document:

The Public Citizen proposal laid out the proposed wording of § 1234.22 (incorrectly cited as § 1234.30 in the Public Citizen petition) with strike-out of text proposed for removal and highlighting of new text. For ease of reading, this document sets forth the language in the following chart, with the current § 1234.22 provided in the left column and Public Citizen's proposed wording in the right column.

Current and proposed wording of 36 CFR 1234.22

Current text of 36 CFR 1234.22:	Public Citizen suggested revised language:
§ 1234.22 Creation and use of text documents. (a) Electronic recordkeeping systems that maintain the official file copy of text documents on electronic media shall meet the following minimum requirements: (1) Provide a method for all authorized users of the system to retrieve desired documents, such as an indexing or text search system; (2) Provide an appropriate level of security to ensure integrity of the documents; (3) Provide a standard interchange format when necessary to permit the exchange of documents on electronic media between agency computers using different software/operating systems and the conversion or migration of documents on electronic media from one system to another; and (4) Provide for the disposition of the documents including, when necessary, the requirements for transferring permanent records to NARA (see § 1228.188[1] of this chapter). (b) Before a document is created electronically on electronic recordkeeping systems that will maintain the official file copy on electronic media, each document shall be identified sufficiently to enable authorized personnel to retrieve, protect, and carry out the disposition of documents in the system. Appropriate identifying information for each document maintained on the electronic media may include: office of origin, file code, key words for retrieval, addressee (if any), signator, author, date, authorized disposition (coded or otherwise), and security classification (if applicable). Agencies shall ensure that records maintained in such systems can be correlated with related records on paper, microform, or other media.	**§ 1234.22 Creation and use of text documents.** (a) Recordkeeping systems that maintain the official file copy of text documents produced on electronic information systems shall meet the following minimum requirements: (1) Preserve the content, structure and context of the original text documents; (2) Provide a method for all authorized users of the system to retrieve desired documents, such as an indexing or text search system; (3) Provide an appropriate level of security to ensure integrity of the documents; (4) Provide for the disposition of the documents including, when necessary, the requirements for transferring permanent records to NARA (see subpart J[2] of this chapter): and (5) Identify each document sufficiently to enable authorized personnel to retrieve, protect, and carry out the disposition of documents in the system. Appropriate identifying information for each document maintained on the electronic media may include: office of origin, file code, key words for retrieval, addressee (if any), signator, author, date, authorized disposition (coded or otherwise), and security classification (if applicable). Agencies shall ensure that records maintained in such systems can be correlated with related records on paper, microform, or other media.

[1] A technical amendment to 36 CFR Part 1234 on May 16, 2001 (66 FR 27027) corrected the reference from §1228.188 to §1228.270.

[2] Subpart J, Transfer of Records to the National Archives of the United States, was redesignated as Subpart L in a final rule published on December 2, 1999 (64 FR 67662). We believe that Public Citizen intends to reference Subpart L, not Subpart J--Transfer, Use, and Disposition of Records in a NARA Records Center.

Discussion of Proposal 1

The Public Citizen proposal would expand current requirements for electronic recordkeeping systems to all recordkeeping systems and specifically require agencies to capture the content, structure, and context of the original electronic text document in the copy filed in the recordkeeping system.

To assist NARA in evaluating this Public Citizen proposal, we invite your comments on the following points:

1A. Definitions

The first paragraph of Public Citizen's proposed CFR text uses the term ''electronic information system.'' In 36 CFR 1234.2, NARA defines this term as ''A system that contains and provides access to computerized Federal records and other information.'' In 36 CFR 1234.2, NARA defines ''Text documents'' as ''narrative or tabular documents, such as letters, memorandums, and reports, in loosely prescribed form and format.''

Questions for comment: 1A1. Is NARA's definition of electronic information system still adequate? Should it explicitly include (or exclude) any types of office applications or other type of software such as the network operating system? Is the definition of ''text documents'' sufficiently broad enough to cover documents produced by products other than word processing software, e.g. PowerPoint presentations or desktop publishing files? Should the definition of ''text documents'' be amended to include presentations and other specific files? Please consider the issues raised relating to both this proposal 1 and proposal 3 found later in this ANPRM.

1A2. If we determine that the section should be amended to reflect Public Citizen's proposed requirements, would coverage of the section be clearer if the term ''electronic information systems'' is replaced in § 1234.22 by a delineation of specific applications that may produce original electronic text documents such as office suite application packages (e.g., Office 2000, Lotus Notes), or word processing or other office automation applications not integrated with the agency email or office suite?

1B. Content, Structure, and Context

The Public Citizen proposal does not place any limit on the content, structure, and context information to be preserved. Indeed, in several places in the petition Public Citizen cites the need for agencies that rely on paper recordkeeping systems to preserve (e.g., print out for a paper recordkeeping copy) the *entire* content, structure, and context that is available in the original electronic documents generated with an office automation application. Neither the Public Citizen petition nor current NARA CFR regulations define ''content'', ''structure'', and ''context'' explicitly. NARA has provided definitions of the terms in its October 2000 Records Management Guidance for Agencies Implementing Electronic Signature Technologies (NARA GPEA guidance), which is available at http://www.nara.gov/records/policy/gpea.html, as follows:

Content: The information that a document is meant to convey (Society of American Archivists Glossary). Words, phrases, numbers, or symbols comprising the actual text of the record that were produced by the record creator.

Structure: The physical and logical format of a record and the relationships between the data elements.[3]

Context: The organizational, functional, and operational circumstances in which documents are created and/or received and used (Society of American Archivists Glossary). The placement of records within a larger records classification system providing cross-references to other related records.

To evaluate the Public Citizen proposed § 1234.22(a)(1)—''Preserve the content, structure and context of the original text documents''—we need to be sure that there is a common understanding of how those terms apply to text documents.

For text documents, NARA considers ''content'' to be the information contained in the record that was used to conduct agency business. For example, the content of a letter would include the text of the letter, the signature, and any other markings (annotations, date stamp received, etc.). A draft circulated for comment might show special editing features, such as highlighting, different color fonts, strike-over, or comment fields, to draw the reviewer's attention to specific points. (We note that if a text document is saved as an ASCII file, special editing features including basic italics and underline are lost.)

For text documents, NARA considers ''structure'' to be the ordering or relationships of the parts of a record. In narrative text, this would include the ordering of the narrative in sentences, paragraphs, sections, chapters, etc. and the designation of certain elements of content as title, author, document date, etc. In a letter, the signature is structurally related to the closing and signature block. In a table, structure would determine the arrangement of content in rows and columns.

For text documents, NARA considers ''context'' to be information that places the record in the business context in which the record was created, received, and/or used. Context may include the drafter or source of the document (if different from the signer), the user(s), the filing code marked on the document or the placement of the document in a case file. Context also may be provided by an associated record, such as a routing slip that shows the levels of review of a final document.

Questions for comment: 1B1. Are the definitions of ''content,'' ''structure,'' and ''context'' contained in the NARA GPEA guidance adequate for all types of records? Do you agree with NARA's understanding of the terms ''content,'' ''structure,'' and ''context'' as they apply to text documents in the Federal Government? If not, what is your understanding of the terms? Do these concepts need to be defined in NARA regulations?

1B2. What information about the content, structure, and context must be maintained as part of the record for the agency to conduct its business and for accountability purposes? Can we define the minimum metadata needed for text documents to provide adequate documentation, as we do for email messages (see 36 CFR 1234.24(a)(1)–(a)(3))? Are the minimum metadata different for permanent and temporary records? Do specific types of text documents require different minimum metadata? What relationship do you see between ''content, structure, and context'' and metadata requirements? Specifically addressing the Public Citizen proposed CFR wording, does compliance with the metadata and other requirements in its proposed § 1234.22(a)(5) meet the requirements for content, structure, and context in its proposed § 1234.22(a)(1)?

1B3. We request comments specifically on the need to retain with the recordkeeping copy the following types of information for text documents:

- *Hidden information:* NARA's view is that hidden information (such as comments) in text records must be preserved as part of the record when the author intends to share the information with others, e.g., notes added to explain or comment on a draft report. Is it essential or even misleading to require it when the document is viewed/printed from a system that does not indicate that there is hidden text? What types of text documents besides word processing have hidden comments/text capability, e.g., spreadsheets with formulas?
- *Document summaries:* What elements of document summary information are commonly available from all major word processing applications? What other office applications that produce text documents have a similar feature? Is the

[3] While this definition is appropriate for the types of electronic records covered in the GPEA guidance, it may not be clearly applicable to all electronic records. Textual records, such as word processing files, may not contain any defined data elements. In the discussion following these definitions of ''content'', ''structure'', and ''context'' we use a broader definition.

document summary feature used in your agency and, if so, how widely? Does any agency require staff to complete the document summary routinely? Is a default normally used? How does the agency use the information if they retain the document in a non-electronic recordkeeping system?

1C. Requirement for Standard Interchange Format for Electronic Recordkeeping Systems

Public Citizen proposed to strike the current paragraph (a)(3), which is applicable only to electronic recordkeeping systems. This paragraph requires agencies to provide a standard interchange format when necessary to permit the exchange of documents on electronic media between agency computers using different software/operating systems and the conversion or migration of documents on electronic media from one system to another. NARA believes the interchange requirements are needed for the survival of all but the most short-term electronic records, and critical for long-term and permanent electronic records.

Question for comment: If we determine that § 1234.22 should be amended to reflect Public Citizen's proposed requirements, should we retain the current paragraph (a)(3) for electronic recordkeeping systems only?

1D. Alternatives to Public Citizen Proposal

Question for comment: Do you see any other issues that should be considered as we evaluate the Public Citizen Proposal 1?

Proposal 2

As noted in the Background on petition section of the **SUPPLEMENTARY INFORMATION,** NARA declined to act on the second proposal, and we are not inviting or considering comments on that proposal in this ANPRM.

Description of Proposal 3

Public Citizen's third proposal was:

3. The Archivist should mandate early appraisal of text documents and mandate that agencies incorporate disposition instructions in the design of new electronic information systems. [Bold in petition document.]

The Archivist's current regulations require that electronic information systems ''shall be scheduled as soon as possible but no later than one year after implementation of the system,'' 36 C.F.R. § 1234.32, but the regulations only require that disposition instructions be incorporated into system design for ''data files.'' Id. § 1234.20. We urge that the following language be added to 36 C.F.R. § 1234.30 to mandate consideration of recordkeeping when systems for text documents are implemented:

(b) Before approving new electronic information systems or enhancements to existing systems that produce, use, or store text documents, the agency shall conduct an initial appraisal of the records associated with the system and incorporate disposition instructions for such records into the electronic information system's design.

Discussion of Proposal 3

Public Citizen states in its petition that records in electronic form have unique advantages, including wider and easier distribution, searching and indexing the records, and storage. Public Citizen further states that ''electronic records carry advantages for research, even if the records have not been maintained in a system that satisfies all of the attributes of an ideal electronic recordkeeping system.'' Public Citizen argues that it is important to address the disposition of both text documents and data files whenever new information systems are developed.

NARA believes that the wording proposed by Public Citizen will need modification if we determine that we should incorporate the proposal in 36 CFR part 1234. NARA, not the creating agency, appraises records and approves disposition instructions. As part of an agency's planning for a new or modified system, we think that the agency should consider records management issues including retention and disposal of the records and ensuring that the records can be maintained for their entire retention period. Additionally, the proposed placement of the new paragraph (b) in § 1234.30 is not as appropriate as placing it in § 1234.22 or in a new separate section.

To assist NARA in evaluating this Public Citizen proposal, we invite your comments on the following points:

3A. Terminology Used in the Proposal

Questions for comment: 3A1. Does (and should) ''electronic information system'' as used in this proposed paragraph include word processing applications? If so, does the word processing application technically ''store'' the text documents produced with the software?

3.A.2. Should we distinguish systems that only produce or use electronic records from those that store them? If an agency sends all its electronic records to a records management application (RMA), NARA believes there is no need to build disposition functionality into its word processing application or into a web tool that can search and retrieve documents from the RMA. What do we do about systems used to produce electronic records that are only maintained in hard copy?

3.A.3. How should ''enhancements to existing systems'' be defined or qualified to indicate that new or different records are being created? NARA has a general policy that agencies must reschedule their records when an agency program is reorganized or otherwise changed in a way that results in the creation of new or different records (see 36 CFR 1228.26(a)(2)).

3.A.4. What activities does the term ''produce'' cover? Is there a clearer way to state these activities?

3B. Alternatives to Public Citizen Proposal 3

Question for comment: Do you see any other issues that should be considered as we evaluate Public Citizen proposal 3?

Dated: August 21, 2001.

John W. Carlin,

Archivist of the United States.

[FR Doc. 01–24783 Filed 10–9–01; 8:45 am]

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