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(iii) Retain the records in a usable format for their required retention period as specified by a NARA-approved records schedule;

(iv) Be accessible by individuals who have a business need for information in the system;

(v) Preserve the transmission and receipt data specified in agency instructions; and

(vi) Permit transfer of permanent records to the National Archives and Records Administration (see 36 CFR 1228.270 and 36 CFR 1234.32(a)).

(2) Agencies may elect to manage electronic mail records with very short-term NARA-approved retention periods (transitory records with a very short-term retention period of 180 days or less as provided by GRS 23, Item 7, or by a NARA-approved agency records schedule) 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 use an electronic mail system to store the recordkeeping copy of electronic mail messages identified as Federal records unless that 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.

(c) Agencies that maintain their electronic mail records electronically shall move or copy them to a separate electronic recordkeeping system unless their system has the features specified in paragraph (b)(1) of this section. Because they do not have the features specified in paragraph (b)(1) of this section, backup tapes should not be used for recordkeeping purposes. Agencies may retain records from electronic

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mail systems in an off-line electronic storage format (such as optical disk or magnetic tape) that meets the requirements described at 36 CFR 1234.30(a). Agencies that retain permanent electronic mail records scheduled for transfer to the National Archives shall either store them in a format and on a medium that conforms to the requirements concerning transfer at 36 CFR 1228.188 or shall maintain the ability to convert the records to the required format and medium at the time transfer is scheduled.

(d) Agencies that maintain paper files as their recordkeeping systems shall print their electronic mail records and the related transmission and receipt data specified by the agency.

[60 FR 44641, Aug. 28, 1995, as amended at 66 FR 27028, May 16, 2001; 71 FR 8807, Feb. 21, 2006]

§ 1234.26 Judicial use of electronic records.

Electronic records may be admitted in evidence to Federal courts for use in court proceedings (Federal Rules of Evidence 803(8)) if trustworthiness is established by thoroughly documenting the recordkeeping system's operation and the controls imposed upon it. Agencies should implement the following procedures to enhance the legal admissibility of electronic records.

(a) Document that similar kinds of records generated and stored electronically are created by the same processes each time and have a standardized retrieval approach.

(b) Substantiate that security procedures prevent unauthorized addition, modification or deletion of a record and ensure system protection against such problems as power interruptions.

(c) Identify the electronic media on which records are stored throughout their life cycle, the maximum time span that records remain on each storage medium, and the NARA-approved disposition of all records.

(d) Coordinate all of the above with legal counsel and senior IRM and records management staff.

[55 FR 19218, May 8, 1990. Redesignated at 60 FR 44641, Aug. 28, 1995]