

ELECTRONIC MESSAGE PRESERVATION ACT

JUNE 25, 2013.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ISSA, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany H.R. 1234]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 1234) to amend title 44, United States Code, to require preservation of certain electronic records by Federal agencies, to require a certification and reports relating to Presidential records, and for other purposes, having considered the same, report favorably thereon with amendment and recommend that the bill as amended do pass.

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The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 4, before line 16, insert the following new subsection (and redesignate the subsequent subsection accordingly):

(b) DISCLOSURE REQUIREMENT FOR OFFICIAL BUSINESS CONDUCTED USING NON-OFFICIAL ELECTRONIC MESSAGING ACCOUNT.—

(1) AMENDMENT.—Chapter 29 of title 44, United States Code, as amended by subsection (a)(1), is further amended by adding at the end the following new section:

“§ 2912. Disclosure requirement for official business conducted using non-official electronic messaging accounts

“(a) IN GENERAL.—An officer or employee of an executive agency may not create or send a record using a non-official electronic messaging account unless such officer or employee—

“(1) copies an official electronic messaging account of the officer or employee in the original creation or transmission of the record; or

“(2) forwards a complete copy of the record to an official electronic messaging account of the officer or employee within five days after the original creation or transmission of the record.

“(b) ADVERSE ACTIONS.—The intentional violation of subsection (a) (including any rules, regulations, or other implementing guidelines), as determined by the appropriate supervisor, shall be a basis for disciplinary action in accordance with subchapter I, II, or V of chapter 75 of title 5, as the case may be.

“(c) DEFINITIONS.—In this section:

“(1) ELECTRONIC MESSAGES.—The term ‘electronic messages’ has the meaning given that term in section 2901.

“(2) ELECTRONIC MESSAGING ACCOUNT.—The term ‘electronic messaging account’ means any account that sends electronic messages.

“(3) EXECUTIVE AGENCY.—The term ‘executive agency’ has the meaning given that term in section 105 of title 5.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 29 of title 44, United States Code, as amended by subsection (a)(2), is further amended by adding at the end the following new item:

“2912. Disclosure requirement for official business conducted using non-official electronic messaging accounts.”.

Page 7, beginning on line 17, strike “, as amended” and all that follows through “is further amended” on line 18, and inserting “is amended”.

Page 8, line 13, strike “this section” and insert “subsections (a), (b), and (c)”.

At the end of the bill, add the following:

(e) DISCLOSURE REQUIREMENT FOR OFFICIAL BUSINESS CONDUCTED USING NON-OFFICIAL ELECTRONIC MESSAGING ACCOUNT.—

(1) AMENDMENT.—Chapter 22 of title 44, United States Code, as amended by subsection (b)(1), is further amended by adding at the end the following new section:

“§ 2209. Disclosure requirement for official business conducted using non-official electronic messaging accounts

“(a) IN GENERAL.—An officer or employee of an executive agency may not create or send a Presidential record using a non-official electronic messaging account unless such officer or employee—

“(1) copies an official electronic messaging account of the officer or employee in the original creation or transmission of the Presidential record; or

“(2) forwards a complete copy of the Presidential record to an official electronic messaging account of the officer or employee within five days after the original creation or transmission of the Presidential record.

“(b) ADVERSE ACTIONS.—The intentional violation of subsection (a) (including any rules, regulations, or other implementing guidelines), as determined by the appropriate supervisor, shall be a basis for disciplinary action in accordance with subchapter I, II, or V of chapter 75 of title 5, as the case may be.

“(c) DEFINITIONS.—In this section:

“(1) ELECTRONIC MESSAGES.—The term ‘electronic messages’ has the meaning given that term in section 2901.

“(2) ELECTRONIC MESSAGING ACCOUNT.—The term ‘electronic messaging account’ means any account that sends electronic messages.

“(3) EXECUTIVE AGENCY.—The term ‘executive agency’ has the meaning given that term in section 105 of title 5.”

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 22 of title 44, United States Code, as amended by subsection (b)(2), is further amended by adding at the end the following new item:

“2209. Disclosure requirement for official business conducted using non-official electronic messaging accounts.”.

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 1234, the Electronic Message Preservation Act was introduced on March 18, 2013, by Ranking Minority Member Elijah E. Cummings (D-MD). As amended, this legislation would require federal agencies to preserve electronic messages that are determined to be records, require preservation and certification of electronic messages that are presidential records, and make additional changes to improve the Federal Government’s ability to capture and archive electronic federal records created or sent by personal electronic messaging accounts of federal employees.

BACKGROUND AND NEED FOR LEGISLATION

Congress first addressed federal recordkeeping in the 1930s, when the combination of growing public concern over poor agency recordkeeping practices and an expanding federal bureaucracy necessitated recordkeeping solutions for a larger volume of records. In 1934, Congress established the National Archives and the position of Archivist of the United States as the primary, central agent of records preservation for the Federal Government.¹ In 1950, Congress followed up the establishment of the National Archives with the Federal Records Act (FRA), which established basic records management authority for federal agencies and set basic records management standards, including standards for the disposal of records. The intent was that agencies would manage their own records internally, while the National Archives would filter and preserve those records that were transferred to the National Archives for posterity.

¹ See generally National Archives Act, 48 Stat. 1122 (1934).

In 1978, in the wake of Watergate, Congress also passed the Presidential Records Act (PRA), intended to be a comprehensive answer to the general issue of presidential records preservation and maintenance. The PRA defined what did and did not qualify as a presidential record,² clarified the ownership of presidential records,³ detailed guidelines for the management and custody of presidential records,⁴ established procedures for restricting access to Presidential records under certain circumstances,⁵ and granted the Archivist the ability to promulgate regulations enforcing the PRA.⁶

Unfortunately, the rapid migration over the last several decades toward electronic communication and recordkeeping has rendered antiquated aspects of both the FRA and the PRA. This legislation will begin to address the deficiencies of current law in three ways. First, it will require the electronic capture, management, and preservation of electronic federal records by agencies. To ensure the success of this requirement, the National Archives will be required to establish mandatory minimum function requirements for electronic records management systems and to establish a process to certify that agencies' systems meet those requirements. Second, it will require the Archivist to issue regulations that establish standards necessary for the economical and efficient management of electronic Presidential records during the President's term of office. Similar to the standard for federal agencies, records management controls must be established and the Archivist will be required to annually certify whether the President's electronic records management controls meet the requirements of the Archivist. Finally, the legislation will also explicitly codify a requirement that federal employees who create or transmit a federal or presidential record through a non-governmental electronic messaging account file an electronic copy of that record with their agency.

LEGISLATIVE HISTORY

H.R. 1234, the Electronic Message Preservation Act, was introduced on March 18, 2013, and referred to the House Committee on Oversight and Government Reform. In the 112th Congress, the provisions contained within the introduced version were among a number of provisions included in H.R. 1144 and in the amended version of H.R. 3071, which was itself ordered favorably reported by the Oversight and Government Reform Committee.

At a business meeting on March 20, 2013, the Committee considered H.R. 1234 and, after the adoption by voice vote of an amendment offered by Chairman Issa (R-CA), H.R. 1234 was ordered to be favorably reported from the Committee, also by voice vote.

² See *id.* at § 2201.

³ See *id.* at § 2202.

⁴ See *id.* at § 2203.

⁵ See *id.* at §§ 2204 and 2205.

⁶ See *id.* at § 2206. The PRA also provides that the same rules governing the collection, storage, and preservation of presidential records govern the collection, storage, and preservation of vice presidential records. See *id.* at § 2207.

SECTION-BY-SECTION

Section 1. Short title

Section 1 establishes the bill's title as the, "Electronic Message Preservation Act."

Section 2. Records management

Subsection (a) creates 44 U.S.C. 2911 which requires the Archivist, within 18 months of enactment, to promulgate regulations governing Federal agency preservation of electronic federal records which must ensure: (1) the electronic capture, management, and preservation of electronic records; (2) that electronic records are readily accessible through electronic searches; (3) mandatory minimum functional requirements necessary to comply with electronic storage and retrieval guidelines; (4) a process is created to certify agency electronic records management systems meet the necessary functional requirements; and (5) agency compliance with the regulations not later than four years after enactment.

Subsection (b) creates 44 U.S.C. 2912 which requires federal employees who create or send a federal record from a non-official electronic messaging account to forward a complete copy of the record to an official electronic messaging account within five days. In cases of intentional violation of this disclosure requirement, the section authorizes disciplinary action as determined by the appropriate supervisor, in accordance with subchapter I, II, or V of chapter 75 of title 5, U.S. Code.

Subsection (c) adds definitions of "electronic messages" and "electronic records management system" to 44 U.S.C. 2901.

Section 3. Presidential records

Subsection (a) amends 44 U.S.C. 2206 to require the Archivist to promulgate provisions for the economical and efficient management of electronic Presidential records during the President's term of office.

Subsection (b) creates 44 U.S.C. 2208 which requires the Archivist to certify whether a presidential administration's electronic records management system is sufficient to meet the electronic records management requirements of the Presidential Records Act.

Subsection (c) requires the Archivist to submit a report to Congress one year after a President leaves office detailing the volume and format of the electronic Presidential records deposited into that President's archival depository.

Subsection (d) provides an effective date for subsection (a), (b), and (c) of one year after date of enactment.

Subsection (e) creates 44 U.S.C. 2209 which requires federal employees who create or send a Presidential record from a non-official electronic messaging account to forward a complete copy of the record to an official electronic messaging account within five days. In cases of intentional violation of this disclosure requirement, the section authorizes disciplinary action as determined by the appropriate supervisor, in accordance with subchapter I, II, or V of chapter 75 of title 5, U.S. Code.

EXPLANATION OF AMENDMENTS

The provisions of the adopted amendments are explained in this report.

COMMITTEE CONSIDERATION

On March 20, 2013, the Committee met in open session and ordered reported favorably the bill, H.R. 1234, as amended, by voice vote, a quorum being present.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill requires federal agencies to preserve electronic messages that are determined to be records, requires preservation and certification of electronic messages that are presidential records, and makes additional changes to improve the Federal Government’s ability to capture and archive electronic federal records created or sent by personal electronic messaging accounts of federal employees. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee’s performance goals and objectives are reflected in the descriptive portions of this report.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 1234 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

H.R. 1234 requires the Archivist to develop and issue a number of regulations related to electronic messaging. With regard to federal records, the Archivist is required to issue regulations within 18 months of enactment of the legislation to: (1) require the electronic capture, management, and preservation of electronic records; (2) require that such electronic records are readily accessible for retrieval by elections searches; (3) establish mandatory minimum functional requirements for electronic records management systems; (4) establish a process to certify agency compliance with elec-

tronic records management system functional requirements; and (5) provide timelines for agency compliance with the aforementioned requirements, not to exceed four years from enactment. The Archivist is also directed to update these regulations as necessary. With regard to Presidential records, the Archivist is required to establish standards necessary for the economical and efficient management of electronic Presidential Records, including through a process to annually certify a President's compliance with such regulations.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 1234 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 1234. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1234 from the Director of Congressional Budget Office:

MAY 23, 2013.

Hon. DARRELL ISSA,
Chairman, Committee on Oversight and Government Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1234, the Electronic Message Preservation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1234—Electronic Message Preservation Act

H.R. 1234 would amend federal law concerning the preservation, storage, and management of records by federal agencies. The legislation would direct the National Archives and Records Administration (NARA) to issue regulations governing the preservation of e-mail and other electronic records in electronic format and establish procedures for using nonfederal e-mail services for official government business. Finally, H.R. 1234 would amend the Presidential Records Act to authorize NARA to manage the electronic records of the President.

Under the legislation, NARA would have 18 months to promulgate regulations on the preservation of electronic messages, and agencies would have four years to comply. Most of the provisions of H.R. 1234 would codify or expand current practices of the federal government. Under the Federal Records Act, each agency is required to make and preserve records of its activities. To accomplish this, agencies are required to have appropriate systems to manage and preserve their records. The act also gives NARA the responsibility to oversee and issue guidance on managing federal records, including e-mail messages. Although current NARA regulations require that government e-mail messages be stored electronically, NARA allows agencies to print and file paper copies of e-mail records. In addition, a 2012 Managing Government Records Directive (M-12-18) from the Office of Management and Budget requires that federal agencies manage all e-mail in an electronic format by 2016.

CBO expects that not all agencies will meet the timeline specified in the directive for using electronic systems to manage e-mail records. Some agencies will probably have to acquire additional computer hardware and software to meet the new requirements. Based on information from NARA and selected agencies, CBO estimates that implementing H.R. 1234 would cost \$15 million over the 2014–2018 period, assuming the availability of appropriated funds. CBO estimates that implementing other provisions of the bill regarding nonfederal e-mail and managing Presidential records would not have a significant impact on the federal budget. The legislation also could affect direct spending by agencies not funded through annual appropriations or by agencies considered to be off-budget. Therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would not be significant. Enacting the bill would not affect revenues.

Electronically archiving e-mail could reduce the administrative costs agencies incur to print and file paper copies and to perform other tasks, such as fulfilling Freedom of Information Act requests and retiring records for judicial proceedings. However, CBO expects that any such savings over the next five years would be small.

H.R. 1234 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 44, UNITED STATES CODE

* * * * *

CHAPTER 22—PRESIDENTIAL RECORDS

Sec.
2201. Definitions.

* * * * *

2208. *Certification of the President's management of Presidential records.*

2209. *Disclosure requirement for official business conducted using non-official electronic messaging accounts.*

§ 2201. Definitions

As used in this chapter—

(1) * * *

* * * * *

(6) *The term “electronic messages” has the meaning given that term under section 2901(15) of this title.*

(7) *The term “electronic records management system” has the meaning given that term under section 2901(16) of this title.*

* * * * *

§ 2203. Management and custody of Presidential records

(a) * * *

* * * * *

(f)(1) * * *

* * * * *

(4) *One year following the conclusion of a President's term of office, or if a President serves consecutive terms one year following the conclusion of the last term, the Archivist shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on—*

(A) *the volume and format of electronic Presidential records deposited into that President's Presidential archival depository; and*

(B) *whether the electronic records management controls of that President met the requirements under sections 2203(a) and 2206(5) of this title.*

* * * * *

§ 2206. Regulations

The Archivist shall promulgate in accordance with section 553 of title 5, United States Code, regulations necessary to carry out the provisions of this chapter. Such regulations shall include—

(1) * * *

* * * * *

(3) provisions for notice by the Archivist to the former President when the disclosure of particular documents may adversely affect any rights and privileges which the former President may have; **[and]**

(4) provisions for establishing procedures for consultation between the Archivist and appropriate Federal agencies regarding materials which may be subject to section 552(b)(7) of title 5, United States Code**[.]**; *and*

* * * * *

(5) *provisions for establishing standards necessary for the economical and efficient management of electronic Presidential records during the President's term of office, including—*

(A) *records management controls necessary for the capture, management, and preservation of electronic messages;*

(B) *records management controls necessary to ensure that electronic messages are readily accessible for retrieval through electronic searches; and*

(C) *a process to certify the electronic records management system to be used by the President for the purposes of complying with the requirements in subparagraphs (A) and (B).*

* * * * *

§ 2208. Certification of the President's management of Presidential records

(a) **ANNUAL CERTIFICATION.**—*The Archivist shall annually certify whether the electronic records management controls established by the President meet requirements under sections 2203(a) and 2206(5) of this title.*

(b) **REPORT TO CONGRESS.**—*The Archivist shall report annually to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives on the status of the certification.*

§ 2209. Disclosure requirement for official business conducted using non-official electronic messaging accounts

(a) **IN GENERAL.**—*An officer or employee of an executive agency may not create or send a Presidential record using a non-official electronic messaging account unless such officer or employee—*

(1) *copies an official electronic messaging account of the officer or employee in the original creation or transmission of the Presidential record; or*

(2) *forwards a complete copy of the Presidential record to an official electronic messaging account of the officer or employee within five days after the original creation or transmission of the Presidential record.*

(b) **ADVERSE ACTIONS.**—*The intentional violation of subsection (a) (including any rules, regulations, or other implementing guidelines), as determined by the appropriate supervisor, shall be a basis for disciplinary action in accordance with subchapter I, II, or V of chapter 75 of title 5, as the case may be.*

(c) **DEFINITIONS.**—*In this section:*

(1) **ELECTRONIC MESSAGES.**—*The term “electronic messages” has the meaning given that term in section 2901.*

(2) **ELECTRONIC MESSAGING ACCOUNT.**—*The term “electronic messaging account” means any account that sends electronic messages.*

(3) **EXECUTIVE AGENCY.**—*The term “executive agency” has the meaning given that term in section 105 of title 5.*

* * * * *

CHAPTER 29—RECORDS MANAGEMENT BY THE ARCHITECT OF THE UNITED STATES AND BY THE ADMINISTRATOR OF GENERAL SERVICES

Sec.

2901. Definitions.

* * * * *

2911. *Preservation of electronic messages and other records.*

2912. *Disclosure requirement for official business conducted using non-official electronic messaging accounts.*

§ 2901. Definitions

As used in this chapter, and chapters 21, 25, 31, and 33 of this title—

(1) * * *

* * * * *

(14) the term “Federal agency” means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Supreme Court, the Senate, the House of Representatives, and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol); **[and]**

[(15) the term “Administrator” means the Administrator of General Services.]

(15) *the term “electronic messages” means electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals; and*

(16) *the term “electronic records management system” means software designed to manage electronic records, including by—*

(A) *categorizing and locating records;*

(B) *ensuring that records are retained as long as necessary;*

(C) *identifying records that are due for disposition; and*

(D) ensuring the storage, retrieval, and disposition of records.

* * * * *

§2911. Preservation of electronic messages and other records

(a) *REGULATIONS REQUIRED.*—Not later than 18 months after the date of the enactment of this section, the Archivist shall promulgate regulations governing Federal agency preservation of electronic messages that are determined to be records (as such term is defined under section 3301 of this title). Such regulations shall, at a minimum—

(1) require the electronic capture, management, and preservation of such electronic records in accordance with the records disposition requirements of chapter 33 of this title;

(2) require that such electronic records are readily accessible for retrieval through electronic searches;

(3) establish mandatory minimum functional requirements for electronic records management systems to ensure compliance with the requirements in paragraphs (1) and (2);

(4) establish a process to certify that Federal agencies' electronic records management systems meet the functional requirements established under paragraph (3); and

(5) include timelines for Federal agency compliance with the regulations that ensure compliance as expeditiously as practicable but not later than four years after the date of the enactment of this section.

(b) *COVERAGE OF OTHER ELECTRONIC RECORDS.*—To the extent practicable, the regulations promulgated under subsection (a) shall also include requirements for the capture, management, and preservation of other electronic records.

(c) *COMPLIANCE BY FEDERAL AGENCIES.*—Each Federal agency shall comply with the regulations promulgated under subsection (a).

(d) *REVIEW OF REGULATIONS REQUIRED.*—The Archivist shall periodically review and, as necessary, amend the regulations promulgated under subsection (a).

(e) *REPORTS ON IMPLEMENTATION OF REGULATIONS.*—

(1) *AGENCY REPORT TO ARCHIVIST.*—Not later than four years after the date of the enactment of this section, the head of each Federal agency shall submit to the Archivist a report on the agency's compliance with the regulations promulgated under this section.

(2) *ARCHIVIST REPORT TO CONGRESS.*—Not later than 90 days after receipt of all reports required by paragraph (1), the Archivist shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on Federal agency compliance with the regulations promulgated under subsection (a).

§2912. Disclosure requirement for official business conducted using non-official electronic messaging accounts

(a) *IN GENERAL.*—An officer or employee of an executive agency may not create or send a record using a non-official electronic messaging account unless such officer or employee—

(1) *copies an official electronic messaging account of the officer or employee in the original creation or transmission of the record; or*

(2) *forwards a complete copy of the record to an official electronic messaging account of the officer or employee within five days after the original creation or transmission of the record.*

(b) *ADVERSE ACTIONS.—The intentional violation of subsection (a) (including any rules, regulations, or other implementing guidelines), as determined by the appropriate supervisor, shall be a basis for disciplinary action in accordance with subchapter I, II, or V of chapter 75 of title 5, as the case may be.*

(c) *DEFINITIONS.—In this section:*

(1) *ELECTRONIC MESSAGES.—The term “electronic messages” has the meaning given that term in section 2901.*

(2) *ELECTRONIC MESSAGING ACCOUNT.—The term “electronic messaging account” means any account that sends electronic messages.*

(3) *EXECUTIVE AGENCY.—The term “executive agency” has the meaning given that term in section 105 of title 5.*

* * * * *

