

record would not be preserved). The ability to overwrite or erase records stored on these systems makes them non-compliant with Rule 17a-4(f).

Any system used by a broker-dealer must comply with every requirement in paragraph (f) of the rule. Among other requirements in paragraph (f), the broker-dealer would need to have in place an audit system providing for accountability regarding the inputting of records into the storage system.<sup>13</sup> The audit procedures for a storage system using integrated software and hardware codes to comply with paragraph (f) would need to provide accountability regarding the length of time records are stored in a non-rewriteable and non-erasable manner. This should include senior management level approval of how the system is configured to store records for their required retention periods in a non-rewriteable and non-erasable manner. It would be prudent to configure such a storage system so that records input without an expiry or a retention period, by default, would be assigned a permanent retention period. This would help to ensure the records are maintained in accordance with the retention periods specified in Rule 17a-4 or other applicable Commission rules.

Moreover, there may be circumstances (such as receipt of a subpoena) where a broker-dealer is required to maintain records beyond the retention periods specified in Rule 17a-4 or other applicable Commission rules. Accordingly, a broker-dealer must take appropriate steps to ensure that records are not deleted during periods when the regulatory retention period has lapsed but other legal requirements mandate that the records continue to be maintained, and the broker-dealer's storage system must allow records to be retained beyond the retention periods specified in Commission rules.

## V. Conclusion

For the foregoing reasons, the Commission finds this interpretation to be consistent with section 17 of the Exchange Act and Rule 17a-4 thereunder.

## List of Subjects in 17 CFR Part 241

Securities.

## Amendment to the Code of Federal Regulations

■ For the reasons set out in the preamble, the Commission is amending title 17, chapter II of the Code of Federal Regulations as set forth below:

## PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ Part 241 is amended by adding Release No. 34-47806 and the release date of May 7, 2003 to the list of interpretive releases.

By the Commission.

Dated: May 7, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-11727 Filed 5-9-03; 8:45 am]

BILLING CODE 8010-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Parts 10, 14, 20, 314, and 720

[Docket No. 99N-2637]

### Public Information Regulations

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing final regulations to comply with the requirements of the Electronic Freedom of Information Amendments of 1996 (EFOIA). EFOIA is designed to broaden public access to Government documents by making them more accessible in electronic form and by streamlining the process by which agencies generally disclose information.

**DATES:** This rule is effective July 28, 2003.

**FOR FURTHER INFORMATION CONTACT:** Betty Dorsey, Freedom of Information Staff (HFI-30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-6567.

### SUPPLEMENTARY INFORMATION:

#### I. Introduction

In the *Federal Register* of November 4, 1999 (64 FR 60143), FDA published a proposed rule that would amend its public information regulations in part 20 (21 CFR part 20) to comply with the requirements of the EFOIA and to clarify and update certain provisions unrelated to EFOIA. EFOIA authorizes, and in some instances requires, agencies to issue regulations implementing certain of its provisions, including provisions regarding the aggregation of Freedom of Information Act (FOIA) requests, the expedited processing of FOIA requests, and the establishment of

separate queues for the processing of FOIA requests. In addition, EFOIA amends the time limits for responding to an FOIA request from 10 to 20 working days, the process by which an agency may extend the time for responding to an FOIA request, and the requirements for reporting on FOIA activities. EFOIA also includes provisions regarding the availability of records in electronic form, the establishment of "electronic reading rooms," and provisions requiring agencies to inform requesters about the amount of information not being released to them.

In addition to the changes in the proposed rule, this document also reflects technical changes caused by the redesignation of several provisions and by the revocation of existing § 20.44 for the reasons outlined in the proposed rule.

## II. Discussion of Comments on the Proposed Rule

FDA received one comment on the proposed rule from a pharmaceutical research and development organization.

### A. Section 20.33—Form or Format of Response

The proposal would revise the agency's regulation by adding a requirement to provide records in any requested form or format if the record is readily reproducible by the agency in the requested form or format. FDA offices responsible for responding to FOIA requests shall make reasonable efforts to maintain their records in forms or formats that are readily reproducible for FOIA purposes. Because of the wide range of possible forms and formats, a specific office responding to a FOIA request may not have means to respond to requests in all requested forms and formats. In its proposal, the agency noted that it is striving toward a common records filing structure that will enhance the agency's ability to respond to requests for records in a particular form or format.

The comment asked whether FDA has requested input from its constituents with regard to a common record filing structure, and, if not, recommended that FDA do so.

FDA has not requested input from its constituents on this matter, but will take this comment into consideration as the agency continues to develop a common records filing structure. However, until such a structure is in place, FDA will respond to requests for records in specified forms or formats based on its existing technological and resource capabilities.

<sup>13</sup> 17 CFR 240.17a-4(f)(3)(v).