

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

ANDREW WHEELER,

THE NATIONAL ARCHIVES AND
RECORDS ADMINISTRATION,

DAVID S. FERRIERO

Defendants.

Case No. 1:18-cv-406 (JEB)

SECOND DECLARATION OF JOHN B. ELLIS

I, John B. Ellis, Agency Records Officer for the United States Environmental Protection Agency (EPA or Agency), declare that the following statements are true and correct, and that they are based upon my personal knowledge or upon information supplied to me by employees in other EPA offices.

1. I am the Agency Records Officer, and I lead EPA's National Records Management Program (NRMP). I have served in this role since 2006. The NRMP is located in EPA's Office of Environmental Information, Office of Enterprise Information Programs (OEIP), Enterprise

Records Management Division (ERMD). I have considerable experience working with the EPA's policies and procedures for managing, preserving, and disposing of federal records, in accordance with the Federal Records Act, National Archives and Records Administration (NARA) Regulations, and NARA approved Records Retention Schedules.

2. The ERMD is responsible for providing leadership and direction for the Agency's records management program. This includes, for example, producing and updating EPA records management policies, procedures, standards and guidance; working with other offices within EPA to develop policies and guidance on the application of technology to records management; developing records schedules that authorize the disposal of temporary records and the transfer of permanent records to NARA; conducting briefings on records management; coordinating the records program within the Agency and with outside parties such as NARA; providing records advice to programs across the Agency; and representing the Agency in interagency records management groups, such as the Federal Records Council and the Federal Records Officers Network.

3. ERMD also provides a wide range of services to EPA records managers and staff, such as developing guidance and training materials to meet the needs of the Agency's records management staff and others in EPA program offices and regions; responding to requests for technical assistance on records management; coordinating communications and networking among Agency-wide records managers; promoting communications among records managers and records liaison officers through meetings and conferences; and distributing Agency best practices and publications throughout the Agency.

4. On August 22, 2018, Vaughn Noga, of the Office of Environmental Information for EPA, signed the current Interim Records Management Policy, CIO 2155.4, which superseded

an earlier Records Management Policy from February 2015. Mr. Noga is the Principal Deputy Assistant Administrator for the Office of Environmental Information and Deputy Chief Information Officer, and he also serves as EPA's Senior Agency Official for Records Management. Mr. Noga is the EPA official with authority to issue Agency records management policies that are binding on the Agency. The Interim Records Management Policy applies to all EPA organizations, officials, and employees; those who oversee contractors and grantees; and non-EPA employees who manage Agency records. The Interim Records Management Policy lists records responsibilities for all EPA employees, including the requirement that employees are responsible for "[c]reating and managing the records necessary to document the Agency's official activities and actions...in accordance with EPA recordkeeping requirements."

5. The Interim Records Management Policy also reflects important updates to EPA's Records Management Policy by highlighting the obligation to document substantive decisions and commitments reached orally and clarifying the need to maintain certain working files as records. The Policy was designated as an Interim Policy to ensure the Agency reviewed the Records Policy consistent with the Policy's review cycle timeframe, and to meet certain time-critical needs such as a current Office of Inspector General Audit requirement. EPA intends to maintain the reference to employees' obligation to document oral decisions in any future update of the Interim Records Management Policy to a final Records Management Policy. A current copy of the Interim Records Management Policy is attached as Exhibit A to this declaration.

6. Once the Interim Records Management Policy was signed on August 22, 2018, the Agency began its standard process of sharing the directive with appropriate stakeholders. As part of this process, EPA updated document metadata to enhance searchability, formatted the final PDF version of the file to ensure compliance with Rehabilitation Act Section 508

requirements, posted the directive to the Internet and distributed it via official transmittal to Senior Information Officials for implementation across the Agency.

7. On September 14, 2018, after the standard steps described in paragraph 6 were completed, the Agency took the additional step of distributing the Interim Records Management Policy to all Agency employees via Agency Mass Mailer. Agency Mass Mailers are email messages that are coordinated with EPA's Office of Internal Communications and distributed to all "epa.gov" email addresses, which include all EPA employees as well as certain EPA contractors that have "epa.gov" email addresses. Agency staff worked with the Office of Internal Communications and others to develop the Mass Mailer communication and prepare it for approval and distribution. The Agency Mass Mailer announcing the Interim Records Management Policy was sent out twice on September 14, 2018. The Agency inadvertently omitted a hyperlink to the Interim Records Management Policy in the first transmittal of the message. The message was revised to include a hyperlink to the Interim Records Management Policy and transmitted a second time, also on September 14, 2018. A copy of the Mass Mailer that contained the link to the Interim Records Management Policy is attached to this declaration as Exhibit B. The NRMP also maintains an intranet page that provides all EPA employees access to the Interim Records Management Policy as well as numerous detailed guidance and training materials developed by the NRMP on behalf of the Agency. Finally, the Interim Records Management Policy has been made available on the Agency's internet site.

8. Since at least January 2013, the NRMP has provided EPA employees with a "Frequently Asked Questions" or "FAQs" section of the NRMP's intranet page addressing verbal communications, titled "Verbal Communications and Records." The FAQs are maintained as part of a suite of resources available to employees on the NRMP's intranet page,

and reflect authoritative guidance from the NRMP regarding EPA's records management policies, procedures, and standards. A current copy of the FAQ "Verbal Communications and Records" is attached as Exhibit C to this declaration. Among other things, it provides that "[a]ny oral communication where an Agency decision or other commitment is made, and that is not otherwise documented, needs to be captured and placed in your recordkeeping system." As examples, it references a "meeting or conference call where a decision is made, if formal minutes or notes are not taken"; a "telephone call giving guidance to a member of the regulated community"; a "voice mail message committing to take action"; or a "telephone call responding to a member of the public about EPA policy." The FAQ recognizes that such communications can come in many forms, including "a telephone conversation, a voice mail message or series of voice mails, a formal meeting or even an informal chat with a coworker in the hallway."

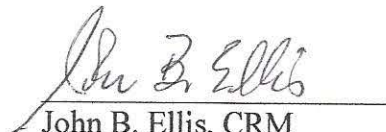
9. EPA employees are required to take annual records management training developed by the NRMP. The deadline for taking the Fiscal Year 2018 training is September 30, 2018. Since at least 2015, the Agency's Mandatory Records Management Training course has included information stating that, "records may include documentary information in any format and any media . . ." and provided examples, including "documented verbal communications." The Fiscal Year 2018 training, like the Fiscal Year 2017 training, referenced in my May 1, 2018, declaration in this matter, specifically includes the instruction: "Verbal communications, voicemail or meetings, if they are records, must be documented by notes, or transcriptions, and the documentation managed as any other record according to the appropriate records schedule." A copy of the relevant Fiscal Year 2018 training slide is attached as Exhibit D to this declaration.

10. I have confirmed with other EPA staff that Acting Administrator Andrew Wheeler has completed the Fiscal Year 2018 online training.

11. In addition to completing the mandatory employee training, Acting Administrator Wheeler also received a Records Management Briefing for Senior Officials and Political Appointees on May 30, 2018, when he was the Deputy Administrator for EPA. The training was delivered by the Director of OEIP, along with the Agency Records Officer and the Records Liaison Officer for the Office of the Administrator. This briefing included “verbal decisions and instructions” in a list of examples of types of records created by senior officials. Furthermore, in a section of the briefing titled “Records Management Guidance,” it states that officials must, “[d]ocument, in an approved Agency records management system, the substance of meetings and conversations where decisions are made, issues are resolved, or policy is established.” Copies of relevant excerpted slides from this briefing are attached to this declaration as Exhibit E.

Pursuant to 28 U.S.C. § 1746, I hereby affirm under penalty of perjury that the forgoing declaration is true and correct.

Executed this 21st day of September, 2018.



John B. Ellis, CRM
EPA Records Officer
Office of Environmental Information
U.S. Environmental Protection Agency

SECOND ELLIS

DECLARATION EXHIBIT A


**INFORMATION DIRECTIVE
INTERIM POLICY**

Interim Records Management Policy		
Directive No.: CIO 2155.4	CIO Approval: 08-22-2018	Transmittal No.: 18-007

*Issued by the EPA Chief Information Officer,
Pursuant to Delegation 1-19, dated 07/07/2005*

Interim Records Management Policy

1. PURPOSE

- To advance a focus on overall records management responsibilities under the Federal Records Act (FRA), as amended, and other applicable authorities.
- To confirm and align principles, responsibilities and requirements for managing the Environmental Protection Agency's (EPA's) records to ensure that the Agency is in compliance with federal laws and regulations; EPA policies; and best practices for managing records.
- To provide the framework for specific guidance and detailed operating procedures governing records management.

2. SCOPE

This policy addresses all records made or received by EPA employees under federal law or in connection with the transaction of public business, and preserved or appropriate for preservation as evidence of EPA functions, organization and activities or because of the value of the information they contain. This policy applies to all EPA headquarters, regional, laboratory and other organizations.

3. AUDIENCE

The audience for this policy includes all EPA organizations, officials, and employees; those who oversee contractors and grantees; and non-EPA employees who manage Agency records, as appropriate.

4. BACKGROUND

The FRA, as amended, requires all federal agencies to make and preserve records containing adequate and proper documentation of their organization, function, policies, decisions, procedures and essential transactions. These records are public property and must be managed according to applicable laws and regulations.

The FRA also requires agencies to establish a records management program, defined as a planned, coordinated set of policies, procedures, and activities needed to manage their recorded information. Major elements include periodically issuing up-to-date records management directives, properly training those responsible for implementation and carefully evaluating the results to ensure adequacy, effectiveness and efficiency.


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Records serve a number of purposes including: planning for administrative and program needs, providing evidence of EPA activities, protecting legal and financial rights, enabling oversight by Congress and other authorized agencies, documenting the Agency's history, and continuing key functions and activities in the event of an emergency or disaster. Records capture the Agency's institutional memory and preserve the historical record; they are of critical importance in ensuring that the organization continues to function effectively and efficiently. In conformance with the Presidential Memorandum, *Managing Government Records*, November 28, 2011, the Agency must "meet the executive branch-wide effort to reform records management policies and practices. [The results will improve] performance and promote openness and accountability by better documenting agency actions and decisions."

5. AUTHORITY

The information directive is issued by the EPA Chief Information Officer, pursuant to Delegation 1-19, dated 07/07/2005.

Additional legal foundations for the policy include:

- 44 U.S.C. Chapter 31 – Records Management by Federal Agencies (Federal Records Act)
- 44 U.S.C. Chapter 33 – Disposal of Records
- 44 U.S.C. Chapter 35 – Coordination of Federal Information Policy (Paperwork Reduction Act of 1980, as amended, Paperwork Reduction Reauthorization Act of 1995, and Government Paperwork Elimination Act)
- Presidential and Federal Records Act Amendments of 2014, Public Law 113-187
- 36 C.F.R. Chapter XII, Subchapter B – Records Management
- OMB Circular No. A-123, "Management's Responsibility for Internal Control," December 21, 2004
- OMB Circular A-130, "Managing Federal Information as a Strategic Resource," July 28, 2016
- U.S. EPA Order 2040.1 A1, "National Security Emergency Preparedness Policy," February 6, 2001
- U.S. EPA Order 2030.1A, "Continuity of Operations (COOP) Policy," April 27, 2005
- Federal Emergency Management Agency (FEMA) Federal Preparedness Circular 65, "Federal Executive Branch Continuity of Operations (COOP)," July 26, 1999
- Presidential Memorandum, "Managing Government Records," November 28, 2011



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- OMB Memorandum M-12-18, "Managing Government Records Directive," August 24, 2012

6. POLICY

6.1. EPA's Responsibility and Commitment

As a regulatory agency charged with protecting human health and the environment, the EPA is committed to managing the Agency's records properly to comply with legal requirements and to support the Agency's mission. Records identification, management and access are essential in allowing the Agency to meet its mission. The accuracy and consistency of how records are identified, captured, stored and retrieved provide the cornerstone to the effective functioning and transparent operation of the Agency. EPA is required to preserve Agency records in accordance with applicable statutory and regulatory requirements and to facilitate access to information by EPA staff, partners, stakeholders and the public, as appropriate.

The Records Management Policy establishes specific requirements to effectively and efficiently identify, manage, search, retrieve and provide access to records throughout their lifecycle.

6.2. Creating and Receiving Records

According to the FRA, every federal agency is required to "make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities." Records contain the information that documents how EPA carries out its mission. The Agency's past and current work generates records. Records typically include information which is:

- Created in the course of doing Agency business;
- Received for action;
- Needed to document EPA activities and decisions;
- Required to support EPA's financial and other obligations and legal claims; or
- Communicated to assert EPA requirements or guidance.

EPA must properly and adequately document Agency business in accordance with NARA regulations. To meet these obligations, EPA employees and non-employees who manage records must create and maintain records that:

1. Document the persons, places, things or matters dealt with by the EPA.
2. Facilitate action by EPA officials and their successors in office.
3. Make possible a proper scrutiny by the Congress or other duly authorized agencies of the Government.
4. Protect the financial, legal and other rights of the Government and of persons directly affected by the Government's actions.



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5. Document the formulation and execution of basic policies and decisions and the taking of necessary actions, including all substantive decisions and commitments reached orally (person-to-person, by telecommunications, or in conference) or electronically.
6. Document important board, committee or staff meetings.

All EPA staff generate and receive records and are legally required to maintain them.

Records document the Agency's business and can be found in all media such as paper, email, instant messaging (IM), text messages, telephone messages, voice mail messages, presentations, websites, social media (e.g., Facebook, Twitter, etc.), word processing documents, spreadsheets and information systems. Documented substantive decisions and commitments reached orally (e.g., person-to-person, telecommunications, in conference) also constitute records. If electronic records are created using any of these media, they need to be transferred to an electronic records management system. Some drafts, working papers/files, and supporting information documenting substantive programmatic, administrative, legal, historical, and mission-related activities are to be maintained as records which document important Agency decision-making processes. The Agency must retain records such as correspondence, presentations, meeting minutes, telephone logs, data, spreadsheets, working papers, reports, drafts, annotations and other notes that are needed to document the rationale and relevant supporting data for important final Agency decisions.

Some records are transitory in nature, which means they are of short-term (180 days or less) interest, and have minimal or no documentary or evidential value, such as individual rough notes, interim calculations, spreadsheets, presentations and analyses that are not directly or substantively incorporated into final products or decisions.

Not all information created or received constitutes a record. Non-records include reference material, supplementary or convenience copies, draft documents or working papers that have no substantive comments and are not needed to document any Agency decisions, and personal information that is unrelated to EPA business.

Official Agency business should first and foremost be done on official EPA information systems. The FRA now prohibits the creation or sending of a federal record using a non-EPA electronic messaging account unless the individual creating or sending the record either: (1) copies their EPA email account at the time of initial creation or transmission of the record, or (2) forwards a complete copy of the record to their EPA email account within 20 days of the original creation or transmission of the record. These FRA requirements are designed to ensure that any use of a non-EPA information system does not affect the preservation of federal records for FRA purposes, or the ability to identify and process those records if requested under the Freedom of Information Act (FOIA), Privacy Act or for other official business (e.g., litigation, congressional oversight requests, etc.). EPA strongly discourages the use of personal email or other personal electronic messaging systems, including text messaging on a personal mobile device, for sending or receiving Agency records, but to the extent such use occurs, the individual creating or sending the record from a non-EPA electronic messaging system must copy their EPA email account at the time of transmission or forward that record to their EPA email account within 20 days of creation or sending.



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Additionally, EPA discourages the use of text messaging on a mobile device for sending or receiving substantive (or non-transitory) Agency records.

However, EPA recognizes that some Agency staff perform time-sensitive work that may, at times, require the creation of substantive (or non-transitory) records in the form of text messages for emergency or environmental notification purposes. In those limited instances, staff must continue to save and manage any text message records related to their work, as discussed below.

6.3. Managing Records

Records are managed for the benefit of EPA and its staff, partners, stakeholders and the public. EPA is committed to maintaining and converting its records to electronic formats, where practical, to facilitate moving away from paper toward more effective and efficient electronic solutions. Non-transitory records should be stored in approved records management systems with records management capabilities or registered information management systems associated with an approved records schedule.

It is important not to use non-EPA systems to conduct Agency business, since such use could potentially lead to the mismanagement of Agency records and/or the unauthorized disclosure of Agency information. In the rare situation when a non-EPA messaging system must be used and a federal record is created or received on a non-EPA messaging system (such as a personal email account or personal mobile device), pursuant to the FRA, staff must either: (1) copy their EPA email account at the time of initial creation or transmission of the record, or (2) forward a complete copy of the record to their EPA email account within 20 days of the original creation or transmission of the record. Once the message is sent or forwarded to the EPA messaging system, you must save the record in an approved EPA electronic records management system. Once the electronic files have been captured in an approved EPA records management system, they should be removed from non-EPA messaging systems, unless there is a specific obligation (such as a litigation hold) to maintain the files on all systems on which they appear.

Additionally, emails forwarding a news article or Web links from a personal email account to EPA's system and emails from EPA forwarding a document to a personal email account both create a copy of the email in EPA's email system. Users can then properly preserve the copy of the email record in a recordkeeping system to meet their preservation requirements, if needed.

Similarly, users of text messaging, instant messaging or other transient messaging technologies on EPA information systems are responsible for ensuring that messages that result in the creation of a substantive (or non-transitory) federal records are saved for FRA purposes and placed in a recordkeeping system. For example, if a text message on an EPA mobile device is received or sent that qualifies as a substantive (or non-transitory) federal record, it must be saved into an approved recordkeeping system. In order to comply with this requirement, you can forward the text message into the EPA system, so that you may then save it in an approved recordkeeping system such as EZ Email Records. When forwarding the text message from the mobile device to the EPA email system, be sure to include the time, date, subject, and sender/recipient of the message



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whenever possible. Guidance on how to email a text message from a mobile device to yourself is available at <http://intranet.epa.gov/mobiledevices/pdf/Instructions-Saving-Text-Messages.pdf>.

Instant messages (such as Lync chats) that constitute substantive (or non-transitory) records should also be saved into an approved Agency recordkeeping system. Guidance on how to save instant messages (Lync chats) is available at <http://intranet.epa.gov/ecms/guides/im.htm>.

6.4. Access

EPA records must be maintained in an appropriate manner, captured and organized to ensure timely search and retrieval for internal Agency use as well as for responses to outside inquiries. Sensitive records (e.g., sensitive personally identifiable information (SPII), and other Controlled Unclassified Information (CUI)) must be maintained with restricted access in accordance with statutory and regulatory requirements.

6.5. Implementation

Each office within EPA must establish and maintain a records management program with the following minimum requirements:

1. Create, receive and maintain records providing adequate and proper documentation and evidence of EPA's activities.
2. Manage records in any format (e.g., paper, emails, IMs, text messages, electronic documents, spreadsheets, presentations, images, maps, videos, blogs and other social media tools that generate communications) in accordance with applicable statutes, regulations, and EPA policy and guidance, including records schedules.
3. Maintain electronic records (e.g., emails, IMs, text messages, electronic documents, spreadsheets, presentations, images, maps, videos, blogs and other social media tools that generate communications) electronically in an approved electronic records system. Non-email electronic records, including electronic records that cannot be forwarded to and managed as an email record, should be saved in their native format in an organized way on an EPA network drive until an approved electronic records management system is available for desktop records.
4. Transfer or migrate records in paper and legacy electronic systems to approved or registered information management systems which are associated with a records schedule for manual management of disposition where practicable and when available. The Registry of Environmental Applications and Databases (READ) often captures information on systems which have a records schedule and require manual disposition.
5. Ensure that non-electronic records are managed appropriately in paper-based official recordkeeping systems which facilitate their preservation, retrieval, use and disposition, if they are not appropriate for scanning (or digitization).



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6. Maintain records so they can be accessed by staff with a need to know the information for appropriate business reasons and maintained for the required retention period.
7. Secure records to protect the legal and financial rights of the government and persons affected by government activities.
8. Implement a plan to protect essential (vital) records and assess damage to and recover any records affected by an emergency or disaster (e.g., financial, legal and emergency operating records).
9. Ensure that instructions for the management and disposition of records as specified in the approved records schedules are followed.

7. ROLES AND RESPONSIBILITIES

Administrator

The EPA Administrator is responsible for creating and preserving records that adequately and properly document the organization, functions, policies, decisions, procedures and essential transactions of EPA. This responsibility is delegated to the Assistant Administrator (AA) for the Office of Environmental Information (OEI) and Chief Information Officer (CIO). As mandated by the Presidential Memorandum of November 28, 2011, the Administrator is also responsible for designating a Senior Agency Official (SAO) at the Assistant Secretary level or its equivalent who has direct responsibility for ensuring that the Agency efficiently and appropriately complies with all applicable records management statutes, regulations, and NARA policy, and requirements of the OMB/NARA Directive of August 24, 2012 – Managing Government Records. The Administrator has designated the OEI AA/CIO as this SAO for records management.

Office of Environmental Information (OEI)

OEI is responsible for leadership, planning, overall policy, guidance and general oversight of records management in the Agency, and its incorporation into the broader information resources management framework. OEI is responsible for the following:

1. Incorporating records management requirements and policies into the Agency's overall information resources management (IRM) policy and planning.
2. Designating an Agency Records Officer responsible for:
 - Leading and managing the Agency-wide national records management program.
 - Ensuring Agency senior officials are aware of their programmatic and individual records management responsibilities and requirements.



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- Advising EPA on records management issues and developing Agency-wide records management policies, procedures, guidance, and training materials.
 - Coordinating the approval of the Agency's records schedules and the transfer of records to NARA.
 - Coordinating records management issues with other federal agencies, including federal oversight agencies such as the Office of Management and Budget (OMB), NARA, and the General Services Administration (GSA).
 - Providing technical advice and training to all Agency organizations on establishing and maintaining effective records management programs.
 - Evaluating recordkeeping practices to determine the effectiveness of the program.
 - Obtaining NARA's Certificate in Federal Records Management.
3. Promulgating and communicating Agency-wide policies and guidance that reflect records management missions and goals and incorporate federal requirements.
 4. Designating other records management staff as required by regulations or as deemed necessary.
 5. Assigning overall responsibility for the records management aspects of centrally provided information technology infrastructure, including local area network applications.
 6. Ensuring senior Agency officials are aware of their records management responsibilities.
 7. Conducting periodic evaluations of records management programs within the Agency as part of the Agency's IRM review and oversight program.

Assistant Administrators, Chief Financial Officer, General Counsel and Regional Counsel, Inspector General, Regional Administrators and Laboratory/Center/Office Directors

Assistant Administrators, Chief Financial Officer, General Counsel and Regional Counsel, Inspector General, Regional Administrators and Laboratory/Center/Office Directors are responsible for the following:

1. Being an advocate for records management in their organization.
2. Personally demonstrating the importance of records management and ensuring their organization is aware of the importance of and processes for managing records.


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3. Demonstrating their commitment to the proper management of records in their organization through appropriate means (e.g., sending out messages, being present during days devoted to records management, encouraging managers and staff to take records training).
4. Designating a Records Liaison Officer (RLO) accountable to the Information Management Official (IMO) or other official designated to oversee the program. The IMO or other official designated to oversee the program reports to the Assistant Administrators, Chief Financial Officer, General Counsel, Inspector General, Regional Administrators and Laboratory/Center/Office Directors on a quarterly basis.
5. Ensuring the RLO has adequate skills, resources, time and appropriate authority to perform the job.
6. Overseeing the implementation of a records management program within their area of responsibility to accomplish the objectives identified in federal regulations and EPA policies and procedures. Minimum program components include responsibilities for:
 - Identifying recordkeeping requirements for major programmatic and administrative records.
 - Ensuring that records are identified, proper records schedules are assigned, and the records are properly stored.
 - Developing file plans and indexing approaches where appropriate to simplify the use of, access to, and integration of information within the organization.
 - Drafting and updating records schedules for records created and maintained by the organization.
 - Implementing approved records schedules to ensure records are not destroyed without proper authorization.
 - Reviewing file plans and procedures at least every three years to ensure they are current and updating them as necessary.
 - Assisting in planning and implementing information management technology and reviewing the purchase of records management equipment and services to ensure they conform to federal statutory and regulatory requirements.
 - Implementing an essential (vital) records plan to ensure the continuation of key functions and activities in the event of an emergency or disaster.
 - Providing records management briefings for all managers and training to staff within their organizations, as needed.



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- Actively supporting managers, RLOs, staff and others in carrying out their records management responsibilities.
7. Developing records management oversight roles and communication networks with all program units including field offices and other facilities, as appropriate, to ensure that the records management program is implemented at all sites under their jurisdiction.
 8. Developing and disseminating directives and operating procedures, as needed, to supplement Agency-wide policy to meet the unique records management needs of their organizations and to support a records management program within the organization.
 9. Ensuring records and other types of required documentary materials are not unlawfully removed from EPA by current or departing officials, employees, or agents.

General Counsel and Regional Counsel

The General Counsel and Regional Counsel provide legal advice and counseling on records management issues as well as assist in determining the retention of Agency records that may be needed for legal purposes.

Inspector General

The Inspector General assists in determining the retention of Agency records that may be needed for internal investigation and audit purposes.

Managers and Supervisors

Managers and supervisors (Office Directors, Division Directors, Branch Chiefs, etc.) are responsible for:

1. Ensuring that a records management program is implemented within their organization.
2. Understanding and emphasizing the importance of records management to staff.
3. Designating selected staff as records contacts in order to meet recordkeeping requirements and responsibilities as described in this document.
4. Providing support, time, and resources for records contacts to successfully carry out their recordkeeping responsibilities.
5. Ensuring that the organization's file plans are current.
6. Obtaining training so that they and their staff can carry out their recordkeeping responsibilities.


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7. Implementing an essential (vital) records program within the organization.
8. Participating in records program reviews and assessments and developing and implementing corrective action plans to address gaps.
9. Supporting initiatives to move from paper to electronic recordkeeping.
10. Ensuring that all records of separating employees have been identified, that temporary records that have met their retention are properly disposed of according to applicable records schedules, and that records that must be preserved have been assigned to other employees.

Headquarters, Regional, Laboratory/Center/Office Records Liaison Officers (RLO)

Headquarters, Regional, Laboratory/Center/Office RLOs are responsible for:

1. Creating and updating procedures for their offices in accordance with established EPA and program policies.
2. Performing evaluations of their records management and essential records program.
3. Developing file plans and procedures so records are organized and can be found when needed.
4. Assisting with disposition activities, including retirement of inactive records, transfer of permanent records to NARA, and destruction in accordance with approved records schedules.
5. Reviewing office-specific records schedules annually to ensure they are current, and initiating changes if not.
6. Ensuring sensitive records are protected in accordance with federal and EPA requirements, and making sure designated individuals maintain access lists to ensure such information is released only to authorized individuals.
7. Coordinating the identification and maintenance of essential (vital) records and submitting an annual inventory and certification of essential (vital) records through senior management to the Agency Records Officer.
8. Reviewing and verifying their organizations' section of the Federal Records Centers invoices on a monthly basis verifying the status of their off-site records and costs.
9. Conducting briefings and training sessions on the records management program.
10. Reviewing and recommending requests for records management equipment, services and supplies.


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11. Obtaining NARA's Certificate in Federal Records Management.
12. Completing Records Management Training for RLOs and Records Contacts available at <http://intranet.epa.gov/records/training/rlo/index.html>.
13. Organizing, maintaining and training a network of records contacts within the organization.

Records Contacts

Records contacts are responsible for:

1. Working within their organization as a liaison between the RLO and staff to provide records management training, guidance and support.
2. Being qualified and active in records management issues and participating in records management training when resources are available.
3. Creating file plans specific to their organization.
4. Completing Records Management Training for RLOs and Records Contacts available at <http://intranet.epa.gov/records/training/rlo/index.html>.

Information Resources and System Managers

Information resources and system managers are responsible for:

1. Working with the local RLO, the Agency Records Officer and NARA to establish and update records schedules for electronic systems.
2. Implementing proper recordkeeping procedures for existing information systems and ensuring recordkeeping requirements are included in proposed systems.
3. Ensuring that information systems intended to carry out electronic records management comply with NARA's and EPA's requirements for electronic recordkeeping systems (these requirements available on the NRMP Intranet site at <http://intranet.epa.gov/records/>).
4. Maintaining electronic information systems in accordance with approved records schedules and NARA requirements.
5. Working with their RLO to transfer permanent systems to the National Archives in accordance with approved records schedules and NARA requirements.
6. Ensuring that EPA Internet and Intranet postings containing records are maintained in accordance with Agency recordkeeping requirements.
7. Ensuring that prior approval is obtained before the removal of SPIO from the Agency network or facility.



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8. Coordinating the handling of electronic records and information with the local RLO/records management program and legal office when appropriate.

Project Officers (PO) / Contracting Officer Representatives (COR) and Senior Environmental Employment (SEE) Program Coordinators/Monitors

Project Officers (PO) / Contracting Officer Representatives (CORs) and Senior Environmental Employment (SEE) program coordinators/monitors are responsible for:

1. Creating and maintaining appropriate records of the management and oversight of their related projects, contracts, staff and SEE employees.

Continuity of Operations Program (COOP) Planners

Continuity of Operations Program (COOP) planners are responsible for:

1. Working with records management staff to implement the essential (vital) records plan to ensure the continuation of designated COOP essential functions.
2. Ensuring that essential (vital) records are accessible from designated COOP locations.

All EPA Employees

All EPA employees are responsible for:

1. Creating and managing the records necessary to document the Agency's official activities and actions, including those records generated by EPA contractors and grantees, in accordance with EPA recordkeeping requirements.
2. Destroying records only in accordance with approved records schedules and never removing records from EPA without authorization.
3. Filing records for safe storage and efficient retrieval and maintaining and disposing of personal papers and non-record materials separately from records.
4. Ensuring that when secondary email accounts for individuals, groups or systems are created for business reasons, the records thus created are appropriately managed.
5. Identifying all records, in any format, in the employee's possession, and transferring them to another EPA custodian before separating or transferring to another organization. Note: Non-records and records which have met their disposition per appropriate records schedule should be destroyed unless subject to FOIA, litigation or audit. Records containing SPII must be shredded.


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6. Taking annual records management training and any other related training and participating in records management activities such as records management days, records clean-up days, etc.
7. Contractors, grantees and others doing work on behalf of EPA are required to take annual records management training, as appropriate.

8. RELATED INFORMATION

EPA National Records Management Program website

<http://www.epa.gov/records/>

NARA Bulletin 2013-03, "Guidance for agency employees on the management of federal records, including email accounts, and the protection of Federal records from unauthorized removal," September 2013

<http://www.archives.gov/records-mgmt/bulletins/2013/2013-03.html>

NARA Bulletin 2013-02, "Guidance on a New Approach to Managing Email Records," August 2013

<http://www.archives.gov/records-mgmt/bulletins/2013/2013-02.html>

NARA Bulletin 2012-02, "Guidance on Managing Content on Shared Drives," December 2011

<http://www.archives.gov/records-mgmt/bulletins/2012/2012-02.html>

EPA Information Directive – Policy CIO 2151.1, "Privacy Policy," September 2015

<https://www.epa.gov/sites/production/files/2015-09/documents/2151.1.pdf>

EPA Information Directive – Procedure CIO 2155-P-06.0, "Managing Social Media Records," June 2015

<https://www.epa.gov/sites/production/files/2015-07/documents/2155-p-06.pdf>

EPA website: "Frequent Questions about Email and Records"

<http://intranet.epa.gov/records/faqs/email.html>

EPA Report, "Report on Managing Government Records," March 2012

http://intranet.epa.gov/records/files/EPA_Report_on_Managing_Government_Records.docx

OMB Memorandum M-12-18, "Managing Government Records Directive," August 2012

<https://www.archives.gov/files/records-mgmt/m-12-18.pdf>

9. DEFINITIONS

Definitions can also be found on EPA's National Records Management Program Intranet site at <http://intranet.epa.gov/records/>.



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Approved Records Management System: An agency records management application approved for storing electronic federal records, including applications certified as compliant with the DOD 5015.2-STD standard or meeting the NARA standards for a records management application. Examples include EPA's Correspondence Management System and People Plus.

Authorized Federal Information Management System: A major information system managed by a federal agency which is used by other federal agencies. Records in these systems are managed by the agency owning the system. Examples include Concur, Employee Express and eOPF.

Destruction: In records management, the major type of disposal action. Non-records and records which have reached the end of their retention period per the appropriate record schedule can be legally destroyed. Records containing SPII must be shredded, pulped or burned, and never simply placed in the trash.

Disposition: The actions taken regarding records no longer needed for current government business. These actions include transfer to agency storage facilities or federal records centers, transfer from one Federal agency to another, transfer of permanent records to the National Archives, and disposal of temporary records. Disposition is the third stage of the records life cycle, and the actions taken regarding non-record materials when no longer needed, including screening and destruction.

Electronic Messaging Account: The term "electronic messaging account" means any account that sends electronic messages for purposes of communicating between individuals.

Federal Records: The term "records" includes all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them; and does not include:

- i. library and museum material made or acquired and preserved solely for reference or exhibition purposes; or
- ii. duplicate copies of records preserved only for convenience. (44 U.S.C. 3301)

Official EPA Information System: Any information system that EPA employees are permitted to access, create, share, store or transmit information on for official government business.

Official Recordkeeping System: An "information management system which captures, manages and provides access to records through time" and can be electronic or paper-based, until an appropriate electronic recordkeeping system becomes available.



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Records Schedule: Also called records disposition schedule, records control schedule, records retention schedule, records retention and disposition schedule, or schedule. A document that describes agency records, establishes a period for their retention by the agency, and provides mandatory instructions for what to do with them when they are no longer needed for current government business. The term refers to: (1) an SF 115, Request for Records Disposition Authority, that has been approved by NARA to authorize the disposition of federal records; (2) a General Records Schedule (GRS) issued by NARA; and (3) a printed agency manual or directive containing the records descriptions and disposition instructions approved by NARA on one or more SF 115s or issued by NARA in the GRS. (Source: 36 CFR 1220.14)

Registered Information Management System: An Agency electronic information system which has an associated records schedule or an information management system which holds records and is manually managed. Such EPA systems should be registered in the Agency's Registry of EPA Applications and Databases (READ) so they can be identified for scheduling, and the retention periods tracked. Examples include the Toxics Release Inventory Processing System (TRIPS), Safe Drinking Water Information System (SDWIS), and the Air Quality System (AQS).

Transitory Record: Records of short-term (180 days or less) interest, including in electronic form (e.g., e-mail messages), which have minimal or no documentary or evidential value. An example of a transitory record is a record documenting routine activities containing no substantive information, such as routine notifications of meetings, scheduling of work-related trips and visits, and other scheduling related activities. See NARA GRS 5.1 / EPA 1006.

10. WAIVERS

The Agency Records Officer may grant waivers to any provisions of this policy for sufficient cause.

Applications for waivers to specific provisions should contain:

- (1) Identification of the policy provision;
- (2) A listing of reasons why the policy cannot be applied or maintained;
- (3) An assessment of impacts resulting from non-compliance; and
- (4) The signature of the AA, RA or Laboratory/Center/Office Director, the Chief Financial Officer, the General Counsel, or the Inspector General responsible for the records management program in question.

The Agency Records Officer will notify the requesting office in writing of the decision on the waiver request within two weeks of receipt of the request. Circumstances will dictate whether the waiver may be renewed.

11. MATERIAL SUPERSEDED

EPA Information Directive – Policy CIO 2155.3, “Records Management Policy,” February 10, 2015



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EPA *IRM Policy Manual*, Chapter 10, 1996

Vital Records Order (Order 2160.1)

12. CONTACTS

For further information about this policy, please contact the Office of Environmental Information, Office of Enterprise Information Programs, Director of Enterprise Records Management Division.

A handwritten signature in black ink, appearing to read "Vaughn Noga", written over a solid black horizontal line.

Vaughn Noga
***Principal Deputy Assistant Administrator for Environmental Information
and Deputy Chief Information Officer
U.S. Environmental Protection Agency***

SECOND ELLIS

DECLARATION EXHIBIT B

From: [MassMailer](#)
To: [MassMailer](#)
Subject: UPDATE: Link added - Interim Records Management Policy
Date: Friday, September 14, 2018 11:52:33 AM



From: Vaughn Noga, Principal Deputy Assistant Administrator and Deputy Chief Information Officer, Office of Environmental Information

I am pleased to announce the issuance of the [Interim Records Management Policy](#) for the Environmental Protection Agency (EPA), which was signed on August 22, 2018. The Interim Records Management Policy updates two primary aspects of EPA's Records Management Policy. Specifically, the Interim Policy:

- Highlights the obligation to document substantive decisions and commitments reached orally; and
- Clarifies the ongoing need to maintain certain working files as records if needed to document the rationale underlying final Agency decisions.

Updating the Records Management Policy on an interim basis allows the Agency to stay in step with current requirements from the [National Archives and Records Administration \(NARA\)](#) and EPA's [National Records Management Program](#). This Interim Records Management Policy controls and supersedes any prior policy to the extent such policy is inconsistent with this Interim Records Management Policy.

This notice reaffirms that EPA's policy is, and has been, that all substantive decisions and commitments reached orally must be documented as records. The National Records Management Program has provided an [FAQ](#) document explaining this requirement since 2013. This FAQ document is based on NARA regulations. The need to document substantive decisions and commitments reached orally is also addressed in the [FY18 Mandatory Records Management Training](#). Further, EPA has expressly included this requirement in the Interim Records Management Policy to ensure that all employees remain aware of the requirement.

In FY19, the National Records Management Program will be initiating a comprehensive review of EPA's Records Management Policy with opportunities for Agency-wide input.

Proper records management supports key principles here at EPA, including the Acting Administrator's recent [statement](#) on the importance of transparency. Thank you for your critical role in creating and maintaining the records of EPA's important mission.

SECOND ELLIS

DECLARATION EXHIBIT C

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OEI@Work

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Verbal Communications and Records

Records Help Desk

202-566-1494
records@epa.gov

- [What is a "verbal communication"?](#)
- [What kind of verbal communications might be a record?](#)
- [What types of communications are included?](#)
- [What is the best way to capture conversations that are records?](#)
- [Does this mean that I have to write a transcript of every conversation?](#)

What is a "verbal communication"?

Verbal communication can mean a telephone conversation, a voice mail message or series of voice mails, a formal meeting or even an informal chat with a coworker in the hallway.

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What kind of verbal communications might be a record?

Any oral communication where an Agency decision or commitment is made, and that is not otherwise documented, needs to be captured and placed in your recordkeeping system. For example:

- A meeting or conference call where a decision is made, if formal meeting minutes or notes are not taken;
- A telephone call giving guidance to a member of the regulated community;
- A voice mail message committing to take action; or
- A telephone call responding to a member of the public about EPA policy.

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What types of communications are included?

- Face-to-face meetings;
- Conference calls (including audio or video);
- Telephone calls (including cell phones, walkie-talkies, CB radios or Voice over IP (VoIP)); or
- Voice mail messages (including telephone or computer).

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What is the best way to capture conversations that are records?

Write a memo to the file. Be sure to include:

- Date and time of the communication;
- Type of communication (e.g., voice mail, telephone call);
- Participants;

- Subject; and
- Details on any decisions or commitments.

An alternative, for recorded meetings, is to create or obtain a transcript which can be saved as a record.

The second option would be to save the meeting's recorded Wave file as a record. This is not recommended for three reasons: (1) it is easier to maintain text files, (2) it's easier to search text files, and (3) it is cheaper to store text files than audio files.

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Does this mean that I have to write a transcript of every conversation?

No, not all verbal communications are records. Only write a memo to the file or create or obtain a transcript for verbal communications if they are:

- Needed to document your activities as a federal employee, contractor, or other EPA agent; and
- Not otherwise captured in your recordkeeping system.

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SECOND ELLIS

DECLARATION EXHIBIT D

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What is a Record? General Definition

A record:



- Is created in the course of business
- Is received for action
- Is needed to document your activities and decisions as an EPA employee or contractor
- Supports financial obligations and legal claims
- Communicates EPA requirements or guidance
- Exists in any format (paper or electronic) and in any media such as:
 - spreadsheets
 - voicemail
 - textual documents
 - information on mobile devices
 - databases
 - documented verbal communications
 - photographs and maps
 - messages created in social media tools or applications
 - text messages
 - email messages
 - instant messages



Verbal communications, voicemail or meetings, if they are records, must be documented by notes, or transcriptions, and the documentation managed as any other record according to the appropriate records schedule.

Next



SECOND ELLIS

DECLARATION EXHIBIT E



Records Management Briefing for Senior Officials and Political Appointees

Briefing for

Andrew Wheeler, Deputy Administrator

Provided by the Office of Environmental Information

May 30, 2018



Records Management Briefing

Senior Officials' Records

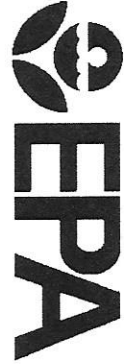
- Records of EPA's Senior Officials are especially important because they document significant Agency decisions and commitments.
- Many records of Senior Officials are considered to be permanent and are transferred to NARA after 15 years.
- Examples of Senior Officials' records include:
 - Calendars, schedules, daily activity logs
 - Verbal decisions and instructions
 - Emails/attachments and other electronic documents that are federal records
 - Controlled and major correspondence
 - Directives, policies, and guidance
 - Speeches and testimony
 - Program development files
 - Files of meetings with the Administrator
 - Reports to the President or Congress



Records Management Briefing

Records Management Guidance

- Records you create or receive in the conduct of Agency business during your tenure belong exclusively to EPA. Personal papers should be maintained separately from federal records.
- Document, in an approved Agency records management system, the substance of meetings and conversations where decisions are made, issues are resolved, or policy is established.
- In general, do *not* use a non-EPA messaging system (e.g., personal email or personal mobile device) to conduct Agency business.
- In rare situations when a non-EPA messaging system must be used and a federal record is created or received, you must
 - copy your EPA email account when initially creating or transmitting the record *or*
 - forward a complete copy of the record to your EPA email account within 20 days of the original creation or transmission of the record; and
 - once in the EPA email system, save the record in an approved electronic records management system (e.g., ECMS).



**Records Management Briefing
for Senior Officials and Political
Appointees**

Recipient of Briefing

Andrew Wheeler, Deputy Administrator, AO

Signature Confirming Receipt of Briefing: _____

(signature)

Presenter of Briefing

Name: Rebecca G. Moser

Title: Director, Office of Enterprise Information Programs (OEIP),
Office of Environmental Information

Signature Confirming Delivery of Briefing: _____

(signature)

Date: 5/30/2018