

US EPA ARCHIVE DOCUMENT

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

PROCEDURES FOR ELECTRONIC MANAGEMENT OF RULEMAKING AND OTHER DOCKETED RECORDS IN THE FEDERAL DOCKET MANAGEMENT SYSTEM

1. PURPOSE

This procedure identifies the specific requirements, processes and supporting documents EPA uses to electronically manage rulemaking and other docketed records in the Federal Docket Management System (FDMS). It is intended to provide a coordinated and consistent approach to management of rulemaking and other docketed records by establishing FDMS as the Agency's central repository for these records.

2. SCOPE AND APPLICABILITY

The scope of this procedure includes all Agency rulemaking and other docketed records. This procedure applies to all EPA organizations, including Headquarters Offices, Program Offices and Regions, and their sub-organizations.

3. AUDIENCE

The audience for these procedures includes all EPA officials, employees, contractors and grantees that manage rulemaking and other docketed records.

4. BACKGROUND

On November 28, 2011, President Obama signed the *Presidential Memorandum – Managing Government Records*, which called on all federal agencies to begin implementing an electronic records management strategy. In response, OMB issued memorandum M-12-18, *Managing Government Records Directive*, on August 24, 2012, calling for agencies to eliminate paper records and adopt, in their place, electronic recordkeeping methodologies. At EPA, these goals will be realized for rulemaking and other docketed records by leveraging the records management capabilities of the Federal Docket Management System (FDMS).

EPA has used FDMS to manage its dockets and make their content publicly available via Regulations.gov since 2005. The system's DOD 5015.2 approved records module was activated at EPA in 2011. This procedure document is designed to explain how users of FDMS would carry out comprehensive electronic management of their regulatory and other docketed records. Important considerations addressed in this procedure include triggers for records closure and retention, protocols for the disposition of records, defined user roles

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within the module, and communication between FDMS Records Managers and program and regional offices.

5. AUTHORITY

- A. Presidential Memorandum, Managing Government Records (November 28, 2011).
 - B. OMB Memorandum, M-12-18, Managing Government Records Directive (August 24, 2012).
 - C. U.S. Environmental Protection Agency, Report on Managing Government Records (March 27, 2012).
 - D. CIO Policy 2155.1: Records Management Policy (June, 8, 2009).
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6. PROCEDURE

Records are broadly defined to include information (regardless of medium or format) that should be preserved because of the informational value they contain. Because there are rules governing the use and destruction of all federal records, proper records management is crucial to ensuring regulatory compliance and preventing improper destruction. The records module in FDMS allows for electronic records management of EPA's rulemaking and other docketed records throughout their entire lifecycle, including declaration, retention and disposition.

I. Selecting a Records Schedule

A record schedule is selected for a docket when the docket is created and applies to all records within that docket. Each new docket in FDMS is assigned a records schedule based on the docket subtype selected on the appropriate form. The retention period and final disposition instructions are determined by the applicable records schedule.

II. Declaration

When a document is posted to public view on Regulations.gov, it is automatically declared as a record. Records that are in a status other than posted, but are deemed part of the docket record, can also be manually declared as a record by the FDMS Records Manager. Declaring a record locks down most aspects of its metadata and limits the actions that can be applied to attachments. If a declared record needs to be modified or deleted, it must first be undeclared by submitting the appropriate form.

III. Setting Retention

Retention is set at the docket level and is intended to render its entire contents immutable. Documents (and most metadata) within the docket cannot be altered, added to, or removed without temporarily un-setting retention.

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FDMS Records Managers annually provide FDMS Records Contacts with a report listing the dockets that are eligible for retention based upon their records schedule. FDMS Records Contacts review this report and indicate to their FDMS Records Manager which dockets are complete and, therefore, ready to have their retention set. The FDMS Records Manager will not set retention until specifically instructed to do so by the FDMS Records Contact at the closure of the action.

The records management life-cycle works most efficiently when docket retention is set as soon as possible. To facilitate the closing of dockets, FDMS Docket Owners should seek to use discrete dockets instead of multiple docket phases to chronicle related, but sufficiently distinct, Agency actions. This practice is supported by the ability of FDMS Docket Owners to associate separate dockets using FDMS metadata.

IV. Disposition

After the retention period has run, records in FDMS are dispositioned as outlined in their applicable records schedule. For permanent records, disposition includes the transfer of records to the National Archives and Records Administration (NARA).

Because FDMS is intended to be a public repository documenting EPA decisions, it is often useful for convenience copies of these records to remain in FDMS even after they have reached their disposition date. The convenience copies maintained in FDMS are not official records and will be assigned to Records Schedule 008 (indicating that the document is a convenience copy). A convenience copy of all permanent records remains in FDMS after the record copy has been transferred to NARA for reference purposes unless the FDMS Records Contact indicates that they want these copies permanently removed from the system. For temporary records, disposition includes the deletion of records from FDMS unless the FDMS Records Contact indicates that they want a convenience copy of the record to remain in the system for reference purposes. All documents in FDMS, including convenience copies, may be subject to Freedom of Information Act (FOIA) or discovery requests.

V. Other Considerations

1. Holds

Holds are designations placed on a record that prevent the record from reaching final disposition. Holds are applied at the docket level and affect all records within the docket. Records that have a hold applied to them cannot reach final disposition until the hold is removed. Holds may be added to or removed from a docket by submitting the appropriate form.

EPA currently has two types of holds available: 1) litigation holds and 2) emergency response holds. A litigation hold suspends the record retention/destruction policies for selected records. The litigation hold responds to the duty to preserve potentially relevant information that arises when litigation occurs or is "reasonably anticipated" or "reasonably foreseeable." This duty also arises if a court orders that documents be preserved or if the Agency has received a preservation notice or discovery

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request. An emergency response hold suspends the record retention/destruction policies for those records that may pertain to the Agency's response to an emergency or disaster situation, preserving records generated as part of EPA's response.

2. Late Comments/Public Submissions

Many EPA dockets ask that interested members of the public respond to their content; the replies are known as public comments or public submissions. While a formal comment period is specified whenever public comments are solicited, the Agency may also receive submissions after the comment period closes; these replies are referred to as late comments. Late comments received before retention is set are automatically processed, added to the docket and made available for consideration. For late comments received after retention has been set, this action is not taken automatically because it would constitute an alteration of the record. Instead, these comments are forwarded directly to the program office or region. If the docket owner wants to make the comment publically available, they can either un-set retention to add the comment to the docket or create a new docket for the comment.

3. Keeping a Complete Rulemaking/Docket Record in FDMS

As an official System of Records, FDMS serves as the central repository for all Agency rulemaking and other docketed records. There are, however, certain records that are not or cannot be stored in FDMS. These records include, but are not limited to, documents containing Confidential Business Information (CBI), large datasets, items that cannot be scanned (due to size, format, or number), original signature documents, and duplicate or near duplicate copies of mass-mail campaigns. Because EPA's records schedules are media neutral, the same records schedule applies to all items maintained in a docket, whether they are stored electronically in FDMS or stored elsewhere in other formats. In order for FDMS to serve as a complete repository for all rulemaking and other docketed records, placeholders are added to the FDMS docket to identify, describe and locate those items that are stored outside the system.

7. RELATED DOCUMENTS

- A. E-Government Act (44 USC 3501 et seq.).
 - B. OMB Memorandum, The E-Government Act of 2002: Implementation of Responsibilities under the Act (August 1, 2003).
 - C. EPA Records Management Manual (February 2007).
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8. ROLES AND RESPONSIBILITIES

FDMS Docket Owner: The FDMS Docket Owner, who is typically the FDMS user that opens and populates the docket, is responsible for giving the FDMS Records Manager the information they need to correctly assign a records schedule at the point of docket creation. In most cases, this is the extent of their records management responsibilities.

FDMS Records Contact: For as long as a record remains in EPA's custody, the program or regional office is its official owner; and it is the FDMS Records Contact that serves as the central point of contact for recordkeeping decisions related to a program or regional office's rulemaking and docketed records. Their primary responsibility is to annually review the listing of dockets that are eligible for retention or disposition (provided by the FDMS Records Manager) and make decisions about when dockets can be closed and have retention set and how dockets are treated when they reach final disposition. None of these records management actions are taken without instruction from the FDMS Records Contact. FDMS Records Contacts need to be formally identified by their program office or region and have a high degree of familiarity with their program's dockets.

FDMS Records Manager: FDMS Records Managers are responsible for carrying out records management tasks in FDMS based upon the instruction they receive from FDMS Docket Owners and FDMS Records Contacts. These tasks include selecting the appropriate records schedules, declaring records, setting retention, and overseeing final disposition. They also carry out other, less routine records management functions, such as producing records reports, un-declaring and deleting records, adding and removing holds, and un-setting retention. Because the FDMS Records Managers have far-reaching abilities over important Agency documents, assignments to this position are limited and closely controlled to ensure the integrity of the system and proper execution of records responsibilities. FDMS Records Managers need to be formally identified and have a high degree of familiarity with their program's dockets and with the FDMS system interface.

Office of General Counsel (OGC): OGC is responsible for providing legal support and guidance to FDMS Docket Owners and FDMS Records Contacts regarding records decisions, including, but not limited to, withdrawing records, setting record retention and applying and removing record holds. An OGC attorney's signature is required to authorize some of these records decisions.

9. DEFINITIONS

Confidential Business Information (CBI): Material that contains trade secrets or commercial or financial information that has been claimed as confidential by its source.

Convenience Copy: Extra copies of documents preserved only for convenience of reference.

Declaration: The act of proclaiming a document to be a record.

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Discovery: The process by which information is searched, sorted, saved, and organized for the purpose of evidence in litigation.

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.

Docket: A collection of documents related to a rulemaking or other actions.

Docket Center: EPA Docket Center in Washington, DC manages the public dockets for and provides support to all EPA headquarters program offices and makes those dockets available for public viewing.

Docket Posting: The act of making dockets available to the public, online via Regulations.gov and in-person at the EPA Docket Center.

Docket Subtype: Secondary classification of a docket, such as Public Notice, Information Collection Requests, or Guidance.

Docket Type: Primary classification of a docket; a docket may have a docket type of Rulemaking or Non-Rulemaking.

DOD 5015.2 Approved System: The DoD 5015.2 Records Management Application (RMA) standard establishes mandatory baseline functional requirements for RMA software used in the implementation of records management programs. It defines required system interfaces and search criteria to be supported by the RMAs, and describes the minimum records management requirements that must be met, based on current National Archives and Records Administration (NARA) regulations.

Federal Docket Management System (FDMS): A docket management solution designed to manage records for a wide range of regulatory and other docketed activities routinely performed by Federal agencies.

Hold: Designations placed on a record that prevent the record from reaching final disposition.

National Archives and Records Administration (NARA): The organization that provides oversight and guidance to Federal agencies and records management programs to ensure that they effectively create and preserve evidence essential to document the rights of citizens, the actions of Federal officials, and the National experience.

Metadata: The description of the data resources, its characteristics, location, usage, and so on. Metadata is used to identify, describe, and define user data.

Non-Record: U.S. Government-owned documentary materials excluded from the legal definition of records or not meeting the requirements of that definition, including extra copies of documents kept only for convenience of reference, stocks of publications and of processed

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documents, and library or museum materials intended solely for reference or exhibition.

Permanent Records: Records appraised by NARA as having sufficient historical or other value to warrant continued preservation by the Federal government beyond the time they are needed for administrative, legal, or fiscal purposes.

Public Comment/Submission: A written expression of an opinion or attitude by a member of the public to a government agency about a rulemaking or other action.

Record: Records include all books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government 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 Government or because of the informational value of data in them.

Records 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.

Reference Copy: Extra copies of documents preserved only for convenience or reference.

Regulations.gov: Regulations.gov is an on-line forum that facilitates public access to information on the development of Federal regulations and other related documents and provides a means for the public to submit comments related to this information.

Retention Period: The length of time that records are to be kept.

Temporary Records: Records approved by NARA for disposal, either immediately or after a specified retention period.

10. WAIVERS

There are no waivers from this procedure.

11. RELATED PROCEDURES, STANDARDS AND GUIDANCE

CIO 2155.2 Interim Records Management Policy
CIO 2132.0 Uniform Rulemaking Docket Manual

12. MATERIAL SUPERSEDED

None.

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13. ADDITIONAL INFORMATION

See associated flow diagram(s) for processing regulatory and other docketed records according to their specific records schedule(s).



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