



Case No.: 2018-00720-FOIA-OS

March 23, 2018

Mr. Aaron Siri
200 Park Avenue
Seventeen Floor
New York, NY 10166
Via email: khertz@sirillp.com

Dear Mr. Siri:

This is the final response to your March 14, 2018, Freedom of Information Act (FOIA) request. You requested the following:

“A copy of the HHS's current document, communication, and email retention policies.”

A representative from the office of the Assistant Secretary for Administration (ASA) conducted a search for responsive records and located **36 pages**. After a careful review of these pages, I have determined to release them to you in their entirety.

If you are not satisfied with any aspect of the processing and handling of this request, you have the right to seek dispute resolution services from:

Michael Bell
HHS FOIA Public Liaison
U.S. Department of Health and Human Services
Office of the Assistant Secretary for Public Affairs
Room 729H
200 Independence Avenue, S.W.
Washington, DC 20201

Telephone: (202) 260-0793
E-mail: HHS_FOIA_Public_Liaison@hhs.gov

and/or:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001

Telephone: 202-741-5770
Toll-Free: 1-877-684-6448
E-mail: ogis@nara.gov
Fax: 202-741-5769

There are no charges in this instance because the billable costs are less than our threshold of \$25.

Sincerely yours,

For


Michael S. Marquis
Director
FOI/Privacy Acts Division

Enclosure(s)



**Office of the Chief Information Officer
Office of the Assistant Secretary for Administration
U.S. Department of Health and Human Services**

HHS Policy for Electronic Mail (Email) Records Management

December 29, 2016

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Document Revision History

Version Number	Release Date	Summary of Changes	Section Number/Paragraph Number	Changes Made By

The Office of the Chief Information Officer (OCIO) is responsible for development and management of the U.S. Department of Health & Human Services' (HHS) Policy for Electronic Mail (Email) Records Management. Please send any recommended changes via email to hhsrecordsmanagement@hhs.gov.

1. Nature of Changes

This policy supersedes and replaces HHS-OCIO-2008-0002.001, HHS OCIO Policy for Records Management for Emails, dated May 15, 2008.

2. Purpose

This policy implements the General Records Schedule (GRS) 6.1, *Email Managed under a Capstone Approach* and identifies its authorities, scope and objectives.

3. Background/Significant Changes

This policy implements Office of Management and Budget (OMB M-12-18, Part I, Goal 1.2. HHS will manage all email records in an appropriate electronic recordkeeping system that supports records management and litigation requirements (which may include preservation-in-place models), including the capability to identify, retrieve, and retain the records for as long as they are required. This policy also addresses recordkeeping requirements when using personal or non-HHS communication tools to conduct HHS business.

HHS employees are responsible for the creation or receipt, maintenance, use and disposition of federal records. Users are required to use the retention policy in the email system to manage email that are official records and remove email records that are non-records.

4. Scope

The Capstone policy applies to all HHS Operating Divisions (OpDivs), Staff Divisions (StaffDivs) and contractors conducting business for, and on behalf of the Department through contractual relationships and service level agreements. OpDivs that wish to apply this GRS in part must ensure that all other email records are covered by another National Archives and Records Administration (NARA) approved disposition authority. OpDivs not managing any of their email under the Capstone approach are responsible for managing their email by applying NARA-approved records schedules. OpDivs may develop and implement more specific policies and procedures consistent with the overarching Email Records Management Policy. The supplemental preservation requirements that apply to HHS records and other documentary materials that are potentially relevant for litigation, investigations and audit matters may be found in the HHS Policy for Records Holds.

This policy does not supersede any other applicable law, court order, existing labor management agreement, and more stringent retention standard or agency directive, to include the HHS Policy for Records Holds in effect as of the date of this policy.

NOTE: Currently, Capstone applies only to email records, as defined in this policy. All other records, including paper, electronic, or other media are governed by the GRS or agency records schedule.

5. Policy for Electronic Mail (Email) Records Management

5.1. Electronic Mail (Email):

5.1.1. Email often meets the definition of a federal record as provided in the Federal Records Act (44 U.S.C., 3301) which includes: all traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form.

5.1.2. Implementation of the “Capstone” approach.

- (a) Under the Capstone approach, OpDivs will manage email records based on the role of the account holder rather than on the content of each email record. Capstone officials include all those listed on an approved NARA Form 1005 (NA 1005), Verification for Implementing GRS 6.1. This includes those officials in an acting capacity for any of the positions listed on the NA 1005 longer than 60 days. The form serves as a list of permanent Capstone officials for implementation of item 010 and a list of positions excluded from implementation of items 011 and 012 of GRS 6.1.
- (b) Email records captured and managed under the Capstone approach must use an existing records retention schedule or maintained as unscheduled records until the approval of the NA 1005. OpDivs will not implement GRS 6.1 until NARA reviews and approves the submission. Once approved, OpDivs will implement retention and disposition of email records accordingly.
- (c) The verification process will require OpDivs implementing GRS 6.1, Email Managed under a Capstone approach, to submit a NA1005 to the Department Records Officer (RO). The Department RO will review and forward to NARA to receive approval prior to implementation of any items of this GRS.
- (d) The verification process for identifying Capstone officials is located in the record description of GRS 6.1. The section defines the ten categories of senior officials provided in the definition of Capstone (permanent) accounts in item 010 of the GRS. These definitions acknowledge that different OpDivs often have different titles for similar positions which are meant to assist OpDivs in properly identifying senior officials within their OpDivs that correlate to each category.

NOTE: Cabinet level agencies implementing a Capstone approach that includes their components/operatives must apply the definition of “Capstone Official” to each component individually. In these cases, each component/operative is considered a separate agency in terms of the definition of Capstone officials. A component/operative of a cabinet level agency may implement a Capstone approach independent of their department, but must also conform to the entirety of this definition.

5.1.3. Email records are captured and managed according to user role using the following retention approach:

(a) Email Records of Designated Capstone Officials. Email records (email messages and attachments, calendar appointments, and tasks captured by the electronic recordkeeping system) from designated Capstone official's email accounts must be retained as permanent. These email records will be transferred to the NARA according to General Record Schedule 6.1, Section 010. Each OpDiv RO will maintain an official list of Capstone officials' email accounts and will forward a copy of the list to the Department RO annually.

(b) Email Records Captured from Email Accounts Not Designated as Capstone Officials. Email records (email messages and attachments, appointments, and tasks captured by the OpDiv electronic recordkeeping system) of all other OpDiv account holders will be retained as temporary according to General Record Schedule 6.1, Sections 011 or 012 and destroyed within the electronic recordkeeping system. If GRS 6.1 is not used, a NARA approved agency records disposition schedule must be followed. (NOTE: Preclude records under preservation obligation, such as litigation hold).

5.1.4. Non-Record Emails. HHS employees may delete "non-record" emails not containing any information documenting HHS actions or activities. Non-records include; non-business related, personal, broadcast messages (e.g., HHS messages to all staff) and advertisement. (NOTE: Preclude records under preservation obligation, such as litigation hold).

5.1.5. Transitory Email Records. Transitory records are records of short-term (180 days or less) interest which have minimal or no documentary or evidential value. Email records that are transitory may be deleted when no longer needed. (NOTE: Preclude records under preservation obligation, such as litigation hold).

5.1.6. Managing Email Records Manually. When automated tools or features are not available within the email system to auto-categorize folders and emails, employees must manually create folders within their email inbox and manage records by record type. (NOTE: For best retention and disposition practices, a folder should be created for each record type the employee creates. Additionally sub-folders may be created to manage records into more specific categories).

5.1.7. Email Retained with Related Records. When business needs require email records to be retained within another electronic recordkeeping system (such as part of a case file), you should also keep a copy of the email with those files. Capstone does not replace existing business practices that require email messages and other related records to be retained together in established electronic recordkeeping systems.

5.1.8. Search and Auditing of System. System-wide email searches may be conducted by OpDiv designated IT personnel with the approval of the General Counsel or Chief

Information Officer as part of an internal or external investigation or in response to an access request as needed.

- 5.1.9. Unauthorized Destruction of Email Records and Reporting Loss. OpDivs will have data/records backup procedures in place. If there's an instance of unauthorized destruction of email records, the user should first contact their supervisor and then the IT Helpdesk to attempt recovery. If recovery is not possible, the user or office must report the incident to the HHS or OpDiv RO. The RO will subsequently report the incident to the Chief Records Officer for the U.S. Government. Per 36 CFR 1230.14, the report should describe the records, the circumstances in which the unauthorized destruction took place and the corrective steps being taken to properly manage the records in the future.
- 5.2. Using of Unauthorized External Information Systems to Conduct Department Business. Transmission of HHS "sensitive" information via personal email is prohibited. In the interest of both protecting HHS employee's personal privacy and increasing transparency for the public, HHS employees assigned an HHS provided computer, email or online storage account must use those government provided resources for conducting any and all official business. Under no circumstances should HHS employees conduct official business using personal computer, email or personal online storage accounts if a federally owned or federally contracted alternative is assigned to them.
- 5.3. Email Records Management (Capstone) Training. Each HHS OpDiv must provide email records management (Capstone) training to all appropriate staff to ensure they are aware of their responsibilities to maintain and safeguard agency email records, including the obligations under this Policy and the HHS Records Holds Policy.
- 5.4. New Employees Orientation. HHS employees whose positions has been designated as Capstone (permanent) must receive an initial and departure briefing as part of their training on their email records management responsibilities.
- 5.5. Annual Training. HHS personnel must complete Records Management training annually, which must include a section on email records management (Capstone Approach).

6. Systems Requirements

- 6.1. OpDivs must have automated or manual systems in place that produce, manage, and preserve email records in an acceptable electronic format until disposition can be executed. Additionally, systems must support the implementation of agency policies and provide access to email records throughout their lifecycle. (NOTE: Preclude records with preservation obligation, such as litigation hold).
- 6.2. Systems and business processes must support the management of email records in accordance with all applicable requirements including the manual or automatic execution of their disposition whether using a Capstone-based or content-based record schedule.

7. Access Requirements

- 7.1. Email records must remain usable and retrievable throughout their lifecycle. Access supports an agency's ability to carry out its business functions. Access must address internal agency needs and accommodate responses to requests for information.
- 7.2. Email records must be maintained in a system that preserves their content, context and structure, protects against their unauthorized loss or destruction, and ensures that they remain discoverable, retrievable, and usable for the period specified in their retention schedule.

8. Disposition Requirements

- 8.1. OpDivs must have a NARA-approved schedule in place to be able to carry out the disposition of permanent and temporary email records – using either agency-specific schedules or GRS) 6.1: Email Managed under a Capstone approach.
- 8.2. HHS, OpDivs must identify appropriate retention periods for email records and implemented systems and policies to support the disposition as specified in an approved records schedule.

9. Roles and Responsibilities

- 9.1. OpDiv ROs:
 - 9.1.1. Evaluate and assign positions as Capstone or Non-Capstone and forward to the Department RO. Send your email account designations to your respective OCIO point of contact.
 - 9.1.2. Ensures that Capstone designations are kept current with organization changes.
 - 9.1.3. Provide training to OpDiv staff on Capstone records management implementation.
 - 9.1.4. Ensure NARA-approved schedules are in place that identifies systems that contain Federal email records.
 - 9.1.5. Transfer permanent email records to the NARA in accordance with approved records schedules and applicable laws, regulations, and NARA Transfer Guidance.
- 9.2. OpDiv and StaffDiv Records Managers (RM) and Records Liaison Officers (RLO):
Monitor personnel changes within their offices and inform Record Officers of changes relevant to Capstone status designations.
- 9.3. HHS OCIO and OpDiv Information Technology Offices:

- 9.3.1. Ensure email systems retain components of email messages identified in RFC 5322 including email attachments.
- 9.3.2. Ensure current and departed employees email records remain accessible throughout the record's lifecycle as determined by the records schedule or legal hold, whichever is longer.
- 9.3.3. Ensure searches across multiple email accounts or multiple systems to find emails needed for agency business.
- 9.3.4. Prevent unauthorized access, modification, or destruction of email records.
- 9.3.5. Ensure supervisor annotate new employee's level of employment is captured on new email account form (designated as Capstone or Non-Capstone) and is used to determine the employees email records disposition (i.e. administrative, supervisor, manager, Senior Executive Service (SES) member, or Political Appointee).

9.4. HHS Personnel (Employees, Contractors, Interns and Fellows):

- 9.4.1. Obtain basic records management training and training on how to use the email system.
- 9.4.2. Recognize the difference between record and non-record material and maintain email records accordingly, to the extent practicable.
- 9.4.3. Use the HHS email system for all business purposes. This policy applies to all user accounts that the employee uses or monitors.
- 9.4.4. When a change in supervisory or management status occurs, employees must disclose this change to the OpDiv or StaffDiv RO. In-turn, the ROs will notify OCIO of the change.
- 9.4.5. Notify your OpDiv RO if you receive a large number of permanent records to determine whether your account should be redesignated as Capstone permanent.
- 9.4.6. Comply with the requirements of this policy including requirements related to email preservation.
- 9.4.7. All HHS account holders are responsible for recognizing that the information they create while conducting HHS business are records. Additional information about records management responsibilities may be found in HHS Records Management Policy.

10. Applicable Laws/Guidance

Authorities include:

- (a) 36 CFR Chapter XII, Subchapter B – Agency Records Management Responsibilities
- (b) 36 CFR Chapter XII, Subchapter C – Electronic Records Management
- (c) 44 U.S.C. Chapter 21 – National Archives and Records Administration
- (d) 44 U.S.C. Chapter 29 – Records Management by the Archivist of the United States
- (e) 44 U.S.C. Chapter 31 – Records Management by Federal Agencies
- (f) 44 U.S.C. Chapter 33 – Disposal of Records
- (g) OMB M-12-18, Managing Government Records Directive
- (h) General Record Schedule 6.1: Email Managed under a Capstone Approach
<http://www.archives.gov/records-mgmt/grs/grs06-1.pdf>
- (i) HHS Policy for Records Holds

11. Additional Information and Assistance

For additional information about this Policy, please contact the Department's RO at (202) 690-5521 or hhsrecordsmanagement@hhs.gov.

12. Effective Date/Implementation

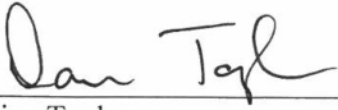
The effective date of this policy is the date the policy is approved.

These policies and procedures will not be implemented in any recognized bargaining unit until the union has been provided notice of the proposed changes and given an opportunity to fully exercise its representational rights.

The HHS policies contained in this issuance shall be exercised in accordance with Public Law 93-638, the Indian Self-Determination and Education Assistance Act, as amended, and the Secretary's policy statement dated August 7, 1997, as amended, titled "Department Policy on Consultation with American Indian/Alaska Native Tribes and Indian Organizations."

It is HHS's policy to consult with Indian people to the greatest practicable extent and to the extent permitted by law before taking actions that affect these governments and people; to assess the impact of the Department's plans, projects, programs and activities on tribal and other available resources; and to remove any procedural impediments to working directly with tribal governments or Indian people.

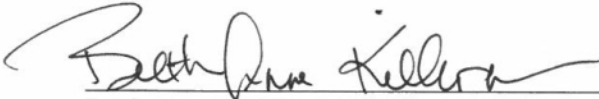
13. Approval



Darius Taylor
Department Records Officer

12/29/16

Date



Beth Anne Killoran
Deputy Assistant Secretary for Information Technology
and Chief Information Officer

1-10-2017

Date

Attachment 1 - Glossary

Capstone – An approach to managing email where agencies must identify those email accounts most likely to contain records that should be preserved as permanent. Agencies will determine Capstone accounts based on their business needs. They should identify the accounts of individuals who, by virtue of their work, office, or position, are likely to create or receive permanently valuable Federal records. Capstone officials will generally be the top-level senior officials of an agency, but may also be other key decision makers at lower levels of the agency.

Capstone Official – Senior officials designated by account level or by email or by email addresses, whether the addresses are based on an individual's name, title, a group, or a specific program function.

Control and Custody of Records – HHS records/materials are the property of the Federal government, not the property of individual employees or contractors acting as an agent for the government, and may not be removed from the Department without proper authority. All employees/contractors shall maintain records and non-record documentary materials separately from one another.

Culling – The act of removing or deleting material prior to disposition. This may include deleting non-record email [e.g., email blast (such as agency-wide communications), spam, and personal email (records belonging to an individual and not related to agency business)], and transitory email records (records of short-term interest or that have minimal documentary or evidentiary value).

Electronic Mail (Email) – All traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form.

Electronic Messages – Electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals.

Electronic Mail (Email) System – A computer application used to create, receive, and transmit messages and other documents. Excluded from this definition are file transfer utilities (software that transmit files between users but does not retain any transmission data), data systems used to collect and process data that have been organized into data files or databases on either personal computers or mainframe computers, and word processing documents not transmitted on an email system. (36 CFR 1236.2)

Electronic Records – Any information that is recorded in a form that only a computer can process and that satisfies the definition of a federal record in 44 U.S.C. 3301. Electronic records include numeric, graphic and text information, which may be recorded on any medium capable of being read by a computer and which satisfies the definition of a record.

This includes, but is not limited to, magnetic media, such as tapes and disks, and optical disks. Unless otherwise noted, these requirements apply to all electronic records systems, whether on microcomputers, minicomputers, or mainframe computers, regardless of storage media, in network or stand-alone configurations.

Electronic Records Keeping System – An electronic system in which records are collected, organized and categorized to facilitate their preservation, retrieval, use and disposition.

Preservation In-Place – Protects and secures electronically stored information (ESI) from accidental deletion prior to collection. (NOTE: This is usually in reference to a litigation hold).



**Office of the Chief Information Officer
Office of the Assistant Secretary for Administration
Department of Health and Human Services**

HHS Policy

for

Records Management

November 25, 2015

Project:
Document Number:

HHS RM Policy
HHS-2015-0004.002

2015-0004.002	HHS Policy for RM	002	Status: Approved
Last Review Date:	Next Review Date:	RM Team	Approved by: Frank Baitman

OCIO is responsible for development and management of the HHS Records Management policy. Please send any recommended changes via email to hhsrecordsmanagement@hhs.gov.

Effective Date: This instruction is effective November 25, 2015, and supersedes all other versions.

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1. Nature of Changes

This policy supersedes HHS-OCIO-2007-0004.001, HHS Policy for Records Management dated January 30, 2008

2. Purpose

The purpose of this policy is to establish the principles, responsibilities, and requirements for managing U.S. Department of Health and Human Services (HHS) records. This policy provides the framework for records management program guidance and operating procedures. This policy does not address the supplemental preservation requirements for records associated with litigation, investigations, and audit matters.

3. Background

The Federal Records Act of 1950 requires all federal agencies to create and preserve records that document the agency's organization, function, policies, decisions, procedures, and transactions. These records must be managed in accordance with subchapter B, chapter XII, of Title 36, Code of Federal Regulations (CFR) and chapters 29, 31, 33, and 35 of Title 44, United States Code.

Additionally, the Federal Records Act calls for agencies to establish a records management program consisting of policies, procedures, and activities to manage recorded information.

Records serve as the Agency's memory; effective and efficient management of records provides the information foundation for decision-making at all levels, mission planning and operations, personnel services, legal inquiries, business continuity, and preservation of U.S. history.

4. Scope

This policy applies to all HHS OpDivs and contractors conducting business for, and on behalf of the Department, through contractual relationships and service level agreements. Within this policy, the term OpDiv includes all Staff Divisions (StaffDivs). OpDivs and StaffDivs may develop and implement more specific policies and procedures consistent with the overarching HHS Records Management Policy.

This policy does not supersede any other applicable law, court order, existing labor management, more stringent retention standard or agency directive to include the HHS Policy for Holds on Records and other Documentary Materials ("HHS Litigation Hold Policy") in effect as of the date of this policy.

5. Records Management Policy

In order to maintain all Federal records in accordance with applicable statutory and regulatory requirements, each OpDiv and StaffDiv is required to establish and maintain a records management program meeting the following minimum requirements:

5.1 Identification of Records:

Records in all media must be properly identified. A record is:

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

5.2 Adequate and Proper Documentation:

OpDivs must establish formal files with documented classification schemes or electronic recordkeeping systems with full records management functionality. Consistent and proper implementation of recordkeeping requirements will ensure the accuracy and integrity of documentation created and transmitted electronically within the OpDiv, among OpDivs, and between OpDivs and the public.

5.3 Electronic Records:

Unstructured electronic records to include records created using applications, electronic mail, and other messaging applications, word processing, or presentation software must be managed in a records management solution. E-mail records must be retained in an appropriate electronic system that supports records management and litigation requirements (which may include preservation in-place models), including the capability to identify, retrieve, and retain the records for as long as they are needed.

All permanent records will be managed electronically to the fullest extent possible for eventual transfer and accessioning by NARA in an electronic format. OpDivs must develop and begin to implement plans to achieve this transition from hard-copy format or other analog formats (e.g., microfiche, microfilm, analog video, and analog audio).

5.3.1 Conducting Official Business using Non-Official Email

Accounts:

Employees of HHS are prohibited from creating a record using a non-official electronic messaging account. The use of non-official accounts are only permitted for extenuating circumstances (i.e., email interruption, computer issues etc.) During such instances employee must:

- (a) Send copies to their official electronic messaging account in the original creation or transmission of the record; or
- (b) Forwards a complete copy of the record to an official electronic messaging account of the employee not later than 20 days after the original creation or transmission of the record.
- (c) The intentional violation as determined by the appropriate supervisor shall be a basis for disciplinary action

5.4 Control and Custody of Records:

Agency records are the property of the federal government, not the property of individual employees, and must not be removed from the Department without proper authority.

5.5 Chain of Custody:

Chain of custody refers to the chronological documentation or paper trail, showing custody, control, transfer and disposition of Federal records for departing employees.

All departing employees shall:

5.5.1 Identify and separate all employee Federal Records from Non-Record Materials and Personal Papers.

5.5.2 Purge non-record materials, personal papers and extra copies.

5.5.3 Complete a Chain of Custody document that certifies that they have turned over to their successor, or to the appropriate official, all Federal records for which they were responsible during their tenure. (See Attachment 3 for Chain of Custody document)
Note: Chain of Custody document must be signed by departing employee and supervisor.

All supervisors or appropriate officials shall:

5.5.4 Ensure that departing employee's Federal records have been identified and properly disposed of in accordance with approved records disposition schedules before the employee's departure.

5.5.5 Ensure that the departing employee's Federal records have been turned over to the appropriate successor or official to permit continued preservation of the Department Federal records.

5.5.6 Ensure that the Chain of Custody document has been completed and signed before the employee departs the agency.

Records Managers, Records Liaison Officers or Records Custodians:

5.5.7 Ensure chain of custody procedures are implemented for the proper transfer of Federal records from the departing employee to the appropriate successor.

5.5.8 Ensure receipt of the completed Chain of Custody document for proper transfer to the appropriate successor of the records.

5.6 Organization and Maintenance of Records:

Records shall be maintained so that they are easily retrievable. Record systems shall be designed to furnish information necessary to protect the legal and financial rights of the Government and persons directly affected by the Government's actions. If an electronic content management system with recordkeeping functionality is not available, the record

must be printed and filed in a paper recordkeeping system. Permanent electronic records, microform, and audiovisual records are relatively fragile and degrade in a shorter time compared to paper records; therefore they should be transferred promptly to the National Archives for permanent preservation.

5.7 File Plans:

Each HHS OpDiv and StaffDiv must maintain a centralized file plan that includes the title and description of its records, including electronic media. Each HHS OpDiv and StaffDiv must standardize file arrangement systems, filing procedures, and filing techniques of records. File plans must be designed to enhance the current use of the files, the preservation of archival records, and the prompt and systematic disposition of permanent and temporary records according to the appropriate records schedule.

5.8 NARA-Approved Records Schedule:

Record schedules will be developed for all HHS records. Approval of the schedules must be obtained from NARA in accordance with Subchapter B, chapter XII of Title 36, Code of Federal Regulations.

HHS Records must be listed and described in an approved records schedule, and shall be disposed of only as authorized by that schedule. HHS OpDivs must update their records schedules when there are program changes that will result in the establishment of new types of records and the transfer or termination of records, or an increase or decrease in the retention time of the records. (36 CFR 1224.10(c)).

5.9 Essential Records (36 CFR 1223.1 et seq.):

Create and implement a plan to identify and protect records and information necessary for HHS to continue its key functions and activities in the event of an emergency or disaster.

5.9.1 Each HHS OpDiv and OS StaffDiv is responsible for establishing an Essential Records program.

5.9.2 Each HHS OpDiv and OS StaffDiv is responsible for selecting and safeguarding those records that would be required to ensure continuity of essential HHS functions during and following a national disaster.

5.9.3 Disaster Recovery (DR) critical, essential records should be identified as business continuity planning and should be part of the OpDiv and StaffDiv's COOP plan. If there are special electronic storage requirements, cost implications will be incurred.

5.10 Training:

Each HHS OpDiv and StaffDiv must provide records management training to all appropriate staff to ensure they are aware of their responsibilities to maintain and safeguard Department records, including the obligations under this Policy and the HHS Litigation Holds Policy.

Formal Records Management Training courses:

5.10.1 New Employee Orientation:

Each HHS new employee shall receive records orientation training within their first 30 days of duty.

5.10.2 Annual Training:

HHS personnel will receive overview records management training annually to understand their responsibilities in managing HHS records and how to carry out these responsibilities. The records management training must be completed by the established completion date (36 CFR 1220.34(f)).

5.10.3 Senior Officials Awareness Training:

Each HHS OpDiv and StaffDiv must provide training for:

- (a) Incoming Senior Officials and Political Appointees on the importance of appropriately managing records under their immediate control.
- (b) Departing Senior Officials and Political Appointees on the appropriate preservation and disposition of their records.

5.11 Contractor Employee Training:

All contractor employees who have access to (1) HHS Federal Information or a Federal information system or (2) personally identifiable information, shall complete the applicable OpDiv Records Management training before performing any work under their contract. Thereafter, the employees shall complete annual Records Management training throughout the life of the contract. The Contractor shall also ensure subcontractor compliance with this training requirement.

5.12 Social Media and Instant Messaging:

The use of social media and instant messaging may create federal records that must be captured and managed in compliance with Federal records management laws, regulations, and policies. OpDivs must identify these federal records and determine how they will be managed. If the OpDiv has identified social media content as federal records, they must determine whether an existing disposition authority applies, including the General Records Schedule (GRS). If an existing authority does not cover the content, a new schedule must be developed. OpDivs should develop a new records schedule if social media and instant messaging users enhance the content by adding comments, metadata or other information that becomes part of the complete record.

5.13 Formal Evaluations:

OpDivs will conduct a formal evaluation on two of their records management programs annually. The goal of the evaluations is to measure the effectiveness of records

management programs and practices and to ensure that they comply with NARA regulations. Formal evaluations are intended to provide agencies with information they may use to measure compliance and target resources within areas requiring improvement.

6. Roles and Responsibilities

6.1 HHS Assistant Secretary for Administration:

- 6.1.1 Serves as the Senior Agency Official (SAO) for Records Management. Delegates oversight responsibility for the Department-wide records management program to the CIO.
- 6.1.2 Has direct responsibility for ensuring that the department or agency efficiently and appropriately complies with all applicable records management statutes, regulations, NARA policy, and Presidential Directives.
- 6.1.3 Makes adjustments to agency practices, personnel, and funding as may be necessary to ensure compliance and support the business needs of the department or agency.

6.2 HHS Chief Information Officer (CIO):

Provides oversight of the Department-wide records management program. This responsibility includes the following:

- 6.2.1 Appointing the HHS Records Officer to guide and coordinate the HHS Records Management Program. The HHS Records Officer collaborates with HHS OpDivs and NARA to execute the HHS Records Management Program in accordance with this instruction.
- 6.2.2 Integrating records management procedures and activities into HHS Information Resources Management (IRM) policy and planning.
- 6.2.3 Reviewing and making recommendations on requests for funding and acquisition of electronic records management systems in accordance with information technology, capital planning, and investment control procedures.

6.3 HHS Records Officer (RO):

HHS RO is responsible for the implementation of the Department-wide records management program. This responsibility includes the following:

- 6.3.1 Serving as the Department's representative with NARA, other federal agencies, and external organizations on matters pertaining to records management.
- 6.3.2 Providing leadership and guidance to ensure uniformity in records management activities throughout the Department.
- 6.3.3 Conducting periodic compliance evaluations of records management programs.
- 6.3.4 Developing policies, standards, and procedures for records management.

- 6.3.5 Ensuring all HHS employees including senior officials and contractors are aware of their programmatic and individual records management responsibilities.
 - 6.3.6 Coordinating records management issues with other federal and regulatory agencies, including NARA, OMB, GSA, GAO, and OPM.
 - 6.3.7 Providing records management expertise and participating in the review and development of proposed electronic records management systems
 - 6.3.8 Coordinating the development and implementation of the HHS records program.
 - 6.3.9 Providing guidance and operational support for the implementation of litigation holds and other types of legally required holds on records and other documentary materials.
 - 6.3.10 Providing guidance to the OpDiv ROs to ensure compliance with Records Management principles and policies in all phases of the Enterprise Performance Life Cycle (EPLC) process.
- 6.4 OpDiv Chief Information Officers (CIOs):
- OpDiv CIO's or Designated Senior Official responsibilities include the following:
- 6.4.1 Designating ROs to oversee the records management program. Recommend designation of Records Managers (RMs) to support the OpDiv ROs in the implementation of recordkeeping requirements for major programmatic and administrative records.
 - 6.4.2 Ensuring the OpDiv ROs and StaffDiv RMs have adequate skills, training, resources, time, and appropriate authority to execute duties assigned.
 - 6.4.3 Ensuring the implementation of a records management program within their area of responsibility to accomplish the objectives identified in federal regulations and HHS policies and procedures.
 - 6.4.4 Ensuring OpDiv ROs incorporate RM principles and policies in all phases of the EPLC process.
 - 6.4.5 Requesting funds for records storage costs.
 - 6.4.6 Ensuring ROs are adequately trained and remain current on e-mail policies and procedures.
- 6.5 OpDiv Records Officers (ROs):
- OpDiv ROs are responsible for:
- 6.5.1 Serving as the official overseeing the OpDiv's records management program.

- 6.5.2 Serving as the primary official who coordinates the OpDiv's Records Management matters with NARA and other oversight agencies.
 - 6.5.3 Creating and maintaining a network of RMs and Records Liaisons responsible for overseeing the Records Management program in the OpDiv and regions.
 - 6.5.4 Developing and disseminating instructions and operating procedures, as needed, supplementing the HHS-wide policy to meet the unique Records Management requirements of their organization.
 - 6.5.5 Coordinating, developing and updating comprehensive records disposition schedules for all programmatic records regardless of media.
 - 6.5.6 Ensuring that recordkeeping requirements are established, implemented, and periodically updated for all offices at all levels and all record media.
 - 6.5.7 Disseminating notices and instructions for litigation holds and other types of legally required holds in accordance with OGC, HHS RO, and HHS Holds Litigation Holds Policy guidance.
 - 6.5.8 Providing Records Management training in accordance with this policy to ensure compliance with the Federal Records Act.
 - 6.5.9 Ensuring compliance with Records Management principles and policies in all phases of the EPLC process.
 - 6.5.10 Coordinating fiscal year (FY) interagency agreement with NARA and agency budget officials for the storage and servicing of records.
 - 6.5.11 Conducting annual audits for records management retention compliance.
 - 6.5.12 Ensuring compliance with federal and HHS records management policies and directives.
 - 6.5.13 Ensuring Records Management training is conducted for all employees.
 - 6.5.14 Completing requirements for NARA certificate of Federal Records Management Training. New incumbents must obtain certificate within one year of assuming the position of OpDiv RO.
 - 6.5.15 Conducting formal evaluation to measure the effectiveness of OpDiv's records management programs and practices.
- 6.6 OS StaffDiv Records Managers (RM) and Record Liaison Officers (RLO):

The RMs and RLOs are responsible for:

- 6.6.1 Identifying record keeping requirements for programmatic and administrative records.

- 6.6.2 Evaluating the value of records within their span of responsibility to serve as a basis for assigning records retention and disposition instructions.
- 6.6.3 Developing official comprehensive file plans and periodically reviewing them to ensure they are updated.
- 6.6.4 Drafting and updating records schedules for records created and maintained by their organization.
- 6.6.5 Implementing approved records disposition schedules to ensure that records are managed in accordance with all phases of the records lifecycle.
- 6.6.6 Developing a process to ensure records are not unlawfully removed from HHS by current or departing officials, employees, or contractors.
- 6.7 OpDiv Records Liaisons (RL):

Records Liaisons are responsible for:

 - 6.7.1 Managing office records to ensure compliance with guidance and instructions issued by the RM and RL.
 - 6.7.2 Ensuring all office records are listed in the office file plan and are described accurately in the agency's records schedule. Communicating with the records manager if assistance is required.
 - 6.7.3 Following the agency's records schedule to ensure the proper disposition of the office's records, including:
 - (a) Systematic file cutoffs
 - (b) Retirement of eligible records to a records center
 - (c) Prompt disposal of temporary records when their retention periods expire
 - (d) Timely transfer of permanent records to NARA
 - (e) Ensuring personnel do not comingle personal papers, non-records and federal records
 - 6.7.4 Assisting the program manager in implementing procedures to prevent departing employees from destroying ineligible records or removing records from the agency's custody.
 - 6.7.5 Cooperating with the RLO and RM in periodic evaluations of the office's records.
- 6.8 Management/Supervisory Officials:

Managers and Supervisors are responsible for:

 - 6.8.1 Ensuring federal employees, contractors, and interns are aware of and adhere to HHS Records policies.

- 6.8.2 Ensuring federal employees, contractors, and interns complete initial and annual records management training.
- 6.8.3 Ensuring departing employee's record materials, including e-mail records, have been reviewed prior to the employee's departure. Ensuring departing employees comply with policies and procedures regarding preservation, transfer and deleting of records.

6.9 HHS Employees:

All HHS federal employees, contractors, and interns are responsible for:

- 6.9.1 Creating and maintaining records necessary to document the Agency's official activities and to carry out their assigned duties.
- 6.9.2 Maintaining records in a safe storage area that promotes efficient retrieval in accordance with established filing procedures and plans.
- 6.9.3 Maintaining personal papers and non-record materials separate from official HHS records.
- 6.9.4 Avoiding duplicate recordkeeping unless necessary or required (e.g., under HHS Litigation Holds Policy).
- 6.9.5 Disposing of records in accordance with approved records disposition schedules, and departmental policies. Records must never be removed from HHS without proper authorization.
- 6.9.6 Adhering to the HHS e-mail policies.
- 6.9.7 Notifying the RO of e-mail retention issues and working collaboratively to address all issues.
- 6.9.8 Seeking guidance from their supervisors or RO when in doubt about e-mail retention standards.
- 6.9.9 Completing a comprehensive records management training within the first 30 days of employment will suffice for the annual records management training requirement. Thereafter, employees are required to complete the records management training annually.
- 6.9.10 Completing the Employee Departure Process before separation from HHS (See Attachment 2).
- 6.9.11 Reporting incidents immediately to their supervisors if records are inadvertently removed, altered, lost or destroyed.

6.10 Freedom of Information Act (FOIA) Official:

The FOIA official provides a copy of a federal record, if appropriate, for release to the general public.

6.11 The Office of the General Counsel:

The Office of the General Counsel approves disposition schedules for official records and provides instructions for implementing litigation holds required to comply with legal requirements.

6.12 The Office of Inspector General:

The Office of Inspector General assists in investigating the unauthorized removal of records or the actual and potential threats to records (e.g. removal, alteration, or deliberate or accidental destruction).

6.13 The Department Enterprise Architect (EA):

The Department EA, as delegated by the OCIO, will work in conjunction with OpDiv's EA and Capital Planning Investment Control (CPIC) to ensure that any and all systems development plans, schedules, work breakdown structures, business cases, and OMB Exhibits 300 ("Capital Asset Plan and Business Case Summary") address records management provisions in the planning and development stages of the lifecycle.

6.14 The OpDiv Chief Information Security Officer (CISO):

The OpDiv CISO is responsible for ensuring the technical security of the OpDiv electronic data records according to HHS and OpDiv standards.

6.15 IT Infrastructure and Operations and System Managers:

IT infrastructure and operations and system managers are responsible for:

6.15.1 Working with the OpDiv RO to establish and update records schedules for electronic systems.

6.15.2 Ensuring that all phases of the EPLC process comply with HHS Records Management principles and policies.

6.15.3 Ensuring that information systems intended to carry out electronic records management align with NARA's and HHS's requirements for records stored in an electronic recordkeeping systems.

6.15.4 Maintaining electronic information systems in accordance with approved records schedules and NARA requirements.

6.15.5 Working with the OpDiv ROs to transfer permanent systems to the National Archives in accordance with approved records schedules and NARA requirements.

6.15.6 Ensuring that social media content containing official records are maintained in

accordance with HHS recordkeeping requirements.

7. Applicable Laws, Guidance and Records Management Links

Authorities include:

- a. 36 CFR Chapter XII, Subchapter B – Agency Records Management Responsibilities
- b. 36 CFR Chapter XII, Subchapter B and C – Electronic Records Management
- c. 36 CFR Chapter XII, Subchapter G – Damage to, Alienation and Unauthorized Destruction of Records
- d. 44 U.S.C. Chapter 21 – National Archives and Records Administration
- e. 44 U.S.C. Chapter 29 – Records Management by the Archivist of the United States and by the Administrator of General Services
- f. 44 U.S.C. Chapter 31 – Records Management by Federal Agencies
- g. 44 U.S.C. Chapter 33 – Disposal of Records
- h. 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)
- i. 44 U.S.C. 3301 Definition of Records
- j. 5 U.S.C. 552a – The Privacy Act of 1974
- k. General Records Schedule (GRS) 20, Item 14 – Electronic Mail Records
- l. General Records Schedule (GRS) 24 – Information Technology Operations and Management Records
- m. General Records Schedule (GRS) 23, Records Common to Most Offices Within Agencies, Item 7, Transitory Records
- n. OMB Directive M-12-18, Managing Government Records Directive
- o. OMB Directive M-14-16, Guidance on Managing E-mail
- p. OMB Circular A-123 – Management’s Responsibility for Internal Control
- q. OMB Circular A-130 – Management of Federal Information Resources
- r. Federal Information Resources Management Regulation (FIRMR) Bulletin B-1, “Electronic Records Management”
- s. FIRMR Part 201-9, “Creation, Maintenance, and Use of Records”
- t. Records Management Guidance for Agencies Implementing Electronic Signature Technologies
- u. <http://www.archives.gov/records-mgmt/rcs/schedules/index.html>
- v. <http://www.archives.gov/records-mgmt/faqs/>
- w. <http://www.archives.gov/records-mgmt/email-mgmt.html>
- x. <http://www.archives.gov/records-mgmt/training/>
- y. <http://www.archives.gov/records-mgmt/toolkit/#list>

8. Additional Information and Assistance

For additional information about this Policy, please contact the Department's RO at (202) 690-5521 or hhsrecordsmanagement@hhs.gov.

9. Effective Date/Implementation

The effective date of this policy is the date the policy is approved.

These policies and procedures will not be implemented in any recognized bargaining unit until the union has been provided notice of the proposed changes and given an opportunity to fully exercise its representational rights.

The HHS policies contained in this issuance shall be exercised in accordance with Public Law 93-638, the Indian Self-Determination and Education Assistance Act, as amended, and the Secretary's policy statement dated August 7, 1997, as amended, titled "Department Policy on Consultation with American Indian/Alaska Native Tribes and Indian Organizations." It is HHS's policy to consult with Indian people to the greatest practicable extent and to the extent permitted by law before taking actions that affect these governments and people; to assess the impact of the Department's plans, projects, programs and activities on tribal and other available resources; and to remove any procedural impediments to working directly with tribal governments or American Indians.

10. APPROVALS

FRANK BAITMAN
Chief Information Officer

Date

DARIUS TAYLOR
HHS Records Officer

Date

Attachment 1 - Glossary

Alienation – Losing care and custody. Not protecting from loss or access.

Control and Custody of Records – HHS records/materials are the property of the Federal government, not the property of individual employees or contractors acting as an agent of the Government, and may not be removed from the Department without proper authority. All employees/contractors shall maintain records and non-record documentary materials separately from one another.

Database – A set of data, consisting of a least one data file, that is sufficient for a given purpose.

Disposal – The action taken regarding temporary records after their retention periods expire and usually consisting of destruction or occasionally of donation. Also, when specified, “disposal” refers to the actions taken regarding non-record materials when no longer needed, especially their destruction. (See NARA, “A Federal Records Management Glossary.”)

Disposition – The action taken concerning records following their appraisal by NARA (36 CFR 1220.14). The actions include transfer to agency storage facilities or Federal records center; transfer from one federal agency to another; transfer of permanent records to the National Archives; and disposal of temporary records. “Disposition” is also the action taken regarding non-records materials when no longer needed, including screening and destruction (NARA, “A Federal Records Management Glossary”).

Electronic Records – Any information that is recorded in a form that only a computer can process, and that satisfies the definition of a federal record in 44 U.S.C. 3301. Electronic records include numeric, graphic and text information, which may be recorded on any medium capable of being read by a computer and which satisfies the definition of a record.

This includes, but is not limited to, magnetic media, such as tapes and disks, and optical disks. Unless otherwise noted, these requirements apply to all electronic records systems, whether on microcomputers, minicomputers, or mainframe computers, regardless of storage media, in the network or stand-alone configurations (FIRMR Bulletin B-1).

Essential Records – Essential records are any records, documents, files or information database in any form or format containing information essential to the operations and survival of an organization. They are needed to conduct essential functions and supporting activities. Essential records are divided into two major categories: (1) Emergency Operating Records are records and databases essential to the continued functioning or the reconstitution of an organization during and after continuity activation. (2) Rights and Interests Records are records critical to carrying out an organization’s essential legal and financial functions and vital to the protection of the legal and financial rights of individuals who are directly affected by that organization’s activities.

File – A collection of related documents or papers arranged so that they can be consulted easily.

File Plan – A listing of all files in a container (regardless of the media), office or organization.

Hold – An agency’s temporary suspension of disposition action(s) and notification to its employees to retain records and other documentary materials in the agency’s possession, custody or control, typically because of litigation (including administrative cases), audit, or investigative needs. Under a Hold, documentary materials, regardless of record status, format, and of physical location, are required to be retained and not destroyed or otherwise disposed of for as long as a Hold is in place.

Information System – Is defined by the Office of Management and Budget (OMB) in Circular No. A-130 “...the organized collection, processing, transmission and dissemination of information in accordance with defined procedures, whether automated or manual.”

Mandatory Records Schedules – All records of the HHS shall be listed and described in an approved records schedule and shall be disposed of only as authorized by that schedule. Schedules shall be reviewed annually. Agencies should update their records schedules when there are program changes that will result in the establishment of new types of records, the transfer or termination of records no longer required, or an increase or decrease in the retention time of the records, to ensure the schedules accurately reflect current records and the functions they document (36 CFR 1228.50(d)).

Whenever possible, HHS should apply the NARA generated General Records Schedules (GRS) for routine administrative records. As required by regulation, HHS must ask NARA for a variance when not following the retention periods outlined by these schedules (36 CFR 1228.40(c)).

Non-record Materials – are federally-owned informational materials that do not meet the statutory definition of records (44 U.S.C. 3301), or that have been excluded from coverage by the definition. Excluded materials are extra copies of documents kept only for reference, stocks of publications and processed documents, and library or museum materials intended solely for reference or exhibit (36 CFR 1220.14).

Office of the Secretary (OS) – is referenced in this Policy as the OpDivs and includes the StaffDivs and the Offices of the Regions.

OMB Exhibit 300- Capital Asset Plan and Business Case Summary – As prescribed and described in OMB’s Circular A-11, Preparation, Submission and Execution of the Budget.

OMB Circular A-130-Management of Federal Information Resources – Establishes policy for the management of federal information resources. OMB includes procedural and analytic guidelines for implementing specific aspects of these policies. The policies in this Circular apply to the information activities of all agencies of the executive branch of the federal government.

Operating Division – An entity of HHS that is an independent Agency.

OS Operating Divisions (OpDivs) – The OpDivs include the Inspector General, as well as the Office of the Secretary and its Staff Division as a combined, single entity.

Personal Papers – Documentary materials belonging to an individual that are not used to conduct agency business. Personal papers are excluded from the definition of Federal records and are not owned by the Government.

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, function, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them.

Library and museum material made or acquired and preserved solely for reference or exhibition purposes or duplicate copies of records preserved only for convenience are not included (44 U.S.C. 3301).

Records Disposition Schedule – A document, approved by NARA, which provides authority for the final disposition of temporary or permanent records. Records shall not be destroyed except as authorized by an approved records schedule.

Records Management – The planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition in order to achieve adequate and proper documentation of the policies and transactions of the federal government and effective and economical management of agency operations (44 U.S.C. 2901 [2]).

Records Schedule – A records schedule is a document providing mandatory instructions for what to do with records no longer needed for current Government business, with the provision of authority for the final disposition of recurring or nonrecurring records.

Reference Material – Shall be clearly marked and maintained separately from the records of the office.

Staff Division (StaffDiv) – Sub-components of the Office of the Secretary Operating Division (OS OpDiv).

Attachment 2 – Employee Departure Process

Determine, in consultation with your manager, whether you're a custodian of records or other documentary material subject to a Hold. If yes, refer to the specific instructions in the applicable HHS policy (e.g., HHS Litigation Holds Policy). Otherwise, follow the steps below to assist you in meeting your recordkeeping requirements. A record is a unit of information, generated or received by an entity on behalf of the organization, which acts as evidence and provides a history of activities.

1. Sort

- Record material
- Non-record material
- Personal material

As you sort the material, purge! Destroy extra copies. Destroy reference materials that only you would need.

Your e-mail box may be of special concern. If your mailbox was not organized to match your files plan, the following is suggested.

- Create a personal (.pst) folder for your personal information. Move your personal information from your mailbox to that folder. You should also delete all information that is not a record. Give access to your mailbox to your support staff with instructions to contact the subject matter experts for disposition guidance for the remaining messages.

2. Turnover – All federal record material to the proper custodian.

3. Seek permission – You are likely to have extra copies of records kept for the convenience of reference in your office or workstation. You may take these with you when you leave if you have the approval of your RO, FOIA Officer, or legal counsel.

4. Follow Guidance established by your organizational unit for the transfer of records residing in electronic format (e-mail, local drives, etc.).

Most records are in the form of a document, although records in other forms are possible, such as photographs, videos, voicemail, etc.

The Record copy you leave provides the evidence and history of the work you performed. It must be organized in a meaningful manner and in most cases transferred to the National Archives. In the event the record copy does not exist or is not properly categorized for retrieval then questions can arise regarding your performance. Do not give anyone the opportunity to question your service to HHS's mission.

Attachment 3 – Records Management Chain of Custody Document

Department of Health and Human Services (DHHS) Records Management Chain of Custody Document

Name: _____ Office: _____
Date/Time: _____ Building/Room: _____

Description of Records		
File Name	Title	Description of Content

Chain of Custody				
File Name	Date/Time	Released by (Signature)	Received by (Signature)	Comments/Location

Attachment 3 – Records Management Chain of Custody Document (Reverse)

Final Disposal Authority
Authorization for Disposal Item(s) #: _____ on office file plan is/are no longer needed and is/are authorized for disposal. Name of Authorizing Official: _____ Signature: _____ Date: _____
Witness to Disposal of Records (If Classified) Item(s) #: _____ on office file plan were disposed of by appropriate Custodian _____ in my presence on (date) _____. Name of Witness to destruction: _____ Signature: _____ Date: _____
Transfer of Records Item(s) #: _____ on this document was/were transferred by appropriate Custodian _____: _____ to FRC/NARA _____ Address: _____ City: _____ State: _____ Zip Code: _____ Signature: _____ Date: _____
This Chain of Custody document is to be retained by Releasing Official and Receiving Official.