

NATIONAL POLICY
Requirements for Retaining Inspection Field Notes

1. PURPOSE: The National Policy: Requirements for Retaining Inspection Field Notes summarizes principles, responsibilities, and requirements for retaining compliance inspection field notes to ensure that EPA inspectors, Senior Environmental Employment Program (SEE) inspectors, State and Tribal inspectors, and contractors conducting inspections on behalf of EPA are in compliance with Federal laws and regulations, EPA policies, and best practices for managing inspection field notes.

2. AUTHORITY: [44 U.S.C. Chapter 33](#) - Disposal of Records.
[44 U.S.C. Chapter 31 - Records Management by Federal Agencies](#)
(Federal Records Act).
[Records Management Policy](#) (EPA 2161), April 2006.
40 CFR 31.42 (Retention and Access to Records under Grants)

3. SCOPE AND APPLICABILITY: This Policy addresses the requirements for retaining and managing all compliance inspection field notes recorded by EPA inspectors, SEE inspectors, state/tribal inspectors, and EPA contractors. For purposes of this Policy, the term inspection field notes includes: all observations, facts, interviews, sketches, and any other relevant inspection information written down on paper by inspectors in field notebooks and notepads. This Policy also applies to electronic inspection files resulting from inspection information directly recorded into personal computers, PC Tablets, laptops, PDAs, or other electronic media.

EPA inspectors must follow Records Schedule 211 for compliance files, including electronic files, Record Schedule 207 for enforcement files, Record Schedule 025 for enforcement files of Superfund sites, and Record Schedule 480 for enforcement files at oil site-specific sites. Senior Environmental Employment Program (SEE) inspectors must also comply with these record keeping requirements. Contractor inspectors conducting inspections on behalf of EPA must retain records as required by EPA Records Schedule 202, the COR Training Manual, Chapter 7, and Federal Acquisition Regulations subpart 1504.8.

State and Tribal inspectors conducting inspections with EPA grant funding must retain inspection records in accordance with the 40 CFR 31.42 Retention and Access Requirements for Records, with the exception of inspections conducted under CERCLA 104(d) Superfund Cooperative Agreements. States and tribes must comply with 40 CFR 35.6705, Records Retention, when carrying out Superfund Cooperative Agreements. To the extent consistent with 40 CFR 31.42 and 40 CFR 35.6705, Regions should ensure that states and tribes comply with the

record keeping terms of any authorization agreements or memoranda of understanding with EPA. Inspection records including inspection field notes received by EPA from states/tribes must be kept in accordance with EPA Record Schedule 203, as described in this document.

Section Six of this document provides details and references of the existing Record Schedules and requirements applicable to inspection field notes.

4. POLICY: This Policy summarizes existing requirements for EPA inspectors to retain inspection field notes from compliance monitoring inspections as official EPA records in accordance with applicable statutory and regulatory requirements. These records are subject to specific retention time periods as required by the U.S. Environmental Protection Agency Records Management Policy found at: <http://www.epa.gov/records/policy/manual/index.htm>. Inspection notes must be maintained in accordance with specific Records Schedules. This Policy provides details on the different EPA Records Schedules applicable to inspection field notes. The applicable Records Schedule depends on whether the inspection (the activity in which the inspection field notes were collected) resulted in EPA initiating an enforcement action, or not. In no case may the inspection field notes or records be destroyed prior to the time specified in each applicable schedule. It is not acceptable to destroy inspection notes prior to the file or case being closed. The specific EPA Records Schedule that applies is dependent on whether an EPA or non-EPA employee conducted the inspection, the inspection outcome, and in some cases if oil site-specific or Superfund site-specific records are involved. The EPA Records Schedule specifies the timeframe when inspection field notes can be destroyed; it is unacceptable to destroy field notes before that specified time period.

If an enforcement action is not initiated as a result of the inspection, the field notes from the inspection must be retained in accordance with EPA Records Schedule 211. This schedule covers inspection field notes in any form or media. EPA Records Schedule 211 specifies compliance records (including records in electronic form) must be kept for a minimum of five years after the case is closed. Note that if an enforcement action is not initiated by EPA as a result of the inspection, the compliance file becomes an inactive record (record not needed for current business and are generally maintained in less expensive off-site storage). These records should be closed at the end of the year in which EPA makes the decision not to initiate an enforcement action. A compliance file becomes an enforcement file if an enforcement action is initiated. An enforcement action is initiated either by issuance of a notice of violation (NOV), referral to Regional Counsel, or referral to any other office with enforcement authority. EPA Record Schedule 207 applies to enforcement records. If inspection field notes become part of an enforcement case file, the time period depends on whether the file is part of an administrative case file or a judicial case file. Administrative case files may be destroyed 10 years after the case is closed. Judicial files may be destroyed 20 years after the file is closed. Inactive records/files should be closed upon settlement or closing of the case.

5. BACKGROUND: During civil inspections/investigations, EPA inspectors often record their observations, facts, interviews, and other relevant inspection information on paper in field notebooks, although in some cases this information may also be electronically recorded directly into personal computers, laptop computers, PC Tablets, PDAs, or other electronic media.

According to the EPA Record Management Manual, records in any format (e.g., paper, electronic) must be kept in accordance with disposition instructions in EPA Record Schedule 211. Inspectors use field notes to prepare inspection reports for each inspection conducted. The Regional or State delegated authority uses inspection reports to assess if the inspected facility is in compliance with the applicable statutes/regulations. Inspection field notes include all observations, facts, interviews, sketches, and other relevant inspection information recorded on paper by inspectors in field notebooks, books, and notepads. This Policy also applies to any records saved electronically in a laptop computer, personal computer, PDA, PC Tablet, or other electronic media. All notes captured in the inspector's notebook during the inspection as well as all documents that fit the description of field notes are considered field notes. Please note that inspection field notes captured in PDAs, PC Tablets, or other type of electronic media must be kept as described in section 6.H of this document which states that: "Notes typed directly into laptops and PC tablets must be printed out and maintained with related records in the region's paper-based record keeping system".

The U.S. EPA Records Manual, published February 2007, defines a federal record as: "an information resource that is created in the course of business, received for action, or needed to document Agency activities." Federal 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 the data in them (44 U.S.C. 3301). Federal records may include annotations, reports, raw data, meeting minutes, photo logs, sample logs, and telephone logs. Official records may be originals or copies of original records. Inspection field notes are official records and must be maintained and retained in accordance with the applicable EPA Records Schedule. Furthermore, EPA's Record Management Manual defines a record as: "... 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 in them." (44 U.S.C. Chapter 33, Sec. 3301). The Records Management Manual defines active records as: "records used to conduct current Agency business and are maintained in office space and equipment"; and inactive records as: "records not needed for current business and are generally maintained in less expensive off-site storage."

6. REQUIREMENTS: This Policy reaffirms the following records retention and management requirements for inspection field notes. Different schedules apply to inspection field notes depending on whether an enforcement action is initiated and the specific type of enforcement action initiated. Each applicable schedule is described below:

A. Compliance Records Description (from EPA Records Schedule 211):

Compliance records include “records used to determine compliance with pollution regulations and to recommend legal enforcement actions if necessary.” Compliance records may include “compliance schedules, inspections, reports, correspondence, inventories, sampling and analytical data, field notebooks, and related documents. Also includes notices of noncompliance, and compliance orders that do not result in enforcement actions.”¹

“If authorized states maintain records for retention periods identified above, the program office may decide to review the records in the state offices rather than maintain copies in regional offices, and destroy the copies it receives. If recordkeeping requirements (e.g., what records to keep and how long to keep them) for authorized states are not covered in EPA regulations, the requirements should be established in a memorandum of understanding. Upon issuance of a notice of violation or referral to Regional Counsel or other office with enforcement authority, the file becomes an enforcement action file. See EPA Records Schedule 207 for disposition instructions for enforcement actions.”²

Please note that record keeping requirements relating to inspections funded with EPA grants are covered by regulations at 40 CFR 31.42 or, in the case of Superfund Cooperative Agreements, 40 CFR 35.6705. Regions may not enter into MOUs with states or tribes that contain record keeping requirements that are inconsistent with these regulations without obtaining an exception under 40 CFR 31.6.

All inspection notes used to draft the inspection report of a compliance inspection must be kept in accordance with EPA Records Schedule 211, including electronic records. This schedule specifies that compliance records must be retained for five years after the file is closed. Note inactive records should be closed at the end of the year. After the five-year period, records can be destroyed. The schedule is found at:
<http://www.epa.gov/records/policy/schedule/sched/211.htm>.

B. Enforcement Records Description (from EPA Records Schedule 207):

Enforcement records include “all cases referred to Office of Regional Counsel or other offices with enforcement authority, for action against a pollution source or discharger. Includes correspondence, meeting documentation, inspections, evaluations, documentation of administrative actions including notices of violation, notices of deficiency, information requests, warning letters, administrative compliance orders, documentation of civil and criminal actions; corrective action orders, attorney work products, case summaries, pleadings, state and local enforcement records, settlement documents including consent decrees.”³ If the enforcement authority to which the case was referred to does not initiate an enforcement action on the case, the records in the file become compliance records and must be kept in accordance with EPA Records Schedule 211.

Inspection notes in an enforcement case file fall under the description of Enforcement Records. All inspection notes used to draft the inspection report of a compliance inspection where EPA takes an enforcement action must be kept in accordance with EPA Records Schedule 207. This

¹ Language from EPA Records Schedule 211 found at: <http://www.epa.gov/records/policy/schedule/sched/211.htm>

² Language from EPA Records Schedule 211 found at: <http://www.epa.gov/records/policy/schedule/sched/211.htm>

³ Language from EPA Records Schedule 207 found at: <http://www.epa.gov/records/policy/schedule/sched/207.htm>.

schedule outlines specific retention periods for enforcement records depending on the type of enforcement case, administrative case file, a judicial case file, or a landmark or precedent case. Administrative case files may be destroyed 10 years after the file is closed. Judicial case files where routine legal actions are taken may be destroyed 20 years after the file is closed. For landmark cases, inactive records should be closed upon settlement or closing of the case, and files transferred to National Archives 20 years after file closure. This schedule may be found at: <http://www.epa.gov/records/policy/schedule/sched/207.htm>.

C. Enforcement Actions – Oil Site-Specific Records Description (from EPA Records Schedule 480):

Enforcement Actions - Oil Site-Specific Records include “all cases referred to Office of Regional Counsel or other offices with enforcement authority for actions taken to assess penalties against facilities for failure to maintain proper spill prevention and response plans or for actual oil spills. Oil Site-Specific Records may include “such actions as inspections, plan reviews, administrative complaints and orders and injunctive relief. Specific types of records include inspection reports, case summaries, compliance status documents, referral packages, attorney work products, state and local enforcement records, facility business and financial records and notices.”⁴

Inspection notes from compliance inspections resulting in EPA initiating an enforcement case involving an oil site fall under the description of Oil Site-Specific Records. All inspection notes from compliance inspections at oil sites resulting in enforcement actions must be kept in accordance with EPA Records Schedule 480. Inspection notes of compliance inspections where no legal action is taken may be closed upon settlement or closing of the case and destroyed 30 years after file closure. For landmark cases, inactive records should be closed upon settlement or closing of the case, and files transferred to National Archives 30 years after file closure. This schedule may be found at: <http://www.epa.gov/records/policy/schedule/sched/480.htm>

D. Enforcement Actions - Superfund Site-Specific Records Description (from EPA Records Schedule 025):

Enforcement Actions - Superfund Site-Specific include “all cases referred to Office of Regional Counsel or other offices with enforcement authority, for action in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA).” Superfund Site-Specific Records may include “such actions as injunctive relief, natural resource damage actions, remedial investigation/feasibility study (RI/FS) special notices, administrative and judicial cost recovery settlements; administrative orders issued under CERCLA Sections 104, 106, and 122; judicial settlements and orders under CERCLA Sections 106, 107, and 122; and federal facility agreements under CERCLA Section 120. Specific types of records found in this series include the Department of Justice (DOJ) referral package, attorney work products, case summaries, compliance status documents, discovery, litigation support documents, consent decrees, notices, pleadings, state and local enforcement records, subpoenas, witness lists, and 10-point settlement memos.”⁵

⁴ Language from EPA Records Schedule 480 found at: <http://www.epa.gov/records/policy/schedule/sched/480.htm>.

⁵ Language from EPA Records Schedule 025 found at: <http://www.epa.gov/records/policy/schedule/sched/025.htm>.

Inspection notes from compliance inspections resulting in EPA initiating an enforcement case involving a Superfund Site fall under the description of Superfund Site-Specific Records. All inspection notes from compliance inspections at Superfund Sites resulting in enforcement actions must be kept in accordance with EPA Records Schedule 025. Inspection notes of compliance inspections that do not require legal action or are routine action cases may be closed upon settlement or closing of case and destroyed 30 years after closure. Inspection notes (non-electronic form) of landmark cases (cases that set precedent) must be transferred to the National Archives 30 years after the file is closed. This schedule may be found at: <http://www.epa.gov/records/policy/schedule/sched/025.htm>.

E. Inspectors Conducting Inspections under Cooperative Agreements or Grants (40 CFR subpart 31, Sec. 31.42,):

Grants and Cooperative Agreement Records include: "... records used to oversee programs operated in lieu of a federal program by states and other entities. Records include reports, inspections, inventories, correspondence, program reviews, and corrective actions."⁶ State/tribal inspectors conducting inspections using EPA grant funding must follow the requirements outlined in 40 CFR 31.42, Retention and Access Requirements for Records. This regulation requires records to be retained for three years from the starting date specified in paragraph (c) of this section. If any litigation, claim, negotiation, audit or other action involving the records is initiated before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues, which arise from it, or until the end of the regular 3-year period, whichever is later. For Superfund Cooperative Agreements, the record retention period is 10-years and is subject to the similar provisions relating to litigation, claims, negotiations, and audits as well as cost recovery actions. The records covered by both regulations include inspection notes. When EPA receives the state/tribal inspection records from the state/tribal grantee, the inspection records must be kept in accordance with EPA Records Schedule 203.

The inspection records, including inspection notes, created by the state/tribal grantee as part of the EPA grant requirements are a Grant and Cooperative Agreement Record if the state or tribe provides the record to EPA. These inspection field notes must be retained by EPA personnel in accordance with EPA Records Schedule 203. EPA Records Schedule 203 states, "... records can be destroyed 10 years after file closure."⁷ EPA Records Schedule 203 can be found at: <http://www.epa.gov/records/policy/schedule/sched/203.htm>. EPA Records Schedule 207, 211, 480, and 025 are also applicable to these inspection field notes depending on whether the inspection resulted in an enforcement action or not.

F. Contractor Inspectors (from COR Training Manual, Chapter 7; Federal Acquisition Regulations subpart 1504.8; Contract Files; and Record Schedule 202):

Pursuant to the Contract Officer Representative (COR) Recertification Training Manual, Chapter 7, EPA contractors are required by the Federal Records Act to preserve information documenting

⁶ Language from EPA Records Schedule 203 found at: <http://www.epa.gov/records/policy/schedule/sched/203.htm>

⁷ Language from EPA Records Schedule 203 found at: <http://www.epa.gov/records/policy/schedule/sched/203.htm>.

Agency's functions, policies, decisions, procedures, and essential transactions. Furthermore, all documents EPA contractors generate on behalf of EPA, such as inspection notes, inspection reports, and other inspection related documentation are considered EPA property, and the contractor needs to provide all the documents to EPA once he/she completes his/her work. The acquisition management records (all contract records) must be kept in accordance to EPA Record Schedule 202. EPA Records Schedule 202 can be found at:

<http://www.epa.gov/records/policy/schedule/sched/202.htm>. EPA Records Schedule 202 states that "the files must be kept for 6 years and 3 months after final contract payment."⁸ They can then be destroyed when no longer needed, unless related to Superfund. If the contracts relate to Superfund site-specific work, EPA Records Schedule 020 is the appropriate schedule. The EPA staff person reviewing the inspection documents received from the contractor will determine what additional EPA Record Schedule may apply to the document (i.e., enforcement, compliance, superfund, and/or oil site-specific). Once received by EPA as a deliverable, contractor prepared field notes must be kept in accordance with either Records Schedule 207 or Schedule 211 (unless a Superfund or OPA matter). Contract Officer Representatives (CORs) should specify under compliance monitoring related work assignments/technical directions that the contractor must submit as a deliverable any contractor-prepared field notes, together with any other supporting documents, when the contractor is performing inspections. Note that in the case of contractor produced records, there may be two types of records: (1) contract records managed by the COR and covered by EPA Record Schedules 202 or 258 (Final Deliverables and Reports Schedule)⁹ and (2) inspection records, covered by EPA Record Schedules 207 or 211. For example, the documents produced as part of contract management activities are turned over to the Contract Officer (CO) who is responsible for ensuring these documents are placed in the appropriate contract files. Documents needed to support other activities such as inspections are turned over to designated EPA personnel responsible for following up on the inspection file. The COR Training Manual can be found at:

<http://dcroam05.reagan.epa.gov:9876/NATAPPS/OARM/OAM/TRNCARD/TrainingWebDB.nsf>. The Federal Acquisition Regulation Subpart 1504.8 can be found at: <http://intranet.epa.gov/ogc/ethicstraining2003/epaar.pdf>.

G. Criminal Investigation Records (from EPA Records Schedule 208):

This EPA Record Schedule applies to: "...criminal investigation files compiled by Criminal Investigation units Agency-wide. Case files consist of items such as a completed criminal investigation package, search warrants, interview reports, investigation reports, lab analyses, indictments, plea agreements, business records, affidavits, and related records."¹⁰ For cases investigated by the Criminal Investigation Division, but not referred to DOJ because no targets were identified, inactive records may be closed and can be destroyed 5 years after file closure. For cases for which targets were identified, but DOJ declined to prosecute, inactive records may be closed and can be destroyed 10 years after file closure. For cases prosecuted by DOJ, inactive records may be closed after completion of investigation or prosecution and can be destroyed 15 years after file closure. Record Schedule 208 may be found at:

<http://www.epa.gov/records/policy/schedule/sched/208.htm>.

⁸ Language from EPA Record Schedule 202 found at: <http://www.epa.gov/records/policy/schedule/sched/202.htm>

⁹ Language from EPA Record Schedule 258 found at: <http://www.epa.gov/records/policy/schedule/sched/258.htm>

¹⁰ Language from EPA Record Schedule 683 found at: <http://www.epa.gov/records/policy/schedule/sched/208.htm>

H. Electronic Records:

Please note there are specific retention times that apply to electronic records. Electronic inspection field notes must be retained and maintained in accordance to EPA Record Schedule 211. The disposition instructions found in Schedule 211 apply to field notes in all formats and media. Field notes typed into laptops and PC tablets must be captured into a record keeping system. EPA has only two approved record keeping systems: (1) a manual, paper-based system used for all records and (2) the Enterprise Content Management System (ECMS) that is currently available only for e-mail records. Notes typed directly into laptops and PC tablets must be printed out and maintained with related records in the region's paper-based record keeping system. E-mail records can be captured into ECMS. For additional information on electronic records please refer to the Identifying Records and Active Records sections in the Records Management Manual found at: <http://www.epa.gov/records/policy/manual/index.htm>. Also, contact your Records Liaison Officer (RLO) for specific record keeping requirements developed for these records in your region. For general questions on electronic record keeping requirements contact the Office of Environmental Information (OEI) or refer to the electronic record section in the Records Management Manual found at: <http://www.epa.gov/records/faqs/pda.htm#q3>.