

AGENDA ITEM

For meeting of March 23, 2017

FEDERAL ELECTION COMMISSION
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FEDERAL ELECTION COMMISSION

Washington, D.C. 20463

MEMORANDUM

To: The Commissioners

Through: Alec Palmer *AP*
Staff Director

From: Edward W. Holder *EWH*
Deputy Staff Director for Management and Administration (Acting)

Date: November 9, 2016

Subject: FEC Email Management Policy- Withdrawal and Resubmission

We are simultaneously withdrawing the FEC Email Management Policy circulated to you for approval on May 10, 2016 and submitting the attached Revised Policy. In the draft Policy circulated in May, we proposed that the email records of Capstone (permanent) officials be transferred to the National Archives 15 years after creation or receipt. The draft Revised Policy proposes that Capstone emails be transferred 25 years after creation or receipt.

Subsequent to the circulation of the draft Policy in May, NARA revised its guidance in a number of ways. NARA now recommends that agencies whose Capstone emails contain a high level of deliberative or sensitive information retain those emails for 25 years. This period is long enough to permit agencies to protect the privilege on operationally sensitive documents while accommodating the needs of researchers and historians for access to documents that are of purely historical interest. The idea is that if the retention period is long enough, the agency can then safely waive any privileges when it turns over legal custody of the documents to NARA.

Attached is the draft Revised Policy for your approval which changes the 15 year retention period to 25 years for Capstone (permanent) email records where applicable; authorizes the waiver of all privileges at the time of the transfer of the Capstone email records (Section V); and states that NARA will redact all personally identifiable information from Capstone email records before release (Section VII).

We recommend Commission approval of this policy so that we may comply with the Managing Government Records Directive goal to manage all email records electronically by December 31, 2016. Once this is approved, we will prepare the records schedule for submission to NARA for its review and concurrence, and will notify you if NARA requires revisions impacting the Policy.

Recommendation – Approve the Revised FEC Email Management Policy.

FEC EMAIL MANAGEMENT POLICY

FEC's "Capstone" Approach to Managing Email Records

I. Purpose

This policy implements the Federal Election Commission's Records Management Directive (FEC Directive 71) as it applies to email communications and related records.

II. Authorities

44 U.S.C. Chapters 29, 31, and 33

36 C.F.R. Chapter XII Subpart B

OMB M-12-18, Managing Government Records Directive

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

NARA Bulletin 2014-08, Guidance on Managing Email

NARA Bulletin 2015-01, Scheduling Guidance on the Appropriate Age for Legal Transfer of Permanent Records to the National Archives of the United States

NARA General Records Schedule 6.1 – Email Managed Under a Capstone Approach

NARA General Records Schedule 23, Item 7 – Transitory Files

III. Scope, Objectives, and Applicability

Goal 1.2 in OMB Memorandum M-12-18 requires that by December 31, 2016, all "Federal agencies must manage all email records in an electronic format. Email 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."

In NARA Bulletin 2013-02, the National Archives and Records Administration ("NARA") sets forth what is called the "Capstone" approach to the management of email records as one approach agencies may choose to implement Goal 1.2. Under the Capstone approach, email is categorized, scheduled, and managed based on the role of the email account user, rather than on the content of each email record. The goal of Capstone is to capture the email accounts of high level policy/decision makers. Such email accounts must be designated as permanent records.

Through this policy, the FEC hereby adopts a modified version of the "Capstone" approach, as described below, as its approach to records management of email communications and related records:

This policy applies to all email records created or received beginning the date that the Commission has completed transition for all active users to Microsoft Office 365 for email. FEC email records are defined as email messages and documents attached to emails.

Note: This policy applies only to FEC email records, as defined above. All other records, either paper or electronic, are governed by the applicable NARA-approved FEC records schedule or the applicable NARA General Records Schedule.

IV. Policy With Respect To the Transition from Lotus Notes to Office 365 mail systems.

As part of the FEC's transition from the use of the Lotus Notes/Lotus Domino client/server platform for email communications to the Microsoft Office 365 software program for email communications, all emails that are stored in individual mailboxes within Lotus Notes on the date of transition, to include all folders within said mailboxes, will be transferred to the corresponding Office 365 individual mailbox. This action is for current active email accounts and will ensure that all stored emails in Lotus Notes are accounted for in compliance with this policy. All in-active email accounts will be captured and stored in a readable format for 10 years or permanently transferred to NARA after 25 years as appropriate.

V. Retention Policy – FEC Capstone Officials

The FEC Capstone approach acknowledges that the email records of designated FEC Capstone officials document high level policy and operational decisions and include significant and historically valuable communications of the FEC. Therefore, in accordance with NARA Bulletin 2013-02, those email records are designated as permanent records. All permanent email records will be transferred to the National Archives after a retention period of 25 years from creation or receipt and the Commission will waive all applicable privileges at the time of the transfer.

The FEC designates the following as FEC Capstone Officials: Commissioners; the Staff Director; the General Counsel; the Chief Financial Officer; the Inspector General; and anyone serving as Acting Staff Director, General Counsel, Chief Financial Officer, or Inspector General.

Capstone officials may delete, or "cull," emails from their active accounts in accordance with part VII below. "Cullable" emails may be culled at any time after the creation or receipt of the email. Capstone officials may also archive non-cullable emails, in accordance with part VIII below, at any time after the creation or receipt of the email.

The Office of the Chief Information Officer is directed to establish a process to retain any Capstone official's non-culled (see part VII below) emails for 25 years after creation or receipt, after which time the emails will be transferred to the National Archives under the direction of the FEC Records Officer.

The designation of these officials' email accounts as permanent applies to both public-facing (e.g., commissionerdoe@fec.gov) and internal FEC email accounts. It also applies to all emails sent to the following email groups: Commissioners; Commissioner Offices; [Commissioner name] office; or [committee name] Committee and FEC Directors.

The Senior Agency Official for Records Management (Deputy Staff Director for Management and Administration) and the FEC Records Officer will maintain an official list of all email accounts that are designated as FEC Capstone officials' accounts.

The Records Officer shall prepare and submit to the National Archives and Records Administration a proposed records schedule to effectuate these determinations.

VI. Retention Policy – All Other FEC Staff and Contractors with FEC Email Accounts

All non-Capstone staff may delete, or "cull," emails from their active accounts in accordance with part VII below. "Cullable" emails may be culled at any time after the creation or receipt of the email. Non-Capstone staff may also archive any non-cullable emails, in accordance with part VIII below, at any time between the creation or receipt of the email and, ten years after that date.

Emails of all non-Capstone staff, whether in active, archive, or "in-place archives" (e.g., accounts of former non-Capstone employees), as well as emails of any contractor personnel who were provided FEC email accounts, and emails in accounts that were established for a particular purpose rather than a particular named individual (e.g., NameOfRulemaking@fec.gov), shall be deleted from FEC email accounts automatically on the tenth anniversary of the date that the email was either created or received. (Example: User A creates or receives an email on July 4, 2016, and it remains in a folder in User A's email account until July 5, 2026, at which point it will then be permanently deleted automatically, with no option for recovery.) OCIO's first automatic deletion of emails from email accounts under this policy shall occur on the date on which the records schedule referenced below is approved by NARA.

EXCEPTIONS: The Administrative Law Team of the Office of General Counsel shall use functions provided by the Office 365 email software to mark for preservation beyond the 10-year period any email that must be preserved for a longer period for purposes of responses to Freedom of Information Act or congressional requests, or in response to litigation holds. The Office of Inspector General may request the Records Officer, pursuant to 5 U.S.C. app. 3 § 6(a)(1), to mark for preservation, preserve, and make available emails needed to fulfill its statutory obligations.

The Records Officer shall prepare and submit to the National Archives and Records Administration a proposed records schedule to effectuate this determination.

VII. Culling

Office 365 is configured such that if a user deletes an email from his or her email account, the email will be retained for 14 days in the user "deleted item folder". After 14 days the email will then be held in the administrator's "salvage folder" for an additional 14 days. After this 14 day period, the email will be permanently deleted and unrecoverable. For purposes of this policy, such deletion shall be referred to as "culling."

All users are **both permitted and encouraged to cull** the following:

*Purely personal emails that are not connected in any way to agency business. For Capstone Officials using O365, there is a third option in addition to culling or archiving: "tagging as personal." An email tagged as personal will be retained by the FEC, if not deleted, but will not be forwarded to NARA.

*Unsolicited emails received because the user is on an outside mailing list.

*Spam.

*Internal emails **received** that are directed to "FEC Staff" or "[office or division name] Staff."
[Note: Users may not cull any such emails that they sent, unless the email content falls into some other category listed here as cullable.]

*News and Views and First Glance (if the user received it, not if they sent it).

*Holiday, birthday or wedding greetings or congratulations; death notices; farewell or retirement messages; notices of office social events; messages about the Combined Federal Campaign; and similar messages.

*Messages reflecting attempts to schedule meetings concerning agency business, **except for** the final message that confirms the time and place of the meeting.

FEC Capstone officials are advised that any cullable email that is not culled or tagged as personal, will be retained in archival form as a permanent record, transferred to the legal custody of the National Archives and Records Administration after 25 years, and thereafter will be available to researchers upon request for the life of the Republic, without redaction (except to personally identifiable information) and without prior consultation with the FEC or the official or former official who created the email.

No user, whether or not they are a Capstone official, may cull the following:

*Any email that the user otherwise would be permitted to cull if the email is responsive to a currently pending Freedom of Information Act request, congressional information request, or litigation hold for which the user has received a hold notice from the Office of General Counsel.

*Any email that, pursuant to the policy of the user's office or division, must be included in the official file of a matter in hard copy or PDF form. (See part IX below.)

*Any email pertaining to official agency business that the user sent up his or her supervisory chain for approval, down his or her supervisory chain for revision, or to colleagues for comment; and any emails the user sent or received in response to such emails.

All users are advised that the willful culling of any email in violation of this policy may be a violation of 18 U.S.C. 2071, and may subject the user to criminal and/or administrative penalties.

Users with questions about whether an email can or should be culled should contact their supervisor, or the Administrative Law Team or the Records Officer.

VIII. Archiving

Archiving is defined as an email management process that allows users to move emails from their individual email box, to another space, with unlimited storage capacity, within O365 that is accessible by the user only, to store those emails designated by the user for other than daily access. This action allows the user's mailbox to operate more efficiently, by not having to store years' worth of email in the mailbox. The archived email can still be culled or accessed by the user at any time up to the time of disposition.

IX. Use of Private Email for FEC Business

Consistent with the Presidential and Federal Records Act Amendments of 2014, Pub. L. 113-187, 128 Stat 2003, no Commissioner or FEC employee may use their own or anyone else's private email account for the transaction of FEC business **unless** –

(A) in the case of emails sent by the Commissioner or employee, the Commissioner or employee "cc's" or "bcc's" his or her official "@fec.gov" email account at the time the message is sent; or

(B) in the case of either emails sent or received, the Commissioner or employee forwards the message to his or her official "@fec.gov" email account not later than 20 days after sending or receiving the email.

Pursuant to 42 U.S.C. 2911, the intentional violation of these provisions relating to the use of private email for FEC business by any career FEC employee may subject the employee to adverse or disciplinary action.

X. Email Records Retained with Related Records

This policy does not replace existing business practices that require email messages and other related records to be retained together in the established recordkeeping system.

If a business unit has a policy that requires employees to print to hard copy or convert to PDF certain emails and/or attachments, and transfer those copies to the unit's file room or docket for inclusion in the unit's official file of a matter, the adoption of this policy does not change the other policy; the user must still put in the official file copies of all communications that under the unit's policy should be in the official file, while still retaining the original of the email communication in their email account pursuant to this policy.

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