# Reclamation Manual

Directives and Standards

***TEMPORARY RELEASE***
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THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

APR 2 7 2018

**Memorandum**

To: Assistant Secretaries
Heads of Bureaus and Offices
NEPA Practitioners

From: Deputy Secretary

Subject: Compiling Contemporaneous Decision Files

**Purpose:**

This Memorandum provides direction regarding the contemporaneous compilation of Decision Files to document Agency review and decision making pursuant to the National Environmental Policy Act (NEPA) and other applicable requirements.[1]

**Background**:

On August 31, 2017, I issued Secretary's Order 3355 (Order) to immediately improve the Department of the Interior's (Department) NEPA process. In the course of implementing that Order, it has come to my attention that some Bureaus do not compile Decision Files contemporaneously with the development of Agency decisions. This yields a need to invest significant time and resources later if the Bureau is asked to compile records before or following a decision.

The Department has multiple responsibilities for the maintenance and disclosure of Federal records. For purposes of this Memorandum, document compilation responsibilities fall into three general categories that often intersect, including: (1) records management governed by 44 U.S.C. Chapters 29 and 31; (2) the Freedom of Information Act (FOIA);[2] and (3) preparation of Administrative Records for litigation.

A Decision File is a contemporaneous record of the Agency's decision-making process. Practically, the Decision File is a collection of documents maintained by a designated employee who is generally the project's program manager, the project manager, or staff who has access to the relevant documents that detail the development of an Agency's decision. Compilation of a Decision File should flow from an already established practice within the Bureaus and Offices to comply with the Federal Records Act (FRA).[3]

[1] These procedures apply to Decision Files for Agency decisions other than notice-and-comment rulemaking, which have their own proscribed processes.
[2] 5 U.S.C. § 552.
[3] 44 U.S.C. § 31 et seq.

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The FRA dictates the need to document, and preserve evidence of, Agency decisions. It requires the head of each Federal Agency to make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the Agency for the purpose of furnishing the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the Agency's activities.[4] By adhering to the FRA, Bureaus and Offices will find themselves well placed to create a Decision File in real time.

If the decision is subjected to judicial review, the Decision File will be used as the primary basis for compilation of the Administrative Record to be submitted to a court. This Memorandum does *not* address the standards for compiling an Administrative Record, which may be a subset of the Decision File document or, in some cases, could be broader. The Decision File may also serve as the primary compilation of documents that may be responsive to a FOIA or other records request, although additional document gathering may be needed depending upon the nature of the request.

**Directives**:

1. No later than May 11, 2018, each Bureau shall issue direction requiring contemporaneous compilation of Decision Files for decision-making processes that will or could result in a "final Agency action" subject to challenge under the Administrative Procedure Act.[5] Each Bureau shall further establish a system for standardized Decision File tracking to comply with this Memorandum and that comports with the needs of the Office of the Solicitor, the Office of Environmental Policy and Compliance, and the Office of the Chief Information Officer.

2. The Decision File should:

    - Contain the complete story of the Agency decision-making process, including options considered and rejected by the Agency;

    - Include important substantive information that was presented to, relied on, or reasonably available to the decision maker;

    - Establish that the Agency complied with relevant statutory, regulatory, and Agency requirements; and

    - Demonstrate that the Agency followed a reasoned decision-making process.

3. Bureaus and Offices have wide latitude to create and maintain Decision Files, but the following general guidelines should be followed:

[4] 44 U.S.C. § 3101.
[5] 5 U.S.C. § 704.

- The Office of the Solicitor should be consulted throughout the process as necessary;
- A Decision File should be created once consideration of a proposal, application, request, or decision begins, which will vary based on the situation;
- The Decision File should serve as a single organized source of information that records the Agency decision and decision-making process;
- As a routine matter, the Decision Files should capture information from employees who are involved in the decision-making process prior to those employees leaving such roles;
- The Decision File should be kept in an accessible location and should be organized in a logical manner, such as chronologically or by topic—or even chronologically within each topic—so that documents can be added to the Decision File as they are generated or received;
- To the extent documents may be subject to a privilege, they should be so marked to the extent practicable during the decision-making process;
- All documents placed in the Decision File should be appropriately labeled and dated;
- Substantive meetings that are relevant to the decision-making process should be sufficiently documented;
- Drafts that help substantiate the Agency's decision-making process should be included in the Decision File;
- Documentation of electronic information (such as that found on websites) and communications (such as emails) should be maintained in the Decision File only if relevant, substantive, and if it documents the decision-making process;
- When information contained on websites is relied on, the Decision File should contain a contemporaneous copy of the website, including the address and date it was downloaded, to ensure that the information relied on is preserved before the website content changes;
- Contemporaneous memoranda that document relevant oral communications, serve to explain otherwise confusing emails, or that document other matters that demonstrate the Agency's decision-making process should be written or collected and placed in the Decision File before the final decision is reached; and

- Once the decision maker has made a final decision, the Decision File should be closed.

4. Bureaus and Offices are directed to provide a copy of the direction referenced in section 3 – paragraph 1 to the Office of the Deputy Secretary at nepa.depsec@ios.doi.gov no later than May 15, 2018.

**Effective Date:**

Directives and guidance within this Memorandum are effective immediately upon distribution.

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