

U.S. DEPARTMENT OF AGRICULTURE  
WASHINGTON, D.C. 20250

<b>DEPARTMENTAL REGULATION</b>		Number:  3903-001
SUBJECT: Information Discovery and Litigation Support Policy	DATE: August 12, 2011	
	OPI: International Technology Services (ITS) – Governance Services Division (GSD)	

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1. PURPOSE

This Regulation sets the roles and responsibilities for all activities related to the retention (or preservation) and/or production of Electronically Stored Information (ESI) between Customer Agencies and International Technology Services (ITS). These activities are generally termed “Information Discovery and Litigation Support (IDLS)” activities. IDLS activities do not include any paper or physical documents. IDLS activities are only for electronic data.

2. SCOPE

This Regulation sets out the responsibilities of ITS and their Customer Agencies with respect to litigation holds, discovery production, subpoenas, Freedom of Information Act (FOIA) requests, forensic requests, and other types of official investigations that involve electronic data. This Regulation will cover only electronically stored information and electronic records. Finally, this DR is not a Department-wide policy for IDLS activities.

3. SPECIAL INSTRUCTIONS/CANCELLATION

- a. Effective Date. This policy will become effective immediately upon issuance of this Regulation.
- b. Series Replaced. Not applicable.
- c. Directives Rescinded. Not applicable.

4. RELATED REFERENCES

- a. Departmental Regulation (DR) 0100-001, Departmental Directives System, dated December 20, 2006, <http://www.ocio.usda.gov/directives/doc/DR0100-001.htm>.
- b. Departmental Regulation (DR) 3080-001, Records Management, dated April 11, 2007, <http://www.ocio.usda.gov/directives/doc/DR3080-001.htm>.
- c. Departmental Regulation (DR) 3090-001, Litigation Retention Policy for Documentary Materials including Electronically Stored Information, dated May 28, 2008, <http://www.ocio.usda.gov/directives/doc/DR3090-001.htm>.

- d. Departmental Regulation (DR) 3099-001, Records Management Policy for Departing Employees, Contractors, Volunteers and Political Appointees, dated March 2, 2009, <http://www.ocio.usda.gov/directives/doc/DR3099-001.htm>.
- e. Federal Rules of Civil Procedure (FRCP) governing e-Discovery, FRCP Rule 26 (b)(2) and FRCP Rule 26 (b)(5) - Revised December 1, 2006, <http://www.fiosinc.com/case-law-rules/e-discovery-federal-rules-civil-procedure-frcp.aspx>.
- f. Memorandum, USDA Office of the Chief Information Officer (OCIO) to all USDA Employees and Contractors, *Minimum Safeguards for Protecting Personally Identifiable Information*, dated October 16, 2009.
- g. Memorandum, USDA Office of the Chief Information Officer (OCIO) to all Agency Chief Information Officers, Departmental Management, and Information System Security Program Managers, *Logging and Handling of Data Extracts of Sensitive and Personally Identifiable Information*, dated April 12, 2010.

## 5. POLICY

ITS, under the Office of the Chief Information Officer (OCIO), provides comprehensive, fee-for-service information technology (IT), associated operations, security, and technical support services to a customer base of more than 45,000 USDA end users. ITS works for USDA agencies using ITS services to deliver billions of dollars of programs, services, and financial transactions to millions of farmers, ranchers, and citizens of rural America. Other customers include Departmental offices that support USDA operations.

ITS' vision is to innovate, deliver and service world-class IT products and services that meet customer requirements and exceed customer expectations. A strategic program developed from this vision is strengthening ITS' customer partnerships by improving outreach, collaboration and understanding of customer requirements.

As part of this strategic program, ITS is also responsible for responding to the requests from Customer Agencies to produce, acquire, retain and/or preserve any electronic information requested for purposes of a pending and anticipated litigation. ITS will support the coordination of FOIA requests, forensic requests, as well as Congressional and other investigations.

All IDLS activities will require planning, coordination and execution with Customer Agencies and related USDA offices for purposes of preserving and/or producing electronically stored information. IDLS activities consists of request(s) for preservation and/or production of electronic data (including related hardware retention) related to litigations, subpoena, FOIA, forensic investigations, and any other investigations and/or inquiries where electronic data are to be preserved and/or produced. These types of activities are above core services for Customer Agencies. Please see the IDLS Procedures in [Appendix A](#) for more information.

## 6. RESPONSIBILITIES

- a. ITS Customer Agencies and Offices. The Customer Agencies will ensure that:
  - (1) All requests for data preservation and/or production are submitted in a timely manner to the IDLS Program in ITS.
  - (2) Appoint Agency Subject Matter Expert(s) for purposes of planning, coordination and execution of IDLS activities.
  - (3) Coordinate with responsible Office of General Counsel (OGC) attorney to confirm the planning, coordination and execution of IDLS activities involving litigation.
  - (4) Funding will be available for services rendered that are above core services.
  - (5) Compliance to Departmental policies on Personally Identifiable Information is achieved.
  
- b. ITS. ITS will ensure that:
  - (1) All relevant policy and procedure documents are readily available for consultation.
  - (2) All requests made by Customer Agencies, OGC, and/or Office of Inspector General (OIG) will be handled in a timely manner.
  - (3) Comply with the procedures set out in [Appendix A](#).
  - (4) Compliance to Departmental policies on Personally Identifiable Information is achieved.

## 7. DEFINITIONS

- a. Customer Agency. ITS customers.
- b. Discovery. Discovery is the process of identifying, locating, securing and producing information and materials for the purpose of obtaining evidence for use in a legal process. The term is also used to describe the process of reviewing all materials, which may be potentially relevant to the issues at hand and/or which may need to be disclosed to other parties, and of evaluating evidence to prove or disprove facts, theories or allegations. There are several formalized methods of conducting discovery, the most common of which are interrogatories, requests for production of documents and depositions.
- c. Document. A collective term for records, non-record materials, and personal papers that refers to all media containing recorded information, regardless of the nature of the media or the method(s) or circumstance(s) of recording.
- d. Electronically Stored Information (ESI). Any information that is created, received, maintained or stored on local workstations, laptops, central servers, personal digital assistants, cell phones, or in other electronic media. Examples include, but are not limited to: electronic mail (“email”), calendars, word processing documents and spreadsheets, databases, videos, video files, digital images, audio files, text messages, voicemails, activity logs, *etc.* ESI includes metadata.
- e. Information Discovery and Litigation Support (IDLS). Activities related to the preservation and/or production of electronically stored information for the purposes of electronic information discovery and litigation support.
- f. Litigation Hold. The obligation of agencies, managers and individual employees to ensure that preservation of documentary materials in their native format that might be or might become relevant to pending or threatened litigation.
- g. Metadata. Data that provides information about other data.
- h. Native Format. The file format that an application normally reads and writes.
- i. Personally Identifiable Information (PII). Data which can be used to distinguish or trace an individual’s identity. Examples include: names, social security numbers or medical records. Personally Identifiable Information also includes

data that, when combined with other identification information, can be linked to a specific individual.

- j. Preservation. The obligation of agencies, managers and individual employees to ensure the preservation of documentary materials that might be or might become relevant to pending or reasonably anticipated litigation.
- k. Production. The process of delivering to another party or making available for that party's review, documents deemed responsive to a discovery request.
- l. Records. All books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference and stocks of publications and of processed documents are not included. (44 U.S.C. 3301)

## 8. ABBREVIATIONS

DR	Departmental Regulation
ESI	Electronically Stored Information
FOIA	Freedom of Information Act
FRCP	Federal Rules of Civil Procedure
GSD	Governance Services Division
IDLS	Information Discovery Litigation Support
IT	Information Technology
ITS	International Technology Services
OCIO	Office of the Chief Information Officer
OGC	Office of General Counsel

OIG Office of Inspector General  
PII Personable Identifiable Information  
USDA United States Department of Agriculture

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## APPENDIX A: IDLS PROCEDURES

### 1. OVERVIEW

- a. This section contains procedures for handling legal and other electronic information requests coming into the United States Department of Agriculture (USDA)-Office of the Chief Information Officer (OCIO)-International Technology Services (ITS). The following is a list of different types of electronic information retention or retrieval requests that could be received by ITS. Prior to execution, Customer Agencies, responsible OGC attorney (in cases of litigation) and the ITS Information Discovery Litigation Support (IDLS) Officer must determine the type or category of the request on the Information Retention and Retrieval (IRR) form.
- b. Categories of IRR Requests:
  - (1) Litigation
    - (a) Litigation Hold
    - (b) Litigation Production
  - (2) Subpoena
  - (3) Freedom of Information Act (FOIA)
  - (4) Forensic Requests
  - (5) Other Types of Investigations
    - (a) Internal Investigations
    - (b) Office of the Inspector General (OIG) Investigations
    - (c) Congressional Inquiries

### 2. LITIGATION HOLDS

- a. Preservation/Retention Requests:
  - (1) Determine if it affects the Email Exchange Service or the Network Data Service.

- (2) Determine if current ITS retention process will fulfill requirements.
- (3) If not, determine specific requirements and coordinate with the Email Exchange Group or the Network Data Group to develop an estimate.
- (4) Present a time and cost estimate to requester for approval.
- (5) Wait for approval.
- (6) Update IRR form with appropriate information and sign.
- (7) Present confirmation to requester that preservation activities have started.
- (8) Wait for Production Request, the amount of time necessary is on a case-by-cases basis.

b. Production Requests:

- (1) Determine if request affects Email Exchange Service or Network Data Service.
- (2) Present requirements to appropriate ITS group.
- (3) Coordinate in developing a time and cost estimate for the production.
- (4) Present the estimate to requester for approval.
- (5) Wait for approval before productions starts.
- (6) Update IRR form with appropriate information and sign.
- (7) Log request into IDLS Case List.
- (8) Send Email Production Request to the appropriate branch.
- (9) Follow-up with OGC for any additional requirements and other USDA organizations as appropriate.
- (10) Report Customer Agency resources expended for responding to production request.
- (11) Log all activities into IDLS Case List.
- (12) The Agency IDLS Officer will formally accept the completed product via signed document, email or SharePoint.
- (13) Send in compliance with PII policies.

### 3. SUBPOENAS

- a. All subpoenas issued to ITS employee(s), or CA (Customer Agency) and/or their employees will be immediately forwarded to the current Point of Contact (POC) for ITS IDLS.
- b. The IDLS POC will contact USDA's OGC, as to which regional attorney to forward the ITS subpoena for further processing and instructions.
- c. The IDLS POC will forward the ITS subpoena to the named regional attorney for further instructions.
- d. The IDLS POC will determine Preservation or Production requirements, if any, and follow appropriate section above ([2.a.](#) or [2.b.](#)) as appropriate.
- e. The request will be properly logged and documented.
- f. The Agency IDLS Officer (or originator of the subpoena) will formally accept the completed product via signed document, email or SharePoint, if applicable.

### 4. FREEDOM OF INFORMATION ACT (FOIA)

- a. ITS personnel will not react or respond to ANY FOIA request unless it comes through the applicable Agency/Staff Office FOIA Officer and is accompanied by an IRR form signed by the IDLS POC.
- b. FOIA Officers will determine the requirements necessary to fulfill a FOIA request and articulate those requirements with the necessary detail to ITS using the IRR process.
- c. IRRs will come to ITS through the IDLS POC.
- d. The IDLS POC will determine Preservation or Production requirements, if any, and follow appropriate section above ([2.a.](#) or [2.b.](#)) as appropriate.
- e. The IDLS POC will determine other requirements from the IRR, if any, and initiate IT Request(s) as necessary.

- f. The IDLS POC will coordinate and monitor progress of the IT Request.
- g. The IDLS POC will be responsible for properly logging and documenting IT Request.
- h. The Agency FOIA Officer will acknowledge/confirm receipt of the completed product via signed document, email or SharePoint.

## 5. FORENSIC REQUESTS

- a. All IRR will come to ITS through the IDLS POC.
- b. The IDLS POC will determine Preservation or Production requirements, if any, and follow appropriate section above ([2.a.](#) or [2.b.](#)) as appropriate.
- c. IDLS POC will coordinate and monitor progress of the IT Request.
- d. IDLS POC will properly log and document the request into the ITS Production Request Log.
- e. IRR progress will be monitored by the IDLS POC and periodically reported to requesting agency.
- f. The Agency IDLS Officer will formally accept the completed product via signed document, email or SharePoint, if applicable.

## 6. OTHER TYPES OF INVESTIGATIONS

- a. The type of investigations that falls under this category includes:

- (1) Internal Investigations;
  - (2) Office of the Inspector General (OIG) Investigations; and
  - (3) Congressional Investigations.
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- b. All IRR will come to ITS through the IDLS POC.
  - c. The IDLS POC will determine Preservation or Production requirements, if any, and follow appropriate section above ([2.a.](#) or [2.b.](#)) as appropriate.
  - d. IDLS POC will determine other requirements from the IRR, if any, and initiate IT Request(s) as necessary.
  - e. IDLS POC will coordinate and monitor progress of the IT Request.
  - f. IDLS POC will properly log and document the request into the ITS Production Request Log.
  - g. IRR progress will be monitored by the IDLS POC and periodically reported to requesting agency.
  - h. The Agency IDLS Officer will formally accept the completed product via signed document, email or SharePoint, if applicable.

## 7. ADDITIONAL INFORMATION

- a. IDLS activities are above core for ITS services. Therefore, the affected Customer Agency or office(s) must pay for the cost to either preserve and/or produce the requested data.
- b. ITS will not make any determinations or interpretations on requirements necessary to fulfill the different categories of IDLS activities. These responsibilities rest with the Customer Agencies or office(s).
- c. Each request must have a cost and time estimate associated with it and must be approved before services are rendered, unless existing system processes are sufficient.

## 8. DEFINITIONS

- a. Chain of Custody. Documentation and testimony regarding the possession, movement, handling, and location of evidence from the time it is obtained to the time it is presented in court; used to prove that evidence has not been altered or tampered with in any way; necessary both to assure admissibility and probative value.
- b. Customer Agency. ITS customers.
- c. Discovery. Discovery is the process of identifying, locating, securing and producing evidence, including testimony, things, information, and materials for utilization in the legal process. The term is also used to describe the process of reviewing all materials, which may be potentially relevant to the issues at hand and/or which may need to be disclosed to other parties, and of evaluating evidence to prove or disprove facts, theories or allegations. There are several formalized methods of conducting discovery, the most common of which are interrogatories, requests for production of documents and depositions.
- d. Document. A collective term for records, non-record materials, and personal papers that refers to all media containing recorded information, regardless of the nature of the media or the method(s) or circumstance(s) of recording.
- e. Electronically Stored Information (ESI). Any information that is created, received, maintained or stored on local workstations, laptops, central servers, personal digital assistants, cell phones, or in other electronic media. Examples include, but are not limited to: electronic mail (“email”), calendars, word processing documents and spreadsheets, databases, videos, video files, digital images, audio files, text messages, voicemails, activity logs, *etc.* ESI includes metadata.
- f. Image. To image a hard drive is to make an identical copy of the hard drive, including empty sectors. Also known as creating a “mirror image”.
- g. IDLS Officer. The ITS Point of Contact for customer agencies to submit data requests.
- h. Information Discovery and Litigation Support (IDLS). Activities related to the preservation and/or production of electronically stored information for purposes of electronic information discovery and litigation support.

- i. Information Retention and Retrieval (IRR). The standard format/process for requesting electronically stored information in the ITS-covered infrastructure.
- j. Litigation Hold. The obligation of agencies, managers and individual employees to ensure that preservation of documentary materials that might be or might become relevant to pending or threatened litigation. If the documentary material was created in electronic format, it must be preserved in that original native format.
- k. Media. An object or device, such as a disk, tape or other device, on which data is stored.
- l. Point of Contact. An assigned individual/position with delegated authority to process/request Information Retention and Retrieval (IRR) or otherwise act as a Customer Agency's proxy.
- m. Preservation. The obligation of agencies, managers and individual employees to ensure the preservation of documentary materials that might be or might become relevant to pending or threatened litigation. If the documentary material was created in electronic format, it must be preserved in that original native format.
- n. Production. The process of delivering to another party or making available for that party's review, documents deemed responsive to a discovery request.
- o. Records. All books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference and stocks of publications and of processed documents are not included. (44 U.S.C. 3301)

## 9. ABBREVIATIONS

CA            Customer Agency(ies)

DOJ	Department of Justice
ESI	Electronically Stored Information
FOIA	Freedom of Information Act
IDLS	Information Discovery Litigation Support
IRR	Information Retention and Retrieval
IT	Information Technology
ITS	International Technology Services
OCIO	Office of the Chief Information Officer
OGC	Office of the General Counsel
OIG	Office of Inspector General
POC	Point of Contact
USDA	United States Department of Agriculture

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