



OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 02-03-009

EFFECTIVE DATE: 06/18/2020

SUBJECT: Electronic Case File (ECF) System Procedures for the Whistleblower Protection Program

ABSTRACT

- Purpose:** The purpose of this Instruction is to establish policies and procedures to create, maintain, and archive electronic case files (ECF) for whistleblower retaliation complaint investigations.
- Scope:** OSHA-Wide.
- References:** Presidential Memorandum – Managing Government Records, 76 FR 75423 (November 28, 2011); Managing Government Records Directive, M-12-18, Office of Management and Budget and National Archives and Records Administration (August 24, 2012); OSHA Instruction: CPL 02-03-007, January 28, 2016 – Whistleblower Investigations Manual (WIM); and the whistleblower provisions of more than twenty (20) federal statutes enforced by OSHA.
- Cancellations:** None
- State Plan Impact:** Federal Program Change, Notice of Intent Required, Adoption Encouraged. See Section VII.
- Action Offices:** Directorate of Whistleblower Protection Programs;
OSHA Regional Offices.
- Originating Office:** Directorate of Whistleblower Protection Programs, Washington, D.C.
- Contact:** Directorate of Whistleblower Protection Programs
200 Constitution Ave., NW, N4618
Washington, D.C. 20210
(202) 693-2199

By and Under the Authority of

Loren Sweatt
Principal Deputy Assistant Secretary

Executive Summary

This directive requires OSHA's Whistleblower Protection Program to document whistleblower complaint investigations using ECFs in lieu of paper case files. It provides procedural guidance regarding the organization, file naming conventions, and requirements for electronic whistleblower investigative case files. This directive clarifies that an ECF is the official government record of a whistleblower case. This directive additionally clarifies that paper files must be converted to electronic files, and once completed, Regions are not required to maintain physical copies of the case files once the case has been closed.

Significant Changes

This directive requires OSHA's Whistleblower Protection Program to document whistleblower complaint investigations using ECFs instead of paper case files. The directive contains specific instructions about how to create, manage, and archive ECFs. Accordingly, this directive expands on the instruction on case file organization outlined in the WIM.

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I. Purpose

The purpose of this Instruction is to establish policies and procedures to create, maintain, and archive ECFs for whistleblower retaliation complaint investigations.

II. Scope

OSHA-Wide.

III. References

Presidential Memorandum – Managing Government Records, 76 FR 75423 (November 28, 2011); Managing Government Records Directive, M-12-18, Office of Management and Budget and National Archives and Records Administration (August 24, 2012); OSHA Instruction: CPL 02-03-007, January 28, 2016 –WIM; the Occupational Safety and Health Act (OSH Act), 29 U.S.C. § 660(c); the Surface Transportation Assistance Act, 49 U.S.C. § 31105; the Asbestos Hazard Emergency Response Act, 15 U.S.C. § 2651; the International Safe Container Act, 46 U.S.C. § 80507; the Safe Drinking Water Act, 42 U.S.C. § 300j-9(i); Federal Water Pollution Control Act, 33 U.S.C. § 1367; the Toxic Substances Control Act, 15 U.S.C. § 2622; the Solid Waste Disposal Act, 42 U.S.C. § 6971; the Clean Air Act, 42 U.S.C. § 7622; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9610; the Energy Reorganization Act, 42 U.S.C. § 5851; the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121; the Sarbanes-Oxley Act, 18 U.S.C. § 1514A; the Pipeline Safety Improvement Act, 49 U.S.C. § 60129; the Federal Railroad Safety Act, 49 U.S.C. § 20109; the National Transit Systems Security Act, 6 U.S.C. § 1142; the Consumer Product Safety Improvement Act, 15 U.S.C. § 2087; the Affordable Care Act, 29 U.S.C. § 218C; the Consumer Financial Protection Act of 2010, 12 U.S.C. § 5567; the Seaman’s Protection Act, 46 U.S.C. § 2114; the FDA Food Safety Modernization Act, 21 U.S.C. § 399d; the Moving Ahead for Progress in the 21st Century Act, 49 U.S.C. § 30171; and the Taxpayer First Act, 26 U.S.C. § 7623(d).

IV. Cancellations

None.

V. Significant Changes

This directive requires OSHA’s Whistleblower Protection Program to document whistleblower complaint investigations using ECFs instead of paper case files. The directive contains specific instructions about how to create, manage, and archive these ECFs. Accordingly, this directive expands on the guidance about case file organization in the WIM.

VI. Action Offices

A. Responsible Offices

DWPP; OSHA Regional Offices.

B. Action Offices

DWPP; OSHA Regional Offices.

C. Information Offices

Directorate of Administrative Programs, Office of Information Technology and Solutions (DAP/OITS).

VII. Federal Program Change

This Instruction describes a federal program change which establishes policies and procedures to create and maintain ECFs for whistleblower retaliation complaint investigations and inquiries. State Plans are encouraged to adopt similar policies and procedures to create and maintain electronic whistleblower complaint case files.

Within 60 days of the date of issuance of this directive, a State Plan must submit a notice of intent indicating whether they already have a similar policy in place, intend to adopt new policies and procedures, or do not intend to adopt this Instruction. If a State Plan does not adopt initially, but at some later point decides to adopt this Instruction or an at least as effective version of this Instruction, the State Plan must notify OSHA of this change in intent. Within 60 days of adoption, the State Plan must provide an electronic copy of the policy or link to where their policy and procedures are posted on the State Plan's website. The State Plan must also provide the date of adoption and identify differences, if any, between their policy and OSHA's. OSHA will provide summary information on the State Plan responses to this Instruction on its website at www.osha.gov/dcsp/osp/index.html.

VIII. Background

On August 24, 2012, the Office of Management and Budget (OMB) and the National Archives and Records Administration (NARA), pursuant to Presidential Memorandum—Managing Government Records, 76 FR 75423 (November 28, 2011), issued the Managing Government Records Directive (OMB/NARA Directive), which “*requires that to the fullest extent possible, agencies eliminate paper and use electronic recordkeeping.*” This OMB Directive is applicable to all executive agencies and to all governmental records, without regard to security

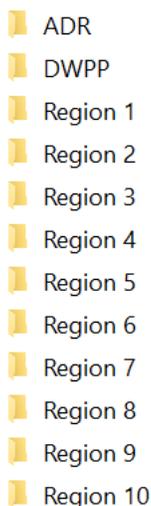
classification or any other restriction.¹

In January 2016, OSHA created a shared “W:” drive with sufficient storage capacity to maintain whistleblower case records in an electronic format to begin the transition from paper copies to electronic records. Additionally, OSHA has ensured that the Whistleblower Protection Program has access to computers and other electronic equipment, such as scanners, which will enable the Program to digitize and store all whistleblower investigative records in an electronic format. In light of these developments, and in order to ensure compliance with the OMB /NARA Directive, OSHA has developed the guidance herein, which will apply to all Regions.

IX. Whistleblower Network Drive

- A. The shared network (“W:”) drive contains a folder (directory) for each Region’s investigative case files, a folder for Alternative Dispute Resolution (ADR) files, and a folder for DWPP’s request for review (RFR) case files, as pictured below:

Path: W:



Note: Regions will have full access to their respective folder and read-only access to the other Regions’ folders. Users will not modify the root W drive.

X. Organization of Files

- A. **Field Investigative Files** - The WIM outlines proper organization for investigative case files. This section of the memorandum provides organizational guidelines for case files stored electronically.

¹ See: <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>

1. Case Folder - Within each Regional Folder, case files should be organized into separate folders divided by fiscal year (FY), which is determined by the date complaints were filed. Cases should be created, uploaded upon receipt of complaint, and maintained throughout the investigation.

- FY2014
- FY2015
- FY2016
- FY2017
- FY2018

2. Case File Folder Naming Protocol - Within each fiscal year folder, case files should be named using the following naming conventions, which conform to Windows file naming rules.²

a) *Docket number[space]Respondent[space] – [space]Complainant*

■ #-####-##-### RP Name - CP Name

b) Cases which are administratively closed should indicate “AC” after the naming protocol.³

■ #-####-##-### RP Name - CP Name - AC

3. Investigative Case File Structure - Case file materials should be organized within each case file by exhibit. The exhibit folders are organized by numerical exhibits, which correspond to the evidentiary exhibits traditionally stored on the right side of paper case files, and alphabetical exhibits, which correspond to the administrative materials traditionally contained on the left side of paper case files. Any internal emails or communication that OSHA has within the agency, within DOL, or to another government agency (such as a sharing letter) should be within *Exhibit C (Government Correspondence)*. An example of a case folder is below: however, additions and deviations can occur depending on the case file. Unused folders should not be deleted.

² See: [https://msdn.microsoft.com/en-us/library/windows/desktop/aa365247\(v=vs.85\).aspx](https://msdn.microsoft.com/en-us/library/windows/desktop/aa365247(v=vs.85).aspx)

³ Any additional wording, such as initials for the assigned investigator, should be included after the naming protocol using lower case letters contained in brackets.

- Exhibit 1 (Complaint)
- Exhibit 2 (Complaint Interview)
- Exhibit 3 (RP Position Statement)
- Exhibit 4 (Witness Interview Smith)
- Exhibit 5 (Documents Submitted by CP)
- Exhibit 6 (Investigator Notes)
- Exhibit 7 (Phone Activity Log)
- Exhibit 8 (ROI)
- Exhibit A (CP Notification)
- Exhibit B (RP Notification)
- Exhibit C (Government Correspondence)
- Exhibit D (CP Correspondence)
- Exhibit E (RP Correspondence)
- Exhibit F (Outside Correspondence)
- Exhibit G (Sec. Findings)
- Exhibit H (IMIS Case Summary)
- Exhibit I (Appeals Folder)
-  Table of Contents

4. **Exhibit Naming Protocol** - Individual documents should be saved within specific exhibit folders in Adobe PDF format; however, Word documents are allowed in specific circumstances. Document names will include an exhibit designation, as well as a concise description about the document or file in parentheses, as illustrated below:

- | | |
|---|--|
|  Exhibit 3 (RP Letter 11-22-2017) |  Exhibit 5 (CP Letter 12-01-2017) |
|  Exhibit 3-A (Attendance Policy) |  Exhibit 5-A (Termination Notice) |
|  Exhibit 3-B (CP Personnel File) |  Exhibit 5-B (Good Job Award) |
|  Exhibit 3-C (Other EE Discipline) |  Exhibit 5-C (Performance Evaluation) |

Note: An investigator may bookmark sub-exhibits in Adobe within a scanned PDF exhibit.

- B. **Alternative Dispute Resolution (ADR) Case Files**⁴ - ADR files are organized by FY, outcome, and case file as pictured as follows:

⁴ As explained in OSHA's ADR directive, ADR files must be kept separate from investigative files to maintain confidentiality and OSHA staff involved in the investigation of a case generally do not have access to the ADR file for the case. *See* Alternative Dispute Resolution (ADR) Process for Whistleblower Protection Program directive dated February 4, 2019, available at https://www.osha.gov/sites/default/files/enforcement/directives/CPL_02-03-008.pdf

By FY:

-  FY18
-  FY19
-  FY20

By Outcome:

-  Assist
-  Inquiry
-  Removed
-  Settled

By Case File:

-  #-####-##-### RP Name - CP Name
-  #-####-##-### RP Name - CP Name

Within each ADR case file, the subdirectories structure is pictured below:

-  Tab A_Settlement Documents
-  Tab B_Government Documents
-  Tab C_Party Documents
-  Tab D_Emails

Refer to OSHA Instruction, [CPL 02-03-008](#), dated February 4, 2019, Alternative Dispute Resolution (ADR) Processes for Whistleblower Protection Programs for retention requirements. Specific guidance can be found in Section XI, paragraph B, subparagraph 11, and Section XII, paragraph D, subparagraph 5.

C. **DWPP/RFR Files** - RFR files are organized by FY, then region, then case file, then exhibit, as pictured below:

By FY:

-  RFR - FY2018
-  RFR - FY2019

By Case File:

-  #-####-##-### RP Name - CP Name
-  #-####-##-### RP Name - CP Name

By Region:

-  Region 1
-  Region 2
-  Region 3
-  Region 4
-  Region 5
-  Region 6
-  Region 7
-  Region 8
-  Region 9
-  Region 10

By Exhibit:

-  Exhibit 1 (Request for Review Letter)
-  Exhibit 2 (Investigative Documents)
-  Exhibit 3 (Tracking Information)
-  Exhibit 4 (RFR form)
-  Exhibit 5 (Post-review Regional Correspondence)
-  Exhibit A (IMIS Case Summary)
-  Exhibit B (Acknowledgment Letter)
-  Exhibit C (Closing-Response Letter)
-  Exhibit D (Misc. Correspondence)
-  Exhibit E (Diary Log)

XI. Confidential Business Information and Medical Records

Documents that are identified as Confidential Business Information (CBI) or Medical Records must be identified as such in the name of the PDF containing the CBI or Medical Records. Additionally, all PDFs containing CBI or Medical Records should be password-protected. The Assistant Regional Administrator of Whistleblower Protection Programs or his/her designee shall maintain a password log for password-protected documents included in ECFs.⁵

 [Exhibit 3-A CBI \(Position Statement - Attachment 1\)](#)

 [Exhibit 5-A Medical Records \(June 2018 Injury\)](#)

XII. Converting Paper Records to an Electronic Format

Regions should encourage both Complainants and Respondents to submit materials in electronic format. Parties are not however, required, to submit materials in electronic format. When a party submits evidence in paper format, the Region should scan and save the document as a PDF. Once the paper document has been converted to a PDF, the PDF becomes the official government record, although Regions should retain the paper submissions until the case is closed at the OSHA level.

Regions should follow the WIM to determine when a case file is closed. Once a case is closed and the ECF is finalized and approved by the supervisor, there is no need for the Region to maintain a physical copy of the file, unless there is an evidentiary reason to do so (e.g., the case has been referred for litigation to the Office of the Solicitor or there are questions about the authenticity of the original paper version of a document submitted to OSHA). The official government record will be maintained on the “W” drive and paper copies or “working papers” should be destroyed.

XIII. File Retention Schedule

- A. Whistleblower ECFs are subject to the same retention schedule as the paper files, with the exception that there is no requirement to retire the ECFs to the Federal Archives and Records Center (FARC) two years after the cut-off.⁶ For ECFs, cut-off is deemed to be at the end of the fiscal year *when the case* is considered closed. The ECF should be destroyed five years after cut-off. See [OSHA’s File Retention Schedule](#).
- B. To properly destroy whistleblower ECFs in accordance with the File Retention Schedule, the Region should use the Length of Investigation Report in OITSS-WB. This report lists all closed cases for a specific timeframe (e.g.,

⁵ Refer to Rules of agency practice and procedure concerning OSHA access to medical records [CLP 02-02-072](#)

⁶ The National Archives and Records Administration (NARA) will no longer accept paper records by the end of 2022.

fiscal year). Using this report, Regions should identify those records within their respective Fiscal Year filing folders and delete them. Regions should not delete cases that have an active FOIA request; they should check with their FOIA liaison before deleting.