

## Record Digitization

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Digitization of records has improved general document management in the legal field in many ways. It has reduced the amount of physical storage required for firms with large volumes of documents.<sup>1</sup> Digitized records also allow for documents to be organized differently and in a more accessible way, improving the efficiency of the legal field generally.<sup>2</sup> E-filing has also improved efficiency, as the need for physical paperwork and in-person document submission has been reduced.<sup>3</sup> “The transition from paper-based to digital records enhances efficiency, accessibility, and overall workflow.”<sup>4</sup>

Digitizing court records has unique advantages, including enhanced accessibility, more efficient use of space, and better organization. It is much easier to locate documents in a digital document management system than in some type of physical document storage system.<sup>5</sup> Further, hard copies may be mislabeled, lost, misplaced, or physically damaged in some way, while electronic records are more secure, both because they are protected from damage and destruction, and also because digital systems can be structured with permissions allowing only authorized users to access secure documents.<sup>6</sup> Federal courts generate and maintain case files with docket sheets and any documents filed with the case for the thousands of cases that are filed each year, which requires a lot of space.<sup>7</sup> Maintenance and use of these physical records can also require full-time assistance for someone to go and retrieve files, so digitizing records helps to save space and also make record retrieval more user friendly.<sup>8</sup>

In recent years, federal agencies have been moving toward electronic records. In June of 2023, the National Archives and Records Administration (NARA) amended regulations establishing standards for digitizing permanent records in 36 C.F.R. 1236, Subpart E. Digitization standards are important because they ensure that the records are appropriate for future

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<sup>1</sup> *The impact of digitalization on legal practice*, THE IMPACT LAWYERS, <https://theimpactlawyers.com/articles/the-impact-of-digitalization-on-legal-practice#:~:text=Lawyers%20can%20search%20and%20retrieve,and%20improves%20the%20firm's%20responsive%20ness.&text=Digitalization%20is%20also%20transforming%20the,which%20enhances%20the%20client%20experie%20nce> (last visited Nov. 17, 2024) [<https://perma.cc/EMB5-75WF>].

<sup>2</sup> *Id.*

<sup>3</sup> Marsha Naegeli, *How the Pandemic Has Changed the Legal Industry*, NAEGELI DEPOSITION & TRIAL (Aug. 9, 2024) <https://www.naegeliusa.com/blog/how-the-pandemic-has-changed-the-legal-industry> [<https://perma.cc/2EDJ-KSLS>].

<sup>4</sup> *Navigating the Future: Trends in Record Services for Legal Professionals*, FIRST LEGAL (Mar. 4, 2024) <https://www.firstlegal.com/navigating-the-future-trends-in-record-services-for-legal-professionals/#:~:text=The%20transition%20from%20paper%2Dbased,impact%2C%20and%20expedite%20informa%20retrieval> [<https://perma.cc/EX34-AHR8>].

<sup>5</sup> *Why Court Records Need to be Digitally Preserved*, MANAGED OUTSOURCE SOLUTIONS (Last updated May 13, 2024) <https://www.managedoutsource.com/blog/why-court-records-need-digitally-preserved/#:~:text=Increased%20Efficiency:%20By%20converting%20paper,flexibility,%20responsiveness,%20and%20transparency> [<https://perma.cc/5QSP-YSWA>].

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

preservation.<sup>9</sup> “[T]hese digitization standards for permanent records ensure that agencies can use digital versions for the same business purposes as the source records and ensure that the digital records will be appropriate for preservation in NARA’s archival holdings.”<sup>10</sup>

The federal agencies were expected to manage all their permanent records in an electronic format no later than June 30, 2024.<sup>11</sup> NARA and the Office of Management and Budget additionally issued two memorandums to “highlight the importance of modernizing and transitioning to digital processes and workflows in the federal government to enhance efficiency, transparency, and accountability.”<sup>12</sup>

The second memorandum, M-23-07, stated that exceptions to the June 30, 2024 date could be made when “replacing specific analog records with electronic systems would be burdensome to the public, the cost would exceed the benefit, statutory or regulatory barriers impede implementation, or there is exceptional intrinsic value in the original format.”<sup>13</sup> This memorandum further stated that all temporary records needed to be managed in electronic format or stored in a commercial records facility by June 30, 2024, and NARA would only accept permanent record transfers in electronic format with metadata consistent with NARA regulations.<sup>14</sup>

36 C.F.R. 1236 addresses electronic records management.<sup>15</sup> Subpart A provides some general information, including definitions that apply to the code, standards to be used as guidance, and agency responsibilities for electronic records management.<sup>16</sup> This section explains that administrative metadata are “elements of information” that describe how records were created, restrictions in access or use that might apply to a particular record, and other relevant information.<sup>17</sup> There are many more definitions provided in Subpart A that provide valuable context, including different types of metadata, control, and quality considerations.<sup>18</sup> Subpart A also explains an agency’s responsibilities for electronic records management, which include incorporating the electronic records management into management activities laid out in the regulation, and including considerations of records management and preservation in “the design, development, enhancement, and implementation of electronic information systems in accordance with subpart B of this part.”<sup>19</sup>

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<sup>9</sup> Federal Records Management: Digitizing Permanent Records and Reviewing Records Schedules, 88 Fed. Reg. 28410 (effective June 5, 2023) (to be codified at 36 C.F.R. pts 1224, 1225, 1236).

<sup>10</sup> *Id.*

<sup>11</sup> OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, M-23-07, UPDATE TO TRANSITION TO ELECTRONIC RECORDS (2022).

<sup>12</sup> *New Rule for Digitizing Records: What you need to know*, NATIONAL ARCHIVES (May 15, 2023) <https://records-express.blogs.archives.gov/2023/05/15/new-rule-for-digitizing-records-what-you-need-to-know/> [<https://perma.cc/UY3T-C59G>].

<sup>13</sup> OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, M-23-07, UPDATE TO TRANSITION TO ELECTRONIC RECORDS (2022).

<sup>14</sup> *Id.*

<sup>15</sup> 36 C.F.R. § 1236 (2024).

<sup>16</sup> 36 C.F.R. § 1236 Subpart A (2024).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> 36 C.F.R. § 1236.6 (2024).

Subpart B covers important management and preservation considerations for designing, developing, and implementing electronic information systems, as well as protection against technological obsolescence.<sup>20</sup> This subpart indicates that reliability, authenticity, integrity, usability, content, context, and structure must all be incorporated in an agency's electronic information system or integrated into their recordkeeping system to "ensure that Federal records in electronic information systems can provide adequate and proper documentation of agency business for as long as the information is needed."<sup>21</sup> Further, this subpart describes how agencies should protect their records from technological obsolescence. When an electronic record needs to be maintained beyond the time that the information system will be used, the agency needs to implement a migration strategy.<sup>22</sup> This section further described upgrading hardware and software to maintain functionality and performing conversions when needed to make records compatible with new hardware or software.<sup>23</sup> This also required keeping the record and its metadata linked in order to maintain that data.<sup>24</sup>

Subpart C provides some additional requirements for these electronic records, including appropriate record keeping systems, requirements for managing electronic mail records, management of unstructured electronic records, system maintenance, and selection and maintenance of electronic record storage media for records that are permanent.<sup>25</sup> Subpart D addresses some requirements for digitizing temporary federal records, including digitization standards, validation of digitization, and disposing of source records.<sup>26</sup>

Subpart E addresses requirements for digitizing permanent federal records.<sup>27</sup> This section contains its own set of definitions, records management requirements, documentation of digitization projects, quality management requirements, and file format requirements.<sup>28</sup> Subpart E specifically covers the digitizing of paper records using reflective digitization techniques, "[d]igital imaging of an object where light is reflected from the object, generally a reflective object such as a map or printed page of text."<sup>29</sup> Subpart E does not address the other laws and regulations in place that cover things like the handling of classified information or compliance, and it is important that agencies ensure they follow all applicable laws.<sup>30</sup>

In conclusion, document and record digitization has had a major impact on the legal field, leading to more user-friendly systems that can improve security, efficiency, and longevity. These digital systems also save space. While this move towards digitization has been beneficial,

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<sup>20</sup> 36 C.F.R. § 1236 Subpart B (2024).

<sup>21</sup> 36 C.F.R. § 1236.10 (2024).

<sup>22</sup> 36 C.F.R. § 1236.14 (2024).

<sup>23</sup> 36 C.F.R. § 1236.14(b) (2024).

<sup>24</sup> *Id.*

<sup>25</sup> 36 C.F.R. § 1236 Subpart C (2024).

<sup>26</sup> 36 C.F.R. § 1236 Subpart D (2024).

<sup>27</sup> 36 C.F.R. § 1236 Subpart E (2024).

<sup>28</sup> *Id.*

<sup>29</sup> *New Rule for Digitizing Records: What you need to know*, *supra* note 12; *Term: Reflective scanning*, Federal Agencies Digital Guidelines Initiative, <https://www.digitizationguidelines.gov/term.php?term=reflectivescanning#:~:text=Term%3A%20Reflective%20scanning&text=Digital%20imaging%20of%20an%20object,or%20printed%20page%20of%20text> (last visited November 17, 2024) [<https://perma.cc/HR4K-2LTT>].

<sup>30</sup> *New Rule for Digitizing Records: What you need to know*, *supra* note 12.

important regulations have been put in place to ensure that federal digital records are of a certain quality and are able to be maintained effectively. As technology improves and becomes more widely available, regulations regarding electronic storage of records could further evolve.