
Appendix Y Records Holds and Freezes

Appendix Y discusses records freezes, legal (litigation) holds, current DON record freezes, CERCLA 104(e) requests for information, standardized responses to formal requests for information, and the National Archives and Records Administration (NARA) O-1 Report.

Definitions

Frozen records – records whose scheduled disposition has been temporarily suspended because of special circumstances that alter the administrative, legal, or fiscal value of the records.

A ***legal/litigation hold*** is a process that an organization uses to preserve all forms of relevant information when litigation is reasonably anticipated. The legal hold is initiated by a notice or communication from legal counsel to an organization that suspends the normal disposition or processing of records.

Applicable Regulations

36 CFR, Subchapter B – Records Management, Part 1228 – Disposition of Federal Records
44 U.S.C. 2909 – Retention of Records

How is a freeze different than a litigation hold or moratorium on destruction?

Litigation refers to any legal action involving your Command. Because of ongoing litigation, your Counsel's Office may periodically issue litigation holds or moratoriums on destruction for certain records because they believe they may be potentially responsive or helpful in ongoing or pending litigation (lawsuits).

The "**holds**" are the implementation of the litigation hold issued by your Counsel's Office. When received, the Records Officer suspends the normal disposition cycle of the records mentioned in the hold notice to prevent their early/premature disposal. Holds are placed on the records that are in your agency's physical custody.

A "**freeze**" is created when the Records Manager receives a hold notice for records not in their physical custody but in the custody of an FRC or other storage facility. The freeze halts premature disposition of the records.

Since most litigations deal with relatively current agency activity, the number of freezes is significantly smaller than the number of records holds.

If you receive a hold notice and know that some of the potentially responsive or useful records are stored in an FRC, apply an existing freeze code or take steps to initiate a freeze on them in conjunction with the hold you place on the records you have on-site

or in your physical custody. This ensures that any potentially responsive record is preserved regardless of its physical location.

If you need to have a freeze code created, contact the Navy Records Office to discuss the information they need to request that NARA create the freeze code. The procedures to request the creation of a freeze code from NARA change. Check with NARA to obtain the most up to date procedures.

If records have met their disposition scheduled date, there are no applicable freezes, no litigation holds issued by an attorney and no actual or known potential litigation, the records may be destroyed.

NIRIS EDMS has a Litigation Manager module which tracks all records holds and freezes.

Before applying a freeze code to records, determine if only part of a Record Group is included in the freeze.

Navy Record Groups and the Freezes Currently Applied to Them

Environmental records generally fall into the DON Records Groups listed below. Most NAVFAC environmental records fall within Record Group 181, general Navy records or 385, NAVFAC Headquarters records

RG	Record Group Name	Freezes Active on RG
181	Naval Districts and Shore Establishments	ABS, IRA, NAM, NAS, NFS, OCE, VLM, KAT

Freeze Codes

In 2009, NARA decided that FRCs would no longer automatically impose this freeze and that Department of the Navy Commands were responsible for formally notifying NARA if their records at FRCs/NARA or future records shipments were related to this freeze. Do not use this freeze code unless it is applicable to the records.

Freeze Code: ABS

Navy documents related to Asbestos Products, 26 February 1979 (applies to certain installations)

Freeze Code: IRA

Iranian Foreign Military Sales Program, Effective Date, 24 May 1984 (not normally applicable to Environmental Records)

Freeze Code: NAM

Vietnam Records, Effective Date 31 July 1972 (not normally applicable to Environmental Records)

Freeze Code: NAS

City of San Diego v. NASSCO et al., No. 09 CV 2275 (W CAB) (S.D. Calif.) Effective Date, October 14, 2009). (State Water Resources Control Board v. General Dynamics Marine Systems; not normally applicable to Environmental Records)

Freeze Code: NSF

Navy Financial Statements, Effective Date, 1 July 2013 (not applicable to most Environmental Records)

Freeze Code: OCE

NAS Oceana litigation and restoration files, Effective Date, 19 September 2013 (applicable to NAS Oceana litigation, compliance and restoration records)

Freeze Code: VLM

Vieques Legal Matters, Effective Date, 24 September 2013 (applicable to Vieques litigation, compliance and restoration records)

Freeze Code: KAT

Hurricane Katrina Relief Records Preservation Order Proponent, Effective Date, 23 September 2005

Freeze Code: USWTC

Undersea Warfare Training Range (USWTR) records; Record Series (SSIC) 5891 - Litigation Case Files. Effective date 5 November 2013

Freeze Code: AWI

Litigation arising out the Navy's lease and use of property from Atlantic Wood Industries from 1942 to 1948 and Navy property Southgate Annex. Effective date 13 October 2015

U S EPA: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(e) Requests

Under section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC Section 9604(e), the U S EPA has the authority to require the U S Department of the Navy to furnish all information and documents in their possession, custody or control or in possession, custody or control of any employees or agents which concern, refer or relate to sites containing hazardous substances as defined by Section 101 (14) of CERCLA and/or contaminants as defined by Section 101 (33) of CERCLA.

Section 104 of CERCLA provides EPA with the explicit authority empowering the U S EPA to seek the release of information for the purpose of undertaking response activities. The purpose of the 104(e) information request is to seek information from any person who has or may have information relevant to the site regarding the release or threat of release of hazardous substances. Effective private, as well as federal, potentially responsible parties (PRPs) searches are fundamental to the U S EPA's enforcement strategies of obtaining maximum PRP involvement in conducting or financing response activities.

The request for information is usually sent by an attorney to parties within the Command who might have responsive records. The request has standardized questions which require a response. The request requires a records search.

How to conduct a Search

Use a standardized format to convey search results information to counsel. Below is the standard format for searching in NIRIS.

1) State the name of the database or records you searched and state why you searched:

EXAMPLE: SEARCHES PERFORMED IN NIRIS (Naval Installation Restoration Information Solution) in response to the Navy Litigation Office litigation hold because the Village of Glenview threat of suit against the Navy should the Navy reject their request to pay for soil removal costs.

NOTE: NIRIS is the approved Installation Restoration online records, document and information management system.

2) State the specific location(s) you searched:

EXAMPLE: I searched the Command: NAVFAC Mid Atlantic Installation: NAS Glenview Administrative Record File, Site Files and Post Decision Files.

3) State the types of searches you made (title, keywords, date, full text, combination of two types, etc.) and list the search terms you used

EXAMPLE: full text searches using the following words in order to have the search results present a list of documents with the word somewhere in the document text. Each search term was searched individually.

Asbestos

sampling data

site investigation

Environmental Baseline Survey

Finding of Suitability

PPV

Public private

venture

deed

Forest City

Midwest Family

base closure

real estate

Village of Glenview

privatization

Village of Glenview and privatization

Paul Hastings law firm

Illinois Environmental Protection Agency

4) (OPTIONAL) State that you performed searches within each document presented in the search results and list the search terms you used

5) State the Findings and attach a copy of all search results to the response

EXAMPLE: I have attached copies of the search results. If there are no search results attached for a word or phrase, no documents were found for that search term.

Please note that the search results for many of the terms returned the same documents.

Searching Other Documents and Files

1) State the name of the database, files or records you searched

EXAMPLE: NAVFAC document Library maintained at NAVFAC Atlantic

2) State the types of searches you made (title, keywords, date, full text, combination of two types, etc.) and list the search terms you used

EXAMPLE: I searched the title and keywords using the following words:

NAS Glenview

Asbestos

3) State the Findings and attach a copy of all search results to the response

EXAMPLE: No relevant documents were found in the documents returned in the search results.

Historic Records Search

On occasion, the request for information is outside the scope of the records held by the Command. The standardized responses cannot be used. The recommendation is to create a narrative to respond to the request for information.

EXAMPLE:

"...We do not have records related to the Delaware Chemical Engineering Company, Harper-Thiel, Inc., Harry S. Thiel, the Atlas Powder Company, Darco Division and Ball Grain Explosives Company. To be thorough, I used all of the above search terms and found no records. NAVFAC does not hold records onsite or in our databases that far back.

The only places related records from circa 1900-1970s may be held are the Federal Records Centers or NARA, depending on whether the records were designated temporary or permanent. If they were designated as temporary, then unless someone extended the deadline for their destruction, they were destroyed many years ago..."

Navy O-1 Report

FRCs produce a monthly report called the "Navy O-1 report" which lists every shipment of Navy/USMC records sent to all the FRCs. Navy O-1 reports describe shipments to FRCs going back to the 1900s. Shipments which have already been disposed of do not appear on the report. NAVFAC can provide you with a copy via AMRDEC site. The series description and other information columns are difficult to read.

No Environmental Restoration records are considered permanent records. The Administrative Record Files, Site Files, and Post Decision Files are temporary records. The Naval Facilities Engineering Commands retain ownership of records sent to Federal Records Centers. Environmental Restoration records are held for 50 years after the last cleanup action and then destroyed. Potential litigation stops the destruction. Commands are notified before destruction takes place so they can make a decision to allow destruction or instruct the FRC to continue to hold the records.

Permanent records ownership transfers to NARA. NARA has excellent recordkeeping 'finders' and indexes to the records they hold. Some finders/indexes are online, some can be purchased from individuals/companies who/which have compiled them and some can be used by traveling to NARA at College Park MD.