

# Preparation of Records Schedules for the Disposition of Imaged Source Records

Version 3

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## Table of Contents

1.0 Introduction.....	1
<b><u>Corporate Specifications</u></b>	
2.0 Records Retention and Disposition Schedule.....	1
3.0 Standards .....	2
4.0 Legal Environment.....	3
4.1 Electronic Transactions Act.....	3
4.2 Alberta Evidence Act.....	4
4.3 Freedom of Information and Protection of Privacy Act .....	4
5.0 Business Environment .....	4
6.0 Using ARDA to Dispose of Administrative Source Records .....	5
<b><u>Business Program Specifications</u></b>	
7.0 Business Program Source Records .....	5
8.0 Business Area Imaging Program .....	5
9.0 Scheduling Business Program Source Records .....	6
9.1 Records Schedule Amendment.....	6
9.2 Archival Appraisal for Records Schedule Amendment.....	9
9.3 Imaging Program Template .....	9
Appendix A – Alberta Evidence Act - Annotation.....	10
Appendix B – Records Schedule Amendment – Example .....	15
Appendix C - Imaging Program Checklist.....	19

## 1.0 Introduction

Scanning source records is a common practice throughout the Government of Alberta and has been in place for many years. Microfilming was a common practice in the past and ministries have scheduled the original source records along with sets of microfilmed records on Records Retention and Disposition Schedules (Records Schedules). As ministries plan and implement their electronic content management systems, opportunities for imaging source documents are often identified. However, no standard approach has been established for disposing of source records that have been scanned.

Most Records Schedules were approved before electronic records were as popular as they are today. As a consequence, older Records Schedules that do not provide provisions for the use of electronic records may not acknowledge electronic records as legitimate forms that can be used and managed as official records. This means that source records cannot be immediately disposed of after the completion of imaging projects.

For the purpose of this document, these “source records” may be scanned or microfilmed or both. The Canadian national standard on electronic evidence<sup>1</sup> defines “source record”<sup>2</sup> and states that source records can be disposed of once their electronic forms have been stored in a secure records management environment<sup>3</sup>. It also states that other policies or business requirements may require the source record be retained for a specific period of time. For the Government of Alberta, such policies are embodied in the Records Schedules which are approved by the Alberta Records Management Committee (ARMC).

## Corporate Specifications

### 2.0 Records Retention and Disposition Schedules

Records Schedules are legal instruments that define the retention and disposition of records in the custody or the control of a ministry. They are legally binding and must be followed. Disposition of records can only occur in accordance with an approved Records Schedule.

The Transitory Records Schedule must not be used to dispose of source records. The intent of this schedule is to give authority to individual employees to dispose of the records they create, receive or use in everyday business processes, which do not need to be retained as evidence of conducting government business. It applies to individual records, not to sets of records.

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<sup>1</sup> Canadian General Standards Board. *Electronic Records as Documentary Evidence* (CAN/CGSB-72.34-2005):

<sup>2</sup> *Ibid*, pg. 13: “source record - a record containing information or data entered into an RMS [records management system]”.

<sup>3</sup> *Ibid*, pg. 14: 5.1 General “ b) Original paper source records can be disposed of once their electronic form is stored in a secure records management environment.”

The *Electronic Transactions Act* has limitations that do not allow it to address all situations relating to records. Records Schedules should be reviewed on a case-by-case basis to determine whether the Records Schedules adequately address electronic records to allow for source record disposition or whether they need to be amended or replaced.

Records Schedules must consider the legal and business requirements. For example, imaging projects should include quality control provisions to ensure that the records are adequate for legal purposes.

### 3.0 Standards

The process used to scan, image and microfilm source records must comply with an applicable standard, as determined through a business risk assessment. Adherence to a standard is determined by the level of risk associated with the records series being scanned. The application of a specific standard (no standard, GoA Standard and/or CAN/CGSB-72.11-93) is implemented prior to commencement of scanning activities. All processes, including creation, capture, receipt, identification, management and protection of records through their life cycle have been documented in a procedures manual as required by the selected standard.

For high risk conditions where legal proceedings are a regular occurrence the CGSB *Microfilm and Electronic Images as Documentary Evidence Standard* (CAN/CGSB-72.11-93) (CGSB Standard) must be followed. This standard provides specific details for the creation and management of computer generated records including imaged or scanned electronic records. The objective of this standard is to establish an environment which, if applied correctly, will help to ensure electronic records will be admissible in legal proceedings.

For most other conditions, the Alberta Digitization standards must be followed.

Service Alberta has developed two standards for the Government of Alberta based on the CGSB Standard. The Digitization Technical Requirements describes the technical standards that organizations must implement in their digitization projects to create authentic and reliable digital business records. The Digitization Process Standard describes the processes that organizations must follow when implementing a digitalization project that will be creating digital business records. These standards ensure consistent processes and procedures that support authentic and accessible digital records. They are available on the [IMT website](#).

It is the business areas responsibility to complete a risk assessment, determine the most appropriate compliance level, and ensure that the decision is documented and authorized by the appropriate role(s).

## 4.0 Legal Environment

As part of any imaging project or operation, the business area should establish and document practices that will demonstrate that the imaged records will be reliable through time. Reliable records are important as they could be required as evidence in court cases and other types of proceedings. This includes electronic records.

Records Schedules need to be considered in terms of legal obligations. If a ministry is required to handle particular types of records in a specific manner to meet legal requirements, then these must be considered when planning an imaging project. These also need to be considered when reviewing existing Records Schedules.

Reasonable efforts must be made to ensure that all pertinent records are made available for litigation and discovery. The principal legal obstacle with electronic records is that they must be deemed accurate and authentic. The system that produces an electronic record or image should include procedures for how records are created, how records are stored, access controls, security features, verification rules and relevant Records Schedules. These procedures contribute to the reliability and integrity of the record-keeping system.

Electronic records may be easier to modify than paper records. Because of this, it is important to have provisions for ensuring that the imaging project being implemented will include quality control. Otherwise, legal requirements may make it impossible to dispose of source records.

### 4.1 Electronic Transactions Act

The *Electronic Transactions Act* has a provision for electronic records and allows the electronic records to be used as official records. It also permits the destruction of the source records. In some cases, this Act may be used to interpret Records Schedules as being inclusive of electronic records; however, there are some limitations:

- The Act does not specifically address imaging projects.
- There are a number of exceptions and exclusions to the Act that may limit its use on existing Records Schedules.
- The Act does not authorize a ministry or other public bodies to destroy a record whose retention or disposition is otherwise legally required.
- Ministries or other public bodies cannot destroy paper records and substitute them with electronic records contrary to the relevant Records Schedules.

In these cases, the Records Schedule would have to be amended or replaced to allow for the final disposition of source records.

Each Records Schedule should be reviewed on a case by case basis to determine which Records Schedules need to be amended or replaced. Though some may not need to be replaced because of the provisions in the *Electronic Transactions Act*, there is value in amending or replacing schedules affected by imaging as it will leave less room for misinterpretation.

#### **4.2 Alberta Evidence Act**

Modifications were made to the *Alberta Evidence Act* to accommodate electronic evidence. Admissibility and weight of electronic records are the two issues that this Act addresses. Appendix A contains a detailed analysis<sup>4</sup> of the Act as it relates to electronic records.

#### **4.3 Freedom of Information and Protection of Privacy Act**

The *Freedom of Information and Protection of Privacy* legislation allows the public to access government information. Imaged records are subject to this legislation and processes need to be established to enable the disclosure and correction of information. This legislation also requires the protection of personnel information. Access to this information must be restricted to the people who need it to perform a specific function.

### **5.0 Business Environment**

The Records Schedules need to be considered in terms of business agreements with other organizations. Also, business requirements need to be assessed when planning imaging projects and when reviewing existing Records Schedules.

It is important to determine if there are reasons to maintain the paper source records, such as for archival purposes. The records scheduling process has included an archival appraisal since 1995/1996. The appraisal can be used as a tool for determining the records retention needs and final disposition of the records in question. Older Records Schedules do not have an archival appraisal. When amending Records Schedules to incorporate the imaging process or creating a new Records Schedule, the archival appraisal will be of great value and will help to determine if source records should be kept for archival purposes.

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<sup>4</sup> Disposition of Source Records Project, Analysis completed by Clark Dalton, Q.C. (2008)

## 6.0 Using ARDA to Dispose of Administrative Source Records

An amendment to the ARDA (Administrative Records Disposition Authority) was approved that enables ministries to dispose of their administrative source records after the records are imaged, providing that appropriate business practices are in place.

Within the Government of Alberta, ministries with approval to use ARDA may use the source records series for disposition of administrative records that have been imaged. However, as part of any imaging project or operation, ministries should establish and document practices that will demonstrate that the master sets of imaged records will be reliable through time.

### **Business Program Specifications**

#### 7.0 Business Program Source Records

ARDA **can not** be used to dispose of program (or operational) source records. Ministries that have implemented imaging processes must amend the related program-specific Records Schedules to include the disposition of the source records. Ministries could also create a new Records Schedule for the complete set of program records if one does not already exist.

The retention and final disposition of each series of program source records should be evaluated separately. Legislation, policies or business requirements may require source records be kept for a longer period of time, e.g. original signatures on a paper document may be required for legal purposes. Also, preservation considerations may require the source records be kept long term. A risk assessment may be needed to determine the risk of litigation or similar uses.

#### 8.0 Business Area Imaging Program

Any electronic records, including imaged records, could be required as evidence in court cases and other types of proceedings. To increase the likelihood that such records will be admissible and credible, the Canadian e-evidence standard specifies in broad terms the policies, procedures and documentation that organizations need for establishing the integrity and authenticity of their recorded information.

Ministries should implement quality management practices for imaged and other electronic records even if they are seldom involved in legal proceedings. Quality management practices may include:

- a Records Management Program officially authorized by senior management;



- procedures to assure that in-house and third-party imaging processes follow de facto industry imaging standards<sup>5</sup>;
- quality control procedures to validate imaged records prior to destruction of the source records;
- an Electronic Records Management System (ERMS) to manage electronic records in one or more secure repositories;
- a Records Management System (RMS) procedures manual that documents the authority of the program, and the authorized policies and procedures for the creation, capture, receipt, identification, management and protection of records through their lifecycle; and
- an audit procedure to validate the reliability of the electronic records management system and the records and metadata stored in the repository(ies).

Service Alberta has developed a standard to support the imaging program. See section 3.0 Standards.

## 9.0 Scheduling Business Program Source Records

The existing Records Schedules will need to be amended to include the imaging process and a new item for source records. Each item on the Records Schedule should be evaluated separately to determine if there are legislation, policy or business requirements that require the source records to be kept for a longer period of time. If a Records Schedule does not exist for the program, a new one will need to be developed and will include an item for source records.

### 9.1 Records Schedule Amendment

Amendments to program Records Schedules for an imaging program will be similar for all programs. A standard process and wording is recommended for ministries to use when amending Records Schedules for the imaging records. This standard approach identifies the scheduling requirements and will help ministries in completing their Records Schedule amendments. It will also assist the ARMC in reviewing and approving the Records Schedule amendments.

Each item on an approved Records Schedule that is part of the imaging program will need to be amended. Also, a new item will need to be added to the Records Schedule for the source records. It is not necessary to create sub-items for each item that is being imaged as was done for ARDA.

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<sup>5</sup> Digitization Process Standard, September 2010, Service Alberta, Records and Information Management Branch

The initial Reason for Amendment on the first page of the Records Schedule should be:

Records Series on this schedule are being electronically imaged. Media changes for these items and a new item for the disposition of source documents are required. This amendment is required so that imaged paper records can be dispositioned. New schedules will be developed following the functional model. This schedule will be cancelled once the replacement schedule is approved.

The items of the Records Schedule will need to be reviewed to determine if they are part of the imaging program. In most cases, the media will need to change to reflect the electronic master. It is recommended that paper and any other media types like photographs, maps, blue prints, etc remain as a media type as well. Ministries may be imaging on a day forward basis and will still need to dispose of older paper records. Also, if paper records are found that are ready for final disposition, the ministry will be able to dispose of the paper version rather than having to image the records.

Because some schedules are quite old, it is recommended that, at a minimum, the items being amended for the imaging program also be updated to meet the current ARMC scheduling standards. In some cases, the item description may need to be enhanced to provide context to the records series. [ARMC Circular 2016-003](#) documents the current ARMC scheduling standards.

Item amendment requirements are documented in the table below.

Item Field	Recommended Value
Description	<p>Add to existing item description: <i>All media types are included because some versions may not be imaged and disposition will need to occur for these records.</i></p> <p>NOTE 1: There may be a legislative requirement to keep the paper version of the record.</p> <p>NOTE 2: The existing item description may need to be updated if it is not adequate.</p>
Media	Paper and Electronic
Legal Reference	If specified, quote section of the legislation that requires paper version to be kept.
Final Disposition	<p>Archives or Destroy</p> <p>NOTE: For final dispositions of Selective Retention, Specimen or Review, an archival appraisal is required.</p>
Reason for Amendment	<i>These records are now being electronically imaged. The source documents are scheduled under item xx of this schedule. (Include any other changes that were done to this item.) xx = new item number for Source Documents.</i>

A new item will need to be added to the Records Schedule for the source records. The recommended wording is as follows:

Item Field	Recommended Value
Title	Source Documents
Description	<p>Includes the source documents that have been successfully captured:</p> <ul style="list-style-type: none"> <li>electronically by scanning or imaging into an electronic records management repository, and/or</li> <li>scanned and stored on microfilm, microfiche or aperture cards (microform).</li> </ul> <p>The process used to scan, image and microfilm source records comply with an applicable standard as determined through a business risk assessment. Adherence to a standard is determined by the level of risk associated with the records series being scanned. The application of a specific standard (no standard, GoA Standard and or/ CAN/CGSB-72.11-93) is implemented prior to commencement of scanning activities. A pre-determined ratio of scanned/imaged documents will be verified against the original source documents as part of the required quality assurance procedures under the selected standard, to ensure that the image quality and scanning process are correct. The verified electronic or microform image is designated the master version and the original source document constitutes a copy. All processes, including creation, capture, receipt, identification, management and protection of records through their life cycle have been documented in a procedures manual as required by the selected standard.</p> <p>If applicable, the requirements under the Canadian e-evidence standard CAN/CGSB-72.11-93 have been implemented to ensure the legal admissibility of records in court.</p> <p>This item applies to source records for items xx, xx and xx.</p>
Date Range	As required (Day forward or start date of existing records that were imaged)
Media	Paper, Microfilm and Electronic
Closure Criteria	After verification of image
On-site Retention* <sup>1</sup>	30 Days
Off-site Retention* <sup>1</sup>	0 Days
Final Disposition* <sup>2</sup>	Destroy
Concurrence Condition* <sup>3</sup>	Providing no outstanding litigation or litigation that is reasonably anticipated and providing no outstanding FOIP requests
Reason for Amendment* <sup>4</sup>	New item to enable the disposition of source documents for items xx, xx and xx after they have been imaged.

\*<sup>1</sup> On-site and Off-site Retention will have to be evaluated to determine if there is a business need to keep the source documents longer than 30 Days.

\*<sup>2</sup> Final Disposition may have a value of Archives if the Provincial Archives of Alberta appraises the source records as having archival value.

\*<sup>3</sup> Concurrence Condition will be blank when the Final Disposition is Archives.

\*<sup>4</sup> In the Reason for Amendment include the items numbers that are impacted by this item.

Depending on the nature of the records series, it is advisable to obtain a legal opinion regarding the disposition of the source records. Some ministries may have legislation that specifically states that the paper records must be kept for a certain period of time. The legal opinion will also help to establish if the *Electronic Transaction Act* enables the destruction of the source records.

Appendix B provides a sample Records Schedule which documents the amendment to include the imaging process.

## 9.2 Archival Appraisal for Records Schedule Amendments

A change to the Records Management Regulation in April 1995 added the archival appraisal requirement for each Records Schedule and major amendment submission to ARMC. This requirement will have an impact on the amendments made to address source records.

Records Schedules approved prior to April 1995 that are being amended will have to be appraised in their entirety.

For amendments to Records Schedules approved after April 1995, only items being amended will need to be appraised. This includes the new source documents item and any items being amended for imaging of source records that have a final disposition of Review, Selective Retention, Specimen or no final disposition. Other items on the Records Schedule that have a final disposition of Selective Retention and are not being amended, do not need to be appraised. These items will be included as part of the Provincial Archives regular Appraisal for Selection process.

## 9.3 Imaging Program Template

The CGSB *Microfilm and Electronic Images as Documentary Evidence Standard* (CAN/CGSB-72.11-93) (CGSB Standard) provides specific details for the creation and management of computer generated records including imaged or scanned electronic records. The requirements in the CGSB Standard have been extracted and documented in a template for ministries to use when implementing an imaging program. See Appendix C.

The Digitization Process Standard requires that a digitization program should be planned, authorized and documented before starting the digitization process. A guide for a Digitization Procedures manual is available from the Imaging Services Team. Contact information is available through the Service Catalogue (see: [Digitization](#)).

## Alberta Evidence Act - Electronic Records – Annotation

### Definitions

41.1 In this section and sections 41.2 to 41.8,

(a) “electronic record” means information that  
(i) is recorded or stored on any medium in or by a computer system or other similar device, and  
(ii) can be read or perceived by a person or a computer system or other similar device,

and includes a display, printout or other output of that information, other than a printout referred to in section 41.4(3);

(b) “electronic records system” includes the computer system or other similar device by or in which information is recorded or stored, and any procedures related to the recording and storage of electronic records.

2001 cE-5.5 s33

*Comment: The definition of "electronic record" fixes the scope of the Electronic Evidence part of the Alberta Evidence Act. The record is the data. The record may be on any medium. It is "electronic" because it is recorded or preserved in or by a computer system or similar device. The Section is intended to apply, for example, to data on magnetic strips on cards or in smart cards.*

*As drafted, it would not apply to telexes or faxes (except computer-generated faxes). It would also not apply to regular digital telephone conversations, since the information is not recorded, but only transmitted by or in a computer system or similar device. However, it would apply to voice mail, since the information has been recorded or preserved in or by a computer system. Likewise video recordings are not covered, though when the video is transferred to a Web site it would be, as the recording or preservation has been accomplished in or by a computer system. Information recorded on paper by means of a typewriter would be a paper record and is not caught by the definition of "electronic record", but once that paper record is captured by electronic imaging technology, then the imaged form would constitute an electronic record.*

*Not all data in "digital" form, then, is covered. A computer or similar device has to be involved in recording or preserving the data,*

*It is to be noted that paper records that are produced directly by a computer system, such as printouts, are themselves electronic records, being just the means of intelligible display of the contents of the record. Photocopies of the printout would be paper records subject to the usual rules about copies, but the "original" printout would be subject to the rules of admissibility of this Section.*

*The system that produced an electronic record will often include procedures for how all records, or electronic records, are to be created and stored, including access controls, security features, verification rules, and retention or destruction schedules. The Section makes the reliability of the record-keeping system relevant to proving the integrity of a particular record.*

*An electronic record is not part of the system that produced it. Section 41.4 provides that the integrity of a record can be proved by proving the integrity of the system that produced it. If the system included the record itself, section 41.4 would not work.*

### Application

41.2(1) Sections 41.3 to 41.8 do not modify any common law or statutory rule relating to the admissibility of records, except the rules relating to authentication and best evidence.

(2) A court may have regard to evidence adduced under sections 41.3 to 41.8 in applying any common law or statutory rule relating to the admissibility of records.

2001 cE-5.5 s33

*Comment: It is not necessary to change the law of hearsay in order to ensure the proper admission of electronic records. The admission of any record may depend on hearsay rules such as the business records rule or the bank records rule. This section does not change those rules.*

*Likewise recorded evidence may be subject to many other rules, about privilege, about competence, about notice, about documents found in the possession of an accused person, that are not affected by this Section.*

*The Section is intended to affect existing law on authentication and best evidence, however, as noted in the Comments to sections 41.3 and 41.4.*

#### Authentication

41.3 A person seeking to introduce an electronic record as evidence has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic record is what the person claims it to be.

2001 cE-5.5 s33

*Comment: Section 41.3 codifies the common law rule on authentication which applies equally to paper records. This formulation follows what is set out in the "Proposed Canada Evidence Act", the Uniform Evidence Act and the U.S. Federal Rules of Evidence. It is also the common law position as stated by the Supreme Court of Canada in U.S.A. v. Shephard (1976), 30 C.C.C. (2d) 424, per Ritchie J. for the majority of the Court. The proponent needs only to bring evidence that the record is what the proponent claims it is (e.g., "this record is an invoice"). This evidence is usually given orally and is subject to attack, like any other.*

*The Section does not open an electronic record to attacks on its integrity or reliability at this stage. That question is reserved for the new "best evidence" rule. Logically the question of integrity could be included in authentication, but it was recommended by the Uniform Law Conference that the question be dealt with only once.*

#### Application of the best evidence rule

41.4(1) Subject to subsection (3), where the best evidence rule is applicable in respect of an electronic record, it is satisfied on proof of the integrity of the electronic records system.

(2) The integrity of an electronic record may be proved by evidence of the integrity of the electronic records system by or in which the information was recorded or stored, or by evidence that reliable encryption techniques were used to support the integrity of the electronic record.

(3) An electronic record in the form of a printout that has been manifestly or consistently acted on, relied on or used as the record of the information recorded or stored on the printout is the record for the purposes of the best evidence rule.

2001 cE-5.5 s33

**Comment:** *The best evidence rule generally requires that the proponent of a record should produce the original record or the closest thing available to an original. The notion of "original" is not easily applicable to many electronic records. The Section therefore dispenses with the need for an original, by substituting another way of serving the purpose of the rule.*

*The purpose of the best evidence rule is to help ensure the integrity of the record, since alterations are more likely to be detectable on the original. The Section provides a different way to test the integrity of the record: evidence of the reliability of the system that produced the record. It will usually be impossible to provide direct evidence of the integrity of the individual record to be admitted. System reliability is a substitute for record reliability.*

*The Section does not say expressly that the proponent of an electronic record does not have to produce an original, but the displacement of the usual best evidence rule will have that effect.*

*Even if there is an original of an electronic record, as in the case of an electronic image of a paper document, the Section does not require the production of the paper. Nor does it require that the original have been destroyed before the electronic image becomes admissible. The Section sets up a rule for admitting electronic records. Records retention policies, for paper or electronic records, are beyond its scope, and should not be determined by the law of evidence in any event. Someone who destroys paper originals in the ordinary course of business, ideally in accordance with a rational schedule, should not be prejudiced in using reliable electronic versions of those records.*

#### Presumption of integrity

41.5 For the purposes of section 41.4(1), in the absence of evidence to the contrary, the integrity of the electronic records system in which an electronic record is recorded or stored is proved

(a) by evidence that supports a finding that at all material times the computer system or other similar device was operating properly or, if it was not, the fact of its not operating properly did not affect the integrity of the electronic record, and there are no other reasonable grounds to doubt the integrity of the electronic records system,

(b) if it is established that the electronic record was recorded or stored by a party to the proceedings who is adverse in interest to the party seeking to introduce it, or

(c) if it is established that the electronic record was recorded or stored in the usual and ordinary course of business by a person who is not a party to the proceedings and who did not record or store it under the control of the party seeking to introduce it.

2001 cE-5.5 s33

**Comment:** *This section sets out a presumption of integrity of the system, to satisfy the requirement of section 41.4. The presumption is based on evidence that includes both the computer system that produced the record and the record-keeping system in which it operates. Both are needed to show reliability.*

*This does not mean that a simple computer record needs the support of a sophisticated record-keeping system in order to be admissible. The results of consultation on this point supported a fairly simple test of integrity at this stage. The integrity of most electronic records is not disputed; they are admitted in evidence routinely. This Section does not intend to make the process more difficult, or to provide grounds for frivolous but possibly expensive attacks on otherwise acceptable records. It does intend to point out the basic criteria on which integrity of an electronic record can be judged.*

*This presumptive evidence of reliability may be brought by anyone and about anyone's records. It is not limited to the proponent of a particular record. So for example if one wanted to introduce a third party's record, but that record was not produced in the ordinary course of business and thus could not benefit from the presumption in section 41.6, one could lead evidence of the system where that record was recorded or preserved, to create the presumption in section 41.5.*

*This section deals with an electronic record obtained from another party in the proceedings, or from someone who is not a party. The record is presumed reliable. If it is not reliable, then the other person has the opportunity to show the unreliability and rebut the presumption, since that person knows his or her or its own record-keeping system better than anyone else.*

*This section creates a presumption of reliability of business records of non-parties to the proceeding. It serves the purpose of the "bank record" provision of the Alberta Evidence Act, section 41. This provision works with section 41.2, which preserves the hearsay aspect of bank record rule. This section supports the reliability of the electronic bank record system.*

*The purpose of the rule is to ensure the admissibility of electronic records from non-parties whose record-keeping systems are not susceptible to ready proof as part of the proceeding.*

*The concept of business records here is intended to apply broadly to enterprise records of organizations not devoted to making a profit, such as governments or not-for-profit organizations.*

## Standards

41.6 For the purpose of determining under any rule of law whether an electronic record is admissible, evidence may be presented in respect of any standard, procedure, usage or practice on how electronic records are to be recorded or stored, having regard to the type of business or endeavour that used, recorded or stored the electronic record and the nature and purpose of the electronic record.

2001 cE-5.5 s33

***Comment:** The Section makes the court, or other tribunal, using the statutory rule, consider the reliability of the record-keeping system, either on the creation of the presumption or on its merits, if the presumptions in sections 41.4 through 41.6 are rebutted. In either case, this section makes relevant the adherence of that system to recognized standards for the kind of record and the kind of business in question. For example, records managers in some industries have established procedures or rules about how their kinds of records are to be handled. The Canadian General Standards Board has adopted a national standard on Electronic Imaging and Microfilm as Documentary Evidence. International bodies such as ISO are also producing relevant standards.*

*This Section does not make compliance with such standards obligatory to get electronic records admitted, but it makes them relevant to the question of admissibility. Records managers seeking to create systems that will produce records that can be admitted in evidence may take some comfort in that rule.*

*The language of the section does not require that the standards be external to the person whose records are in issue. One could show compliance (or not) with one's own standards. Whether this would be as effective as complying with more broadly based standards is a practical question left to the records managers of the proponent of the evidence.*

## Proof by affidavit



41.7 The matters referred to in sections 41.4(3), 41.5 and 41.6 may be established by an affidavit given to the best of the deponent's knowledge or belief.

2001 cE-5.5 s33

*Comment:* This section allows the evidence to support the presumptions in sections 41.5 and 41.6 to be put in by affidavit instead of by oral evidence. The person making the affidavit may not know personally every aspect of the record-keeping system, but if the person informs himself or herself of the relevant information, then the affidavit will be acceptable.

#### Cross-examination

41.8(1) A deponent of an affidavit referred to in section 41.7 that has been introduced in evidence may be cross-examined as of right by a party to the proceedings who is adverse in interest to the party who introduced the affidavit or caused the affidavit to be introduced.

(2) Any party to the proceedings may, with leave of the court, cross-examine a person referred to in section 41.5(c).

2001 cE-5.5 s33

*Comment:* Cross-examination on the affidavit may expose relevant gaps in the information. If doubt is cast on the reliability of the affidavit, then the person presenting the electronic record may have to provide more detailed support of the record-keeping system.

Example

Alberta Records Management Committee

## Records Retention and Disposition Schedule

<b>Organization Name</b> Energy	<b>Org Code</b> EG	Schedule Number/Status <b>1993/041-A001</b> Preliminary Draft
<b>Program/Service Name:</b> The Crown's mineral rights		

### SCHEDULE ADMINISTRATION

<b>Type:</b> Continuing Schedule	<b>Organization Chart:</b> <b>External Documents:</b> <b>Comments:</b> Y								
<b>Related Schedule(s):</b>									
<b>Cancel/Replaces Schedule(s):</b>									
<b>Amendment History</b> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Number</th> <th style="text-align: left;">Amendment to</th> <th style="text-align: left;">Date Approved</th> <th style="text-align: left;">Item(s)</th> </tr> </thead> <tbody> <tr> <td>A001(Major)</td> <td>1993/041</td> <td></td> <td>1, 2, 6</td> </tr> </tbody> </table> <p><b>Reason for Amendment:</b> Records Series on this schedule are being electronically imaged. Media changes for these items and a new item for the disposition of source documents are required. This amendment is required so that imaged paper records can be disposed of. New schedules will be developed following the functional model. This schedule will be cancelled once the replacement schedule is approved.</p>		Number	Amendment to	Date Approved	Item(s)	A001(Major)	1993/041		1, 2, 6
Number	Amendment to	Date Approved	Item(s)						
A001(Major)	1993/041		1, 2, 6						
<b>Schedule Transfer History</b> ----- None -----									
<b>Schedule Cancellation History</b> ----- None -----									

### PROGRAM/SERVICE INFORMATION

<p><b><u>Purpose/Function</u></b> Mineral Resources Division manages the Crown's mineral rights covering petroleum and natural gas, coal, oil sands, industrial and metallic mineral, placer minerals and salt. It ensures that non-renewable resources exploration and development are encouraged where they are in the public interest. It also handles the sale of available mineral rights and administers existing mineral agreements which have been leased for a specific period of time.</p>
<p><b><u>Brief History</u></b> (DISCLAIMER clause is removed.)</p>
<p><b><u>Mandate/Legal Authority</u></b> (Add Acts)</p>

### OPINIONS

<p><b>Opinion</b> (Include a legal opinion from your legal people.)</p>
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## SCHEDULE ITEMS

### 1 \* Production Allocation Unit Agreement

Resource Land Access unit advocates and negotiates for reasonable access to the leasing of mineral rights on behalf of all Albertans who benefit from resource extraction. In specialized areas such as ownership of minerals we act as a window of information for citizens. The Unit supports processes that ensure fair and timely access to develop resources while at that same time understanding the significant issues associated with access to resources located in environmentally sensitive areas.

All media types are included because some versions may not be imaged and disposition will need to occur for these records. There may also be a legislative requirement to keep the paper version of the record. Records series includes correspondence such as memos, maps, legal documents, etc. relating to Production Allocation Unit Agreement.

**Date Range:** 1991 to Date

**Media:** Paper Microfilm Electronic  
**Other:**

**Legal Reference:** *(If specified, quote section of the legislation that requires paper version to be kept.)*

**FOIP Ref :**

<b>Closure Criteria:</b> After closure due to termination	<b>Retention On-site:</b> 0 Year(s)	<b>Retention Off-site:</b> 2 Year(s)
<b>Concurrence Conditions:</b>	<b>Final Disposition:</b> Archives	

**Reason for Amendment A001:** These records are now being electronically imaged. The source documents are scheduled under item 6 of this schedule. Item Description has been enhanced.

### 2 \* Production Allocation Application

Resource Land Access unit advocates and negotiates for reasonable access to the leasing of mineral rights on behalf of all Albertans who benefit from resource extraction. In specialized areas such as ownership of minerals we act as a window of information for citizens. The Unit supports processes that ensure fair and timely access to develop resources while at that same time understanding the significant issues associated with access to resources located in environmentally sensitive areas.

All media types are included because some versions may not be imaged and disposition will need to occur for these records. There may also be a legislative requirement to keep the paper version of the record.

The Production Allocation Agreement identifies the criteria for land use. This records series contains the agreement and correspondence relating to a proposed Production Allocation Agreement.

**Date Range:** 1991 to Date

**Media:** Paper Microfilm Electronic  
**Other:**

**Legal Reference:** *(If specified, quote section of the legislation that requires paper version to be kept.)*

**FOIP Ref :**

<b>Closure Criteria:</b> After termination of the agreement	<b>Retention On-site:</b> 0 Year(s)	<b>Retention Off-site:</b> 0 Year(s)
<b>Concurrence Conditions:</b> Providing no outstanding litigation or litigation that is reasonably anticipated and providing no outstanding FOIP requests	<b>Final Disposition:</b> Destroy	

**Reason for Amendment A001:** These records are now being electronically imaged. The source documents are scheduled under item 6 of this schedule. Item Description has been enhanced

### 3\* Unit Agreement (UNT)

Resource Land Access unit advocates and negotiates for reasonable access to the leasing of mineral rights on behalf of all Albertans who benefit from resource extraction. Background information is developed that will support the final agreement.

This item includes general correspondence such as memos, maps, applications, amendments, transfers, etc. relating to the Unit Agreement.

**Date Range:** 1945 to Date

**Media:** Paper Microfilm Electronic

**Other:** Maps, photographs, blueprints

**Legal Reference:**

**FOIP Ref :**

<b>Closure Criteria:</b> after closure due to termination	<b>Retention On-site:</b> 0 Year(s)	<b>Retention Off-site:</b> 2 Year(s)
<b>Concurrence Conditions:</b>	<b>Final Disposition:</b> Archives	

**Reason for Amendment A001:** These records are now being electronically imaged. The source documents are scheduled under item 7 of this schedule. Item description has been updated.

### 4 Unit Document (UND)

- includes legal documents pertaining to the Unit Agreement (*Correct typing mistakes*)

**Date Range:** 1945 to Date

**Media:** Paper

**Other:**

**Legal Reference:**

**FOIP Ref :**

<b>Closure Criteria:</b> after closure due to termination	<b>Retention On-site:</b> 0 Year(s)	<b>Retention Off-site:</b> 2 Year(s)
<b>Concurrence Conditions:</b>	<b>Final Disposition:</b> Archives	

### 5 Unit Agreement Application

- includes correspondence relating to a proposed Unit Agreement.

**Date Range:** 1945 to Date

**Media:** Paper

**Other:**

**Legal Reference:**

**FOIP Ref :**

<b>Closure Criteria:</b> after closure	<b>Retention On-site:</b> 0 Year(s)	<b>Retention Off-site:</b> 0 Year(s)
<b>Concurrence Conditions:</b> Providing no outstanding litigation or litigation that is reasonably anticipated and providing no outstanding FOIP requests	<b>Final Disposition:</b> Destroy	

### 6 \* Source Documents

Includes the source documents that have been successfully captured:

- electronically by scanning or imaging into an electronic records management repository, and/or
- scanned and stored on microfilm, microfiche or aperture cards (microform).

The process used to scan, image and microfilm source records comply with an applicable standard as determined through a business risk assessment. Adherence to a standard is determined by the level of risk associated with the records series being scanned. The application of a specific standard (no standard, GoA Standard and or/ CAN/CGSB-72.11-93) is implemented prior to commencement of scanning activities. A

pre-determined ratio of scanned/imaged documents will be verified against the original source documents as part of the required quality assurance procedures under the selected standard, to ensure that the image quality and scanning process are correct. The verified electronic or microform image is designated the master version and the original source document constitutes a copy. All processes, including creation, capture, receipt, identification, management and protection of records through their life cycle have been documented in a procedures manual as required by the selected standard.

If applicable, the requirements under the Canadian e-evidence standard CAN/CGSB-72.11-93 have been implemented to ensure the legal admissibility of records in court.

This item applies to source documents from items 1 and 2.

**Date Range:** 1990 to date

**Media:** Paper Microfilm Electronic

**Other:**

**Legal Reference:**

**FOIP Ref :**

<b>Closure Criteria:</b> After verification of image	<b>Retention On-site:</b> 30 Day(s)	<b>Retention Off-site:</b> 0 Day(s)
<b>Concurrence Conditions:</b> Providing no outstanding litigation or litigation that is reasonably anticipated and providing no outstanding FOIP requests	<b>Final Disposition:</b> Destroy	

**Items to be cancelled:**

None

**Reason for Amendment A001:** New item to enable the disposition of source documents from items 1 and 2 after they have been imaged

## 7 \* Source Documents – Archive Value

Includes the source documents that have been successfully captured:

- electronically by scanning or imaging into an electronic records management repository, and/or
- scanned and stored on microfilm, microfiche or aperture cards (microform).

The process used to scan, image and microfilm source records comply with an applicable standard as determined through a business risk assessment. Adherence to a standard is determined by the level of risk associated with the records series being scanned. The application of a specific standard (no standard, GoA Standard and or/ CAN/CGSB-72.11-93) is implemented prior to commencement of scanning activities. A pre-determined ratio of scanned/imaged documents will be verified against the original source documents as part of the required quality assurance procedures under the selected standard, to ensure that the image quality and scanning process are correct. The verified electronic or microform image is designated the master version and the original source document constitutes a copy. All processes, including creation, capture, receipt, identification, management and protection of records through their life cycle have been documented in a procedures manual as required by the selected standard.

If applicable, the requirements under the Canadian e-evidence standard CAN/CGSB-72.11-93 have been implemented to ensure the legal admissibility of records in court.

This item applies to source records for item 3.

**Date Range:** 1945 to date

**Media:** Paper

**Other:** Maps, photographs, blueprints

**Legal Reference:**

**FOIP Ref :**

<b>Closure Criteria:</b> After verification of image	<b>Retention On-site:</b> 30 Day(s)	<b>Retention Off-site:</b> 0 Day(s)
<b>Concurrence Conditions:</b>	<b>Final Disposition:</b> Archives	

**Items to be cancelled:** None

**Reason for Amendment A001:** New item to enable the disposition of source documents from item 3 after they have been imaged.

### Imaging Program Checklist - Ministry Program

The objective of this guideline is to establish an environment which, if applied correctly, will help to ensure electronic records will be admissible in legal proceedings.

#### Imaging and Source Documents General Information

A source record is defined as “a record containing information or data entered into an information system primarily designed to assist an organization in managing its recorded information concerning its record-keeping practices from inception to disposition of records. This information system includes a means to demonstrate that procedures are in place to maintain the integrity and the authenticity of electronic records”.

Project Name:	
Ministry/Branch:	
Contact Individual:	
Senior Records Officer:	
Service Provider(s):	
Description of Program or Function with Imaging and Source Documents:	
Records Retention and Disposition Schedule(s):	
Comments:	

**Records Management System Program Procedures Manual (Procedures Manual) Checklist**

This is the main piece of evidence that will determine the admissibility of electronic records in legal proceedings. The policies and procedures documented in the Procedures Manual provide proof that the records management system program is followed and that the system's integrity is being maintained.

Does the Procedures Manual:

<u>Yes or No</u>	<u>Detailed item</u>
	Senior Management's role in authorizing the records management program and system.
	The Senior Records Officer is identified as the individual authorized to act on behalf of the organization and is responsible for the records management program.
	Senior Records Officer's authority and responsibilities for the records management program and system.
	Senior Records Office's mandate for the creation and maintenance of the Procedures Manual and ensure it is up-to-date.
	Records management system reliably captures, stores and processes e-records.
	Records management system complies with the Procedures Manual and standards to produce reliable records.
	Usual and ordinary course of business and system integrity to support the integrity of the record.
	The Procedures Manual should cover all aspects of the program including creation, capture, receipt, registration, management, migration, retention, protection and disposition of electronic records.
	The Procedures Manual is followed and is kept up to date.
	The Procedures Manual should be reviewed on a regular basis to verify compliance. Updates should be made to incorporate changes in procedures and technology.
	The quality assurance program is documented in the Procedures Manual and is followed.
	As technology changes, the quality assurance program is updated.
Comments:	





**Records Management System Program Requirements  
Checklist**

The records management system program creates the framework to ensure the program supports the legal requirements for admissibility of electronic records.

The following activities should be documented and certified that they are being carried out:

<u>Yes or No</u>	<u>Details on the Ministry's Records Management Program</u>
	Establishing the records management system program including senior management's authorization.
	Identifying and documenting the responsibility of the Senior Records Officer.
	Identifying and documenting the use of service providers to delivery all or portions of the program.
	Implementing a records management system to manage the electronic records and electronic images throughout its lifecycle.
	Defining the policies and procedures that indicate:
	- Roles and responsibilities
	- Technical environment
	- Metadata and security requirements
	- Retention and Disposition requirements
	Implementing strategies to ensure when hardware or software changes, the integrity of the information will be maintained during conversion.
	Implementing information security to protect personal information and restrict access to confidential information such as privileged information, trade secrets and other confidential information.
	Implementing a secure audit trail that cannot be modified and includes system and operator generated logs. Significant events that occurred in the records management system <sup>6</sup> will be captured and preserved. These include:
	- system function used to create the electronic records;
	- unique identifiers;
	- outcome;
	- name of individual carrying out the function; and
	- date and time of the event.

<sup>6</sup> CGSB Standard defines a significant event as: An event is any action performed on an electronic record such as capture, creation, assignments, software changes, metadata maintenance, changes to access authorizations, changes to retention and disposition, changes to classification and final disposition.

**Quality Assurance Program Requirements  
Checklist**

Verification of the records management system is an important step to ensure the system is accurate, reliable and trustworthy. Quality assurance procedures should check all components of the records management system and should be developed for both production scanning operations and ad hoc desktop scanning activities.

Does the quality checks include:

<u>Yes or No</u>	<u>Details on the Ministry's Quality Assurance Program</u>
	Establish and document the image quality control criteria such as:
	- Orientation, alignment of image, size of image, resolution and file format.
	- Image mode (colour, grayscale), bit depth, contrast, hue and sharpness.
	- Details on highlights and shadows, tonal values, noise, missing lines or pixels.
	- Text legibility.
	Method for image verification:
	- Random sampling and verification.
	- Detailed point-by-point inspection and verification.
	Quality control should be performed at predetermined points within the operations or at periodic intervals.
	Periodic confirmation reviews should be conducted through an independent audit to verify compliance.
Comments:	

**Legal Requirements  
Checklist**

The laws of evidence allow for electronic records including electronic images to stand in place of the original or copies of paper source records. In order to support the electronic records as evidence, the ministry must be able to prove the records meet the standards derived from these three rules.

<b><u>Rule</u></b>	<b><u>Detailed Rule Description</u></b>
Authorship Rule:	Proof of the authenticity of the electronic records, i.e. the electronic record actually comes from a particular author or organization and is what it purports to be.
Comments:	
Best evidence rule:	Proof of the integrity of the records management system in which the electronic record was recorded and stored, i.e. the computer system was operating correctly and the electronic record was stored properly. Senior management's role is to establish and declare the records management system as part of the usual and ordinary course of business. They also must state that records will be created and that the organization is always prepared to produce its records as evidence.
Comments:	
Hearsay rule:	Proof that the electronic record is made in the "usual and ordinary course of business", i.e. the creation of the electronic records is part of the normal business process. Authorization of the records management program by senior management will make the program part of the usual and ordinary course of business.
Comments:	
Electronic Discovery	When litigation is reasonably anticipated, reasonable and good faith steps must be taken to preserve potentially relevant electronically stored information. Should be an accommodation in the process for the identification, preservation, collection, review and production of electronically stored information that is reasonably accessible.  In some cases the production of such meta data records is material where such matters as the identity of the author of electronic records, the timing of the treatment of those records, including when they were modified, tracking of the records etc. may be at the core of the issues raised in the litigation.
Comments:	

**Freedom of Information and Protection of Privacy (FOIP)  
Checklist**

*A right of access to records.* The first purpose is to establish a right of access by any person to records in the custody or under the control of a public body, subject to limited and specific exceptions, which are set out in the Act. This right of access is the cornerstone of openness and accountability of public bodies and should be taken into account when making any decision about disclosing records in response to a FOIP request.

<u>Yes or No</u>	<u>Details on the FOIP Considerations</u>
	Are the imaged records subject to FOIP?
	Established controls over the collection, use and disclosure of personal information.
	Able to perform correction of personal information as is required
	Assure accuracy and completeness of personal information and retention for one year after using it
	Apply retention standards
	Assure proper disclosures of personal information
	Disclosing in accordance with Part 1 of the FOIP Act
	Ensure protection of personal information against unauthorized collection, use, disclosure or destruction
	Ensure that there are redaction capabilities for information that can be reasonably severed from a record
	PIA Completed
Comments:	

Assessment Report completed by:

Representative	Name	Signature
Legal		
Imaging		
RM/IM		
FOIP		
IT		
Others:		

