

# EMC SourceOne and the U.S. Federal Rules of Civil Procedure

## Get your house in order to comply with the Federal Rules of Civil Procedure

### The Big Picture

- Prepare your company for litigation and align with the Federal Rules of Civil Procedure (FRCP) amendments
- Respond quickly, accurately, and defensibly to electronic discovery requests
- Reduce eDiscovery costs through in-house, automated repeatable business processes
- Employ defensible eDiscovery identification and collection procedures
- Conduct early case assessments to determine case merit and legal strategies
- Implement a repeatable litigation hold process for e-mail and unmanaged data
- Conduct and enforce document retention, disposition, and remediation activities

In lawsuits and investigations, parties are allowed to conduct discovery to obtain information that could become evidence in the case. Traditionally, discovery of paper documents was a contained process handled by lawyers. However, the discovery of electronically stored information (ESI) can impact any source of information across the enterprise if it is potentially relevant to the case. Organizations need eDiscovery solutions that can identify and collect, preserve, analyze, and review potentially relevant ESI in an efficient and cost-effective manner.

### An overview of the Federal Rules of Civil Procedure

The U.S. Federal Rules of Civil Procedure (FRCP) specify that “electronically stored information” is a formal category of discoverable information. These rules require an early conference to discuss any issues relating to discoverable information, including an inventory of information sources. Additionally, the FRCP requires that litigants be prepared to collect and maintain discoverable data in its native format.

### Identification of sources

Prior to a request from a plaintiff, parties must either produce all relevant electronically stored information or provide a description and location of all such information (Rule 26(a)(1)(B)). A party also must provide a list of all sources that it is not searching due to inaccessibility (Rule 26(b)(2)(B)). Thus, parties must be armed, early in the litigation, with a comprehensive list of their sources of data in preparation for responding to these obligations.

### Protection from sanctions

Rule 37(f) provides a limited “safe harbor” from sanctions when a party has acted in good faith, but potentially relevant information is still deleted by “routine, good-faith operations.” This rule is meant to cover circumstances where information is disposed of as part of normal business practices, such as during the scheduled recycling of backup tapes, dynamic updates of databases, automatic overwriting of deleted information, and the automatic deletion of e-mail.

### Inaccessible data

A party does not have an initial obligation to produce electronic information that is “not reasonably accessible because of undue burden or cost,” but the party must identify the sources of data (see above) and be prepared to provide facts supporting the claim of undue burden or cost. Inaccessible sources might include backup tapes, “unintelligible” legacy data, deleted data, and nonstandard database output.

E-Discovery Amendments can be found on the website of the Administrative Office of the United States Courts. U.S. Courts, Federal Rulemaking:  
[www.uscourts.gov/rules/EDiscovery\\_w\\_Notes.pdf](http://www.uscourts.gov/rules/EDiscovery_w_Notes.pdf)

## Format of data

Rule 34(b) states that electronic information must be produced in the form in which it is ordinarily maintained or some other reasonably useable form. The requesting party may specify the form of production (for example, hard copy, .gif files, native format), and the responding party may object or specify the form in which it intends to produce data if the requesting party does not indicate a preference. This rule is designed to identify and efficiently resolve potential disputes before production occurs.

## Early conference

Parties are required to confer before the scheduling conference to discuss any issues relating to the preservation of discoverable information. This could become a battleground in some cases as the parties maneuver to maximize the amount of data that the other side must preserve—with the significant risk of facing spoliation sanctions if they do not and the court rules against them.

## How you can prepare for the FRCP

To prepare for litigation, organizations need to implement policy-driven information management, and establish consistent, defensible processes for retention, disposition, and litigation hold. The EMC® SourceOne™ family enforces these business policies and helps you adhere to the new rules by:

- Producing relevant information quickly, accurately, and defensibly, thereby improving litigation effectiveness
- Lowering legal costs through in-house, automated, repeatable eDiscovery processes
- Reducing the risk of spoliation (inadvertent deletion or alteration of content) through a proven litigation hold process
- Establishing the business value of ESI for easier identification, management, and retrieval, thereby improving IT efficiency and reducing costs

## Improving litigation effectiveness

Organizations can quickly identify and collect potentially responsive ESI, including e-mail and other unstructured content, by using a simple user interface to identify targeted sources of data and relevant search criteria.

## Lowering legal costs

By providing in-house, automated, repeatable eDiscovery processes, the EMC SourceOne family helps organizations eliminate expensive outsourcing costs and reduce the risk of discoverable data being outside corporate control. Deduplication culls down the result set produced. Investigators can search, sort, and filter items for relevance, review, and tagging.

## Reducing the risk of spoliation

EMC SourceOne eDiscovery products and solutions are defined and built in the context of the Electronic Discovery Reference Model (EDRM). EMC uses a proven litigation hold process for e-mail and unmanaged data, including audit trails to demonstrate chain-of-custody.

## Improving IT efficiency and reducing costs

EMC SourceOne establishes the business value of ESI for easier identification, management, and retrieval. Customers can conduct and enforce retention, disposition, and remediation activities on content “in the wild”—eliminating over-collection and retention of unneeded information.



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### Take the next step

To find out more about how EMC can help your organization manage content to align with the Federal Rules of Civil Procedure and assess litigation readiness for all your eCommunications, visit [www.EMC.com](http://www.EMC.com) or call 800.607.9546 (outside the U.S.: +1.925.600.5802).