

U.S. Food and Drug Administration Social Media Policy

November 2015

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Purpose

This policy discusses the use of social media at the FDA regarding communicating to the general public via third-party platforms. It explains roles and responsibilities, requirements regarding establishing an account or a presence within social media as well as considerations to keep in mind when developing social media strategy and plans as a result of this policy.

Definition

Social media are web or mobile based third-party platforms that facilitate interaction and engagement among individuals in a network or virtual community. Social media offers a participatory environment and includes user-generated content such as videos, photos, videos, microblogs, blogs, and wikis.

Scope and Applicability

Federal agencies utilize social media platforms to engage with the public and to extend the reach of messages beyond traditional email notifications and websites. It is vital that a policy be created and implemented to ensure the Agency is appropriately represented in this space. The FDA encourages the use of social media technologies to enhance communication, collaboration, and information exchange in support of FDA's mission to protect and promote public health. This policy applies to FDA employees, contractors, and other personnel acting in an official capacity when using social media to communicate with the public regarding FDA-related matters:

- Using accounts that the FDA maintains on third-party platforms (e.g., Facebook, Twitter) or,
- In forums or blogs where FDA does not have an official presence (e.g. replying to comments in a blog post where FDA was a guest blogger)

(For discussion on the personal use of social media, please see "Personal Use of Social Media by FDA Employees and Contractors" on page 4). FDA-related matters are topics or issues that relate to (1) data or information only available to the social-media user through his or her employment at FDA, (2) products within FDA's jurisdiction, (3) analyses of FDA programs, policies, regulations, actions or initiatives, or (4) positions or opinions that could reasonably be perceived to reflect FDA's view on issues within its jurisdiction. This policy does not supersede or replace existing legal obligations in effect.

Roles and Responsibilities

The Office of External Affairs (OEA) Web and Digital Media Staff and Office of Information Management and Technology (OIMT) are jointly responsible for ensuring that the FDA's use of social media complies with Federal laws, policies, and best practices.

Office of External Affairs:

- Develops the overall communications strategy and priorities for the Agency.

OEA Web & Digital Media Staff (OEA Web):

- Develops policy and procedures for social media use in consultation with OIMT.

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- Develops the social media strategy for OEA.
- Provides oversight for all social media activities in the Agency.
- Reviews/authorizes all social media channel/account requests for the Agency. Authorization is based on the request meeting Federal/FDA requirements and providing a social media strategy and social media plan.
- Reviews all Agency procurements and contracts, including Terms of Service (TOS) agreements, related to social media tools and services to ensure necessity and reduce duplication.
- Coordinates and manages the Agency's primary social media channels (currently Facebook, Flickr, YouTube, Twitter account @US_FDA, and Pinterest).
- Leads the monthly meeting of the FDA Social Media Working Group.
- Serves as the Agency liaison for social media to the Health and Human Services (HHS) Digital Communications Division and GSA Social Media Community of Practice.

Office of Information Management and Technology:

- Applies the requirements of this policy in its functions of providing appropriate Agency-wide web technology services and security, including technical assistance, to program offices.

Centers/Offices:

- Prior to initiating social media accounts or procurement actions and contracts, Centers/Offices meet with OEA Web.
- Develops the social media strategy for the Center/Office and ensures that it aligns with Agency priorities, their office or center communications strategy, and is coordinated with OEA Web. The strategy should include why social media is being used to meet the stated goals. The social media strategy must be submitted to OEA Web for review.
- Develops social media plan in order to most effectively implement and manage the Center/Office's social media presence including best practices, guidelines for consistency, how these mechanisms will support the goals outlined in the social media strategy.
- The social media plan must be submitted to OEA Web for review.
- Completes a privacy impact assessment and operates in compliance with HHS and the FDA's social media policies.
- Coordinates with and contributes content to OEA Web for posting on the FDA's Agency-wide social media channels (Facebook, Flickr, YouTube, @US_FDA, Pinterest).
- Assists with the dissemination of information on the FDA's social media policies, guidelines, and best practices within the Center/Office.
- Follows approved procedures for collecting and managing records associated with any social media accounts owned by the Center/Office.

Office of the Chief Counsel (OCC):

- Provides legal advice relating to the web and social media.

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Office of Operations, Division of Ethics and Integrity:

- Oversees ethics requirements for FDA employees, including requirements pertaining to the use of social media.

Office of Information Management (OIM), Records Management Staff:

- Oversees records management requirements for the FDA, including requirements pertaining to web records.

Personal Use of Social Media by FDA Employees and Contractors

FDA recognizes the right of employees to express their personal views via social media and encourages employees to use social media to share information that may benefit the public health, consistent with the following.

Principles, guidelines, and standards of conduct that apply to FDA employees in their official duties may apply to employee participation in social media, even in their personal capacity. For example, employees are bound by the Standards of Ethical Conduct for Employees of the Executive Branch, the conflict of interest statutes, the Hatch Act, 5 U.S.C. §§7321-7326,¹ and the *FDA Policy on Use of Government Electronic Equipment and Systems*, FDA SMG 3140.1.² Moreover, employees must understand that non-public information (e.g., personal privacy information, trade secrets, confidential commercial information, or information subject to government privilege) may not be conveyed via social media unless its release to the public is lawful and has been authorized by FDA management in accordance with the law.

To use social media in his or her *personal* capacity, an employee does not need to obtain permission or approval from supervisors or agency management and does not need to obtain outside activity ethics clearance pursuant to the HHS Supplemental Standards of Ethical Conduct at 5 CFR § 5501.106(d).³

¹ The Hatch Act, 5 U.S.C. 7321-7326, limits certain political activities for most federal employees (see <http://www.fda.gov/aboutfda/workingatfda/ethics/ucm071602.htm>). Issues related to employee use of social media can arise under the Hatch Act, particularly as it relates to endorsement of political fundraising activities. For further guidance regarding the Hatch Act's restrictions and prohibitions or particular questions about how the Hatch Act might apply to a planned use of social media, please contact FDA's Division of Ethics and Integrity.

² For more detailed information about the ethics rules governing the personal use of social media, see OGE Legal Advisory LA-15-03, *The Standards of Conduct as Applied to Personal Social Media Use* (April 9, 2015).

³ Under the HHS Supplemental Standards of Ethical Conduct, FDA employees are required to obtain prior outside activity approval before engaging in *certain* speaking and writing activities, if those activities are related to an employee's official duties or at the invitation of a prohibited source. 5 CFR § 5501.106(d)(1)(ii). But employees acting in their personal capacity do not need to seek outside activity approval to write letters to the editors of newspapers and other periodicals, or to provide other public commentary (although they do

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However, the ethical restrictions on receipt of compensation, disclosure of nonpublic information, and improper use of government title or official authority still apply to this activity.

It is important to remember that when employees use social media tools in a personal capacity, they are not speaking for the agency, and it shouldn't appear to others as though they are speaking for FDA. For this reason, employees should not use FDA e-mail addresses to establish personal social media accounts or as an identifier during participation in personal or otherwise unofficial social media activities.

Although employees should not refer to the fact that they are FDA employees in a manner that suggests or implies they are speaking on behalf of the Agency or that the Agency sanctions or endorses their viewpoints or activities, consistent with the views of the Office of Government Ethics, an employee may include his or her title of position in an area of the social media account designated for biographical information.⁴ Beyond inclusion as biographical information, use of an employee's official title or position, or other indicia that the employee may be speaking on behalf of the agency (e.g., featuring the use of the agency logo; referring to employee role in the government to justify statements) may create ethical concerns.⁵ Ordinarily an employee need not use a disclaimer to disavow government endorsement of personal social media communications.⁶ If, however, he or she has concerns that the use of social media may create the impression that his or her views are sanctioned by the agency (beyond using an official title or position in an area dedicated to biographical information), the employee may use a disclaimer to address this misimpression. Displaying the following disclaimer prominently in one's user profile would be effective:

"The views and information presented here are mine."

If the social media platform does not provide a forum to display this disclaimer, the employee should consult with the Office of External Affairs about other appropriate methods to convey that the employee is not speaking on behalf of the agency.

remain subject to restrictions on receipt of compensation, disclosure of nonpublic information, and improper use of government title or official authority). Designated Agency Ethics Official Supplemental Instruction, Letters to the Editor(s) of Newspapers and Other Periodicals, No. 98-1 (Nov. 20, 1998). We consider employee personal use of social media regarding FDA related matters to be a similar form of public commentary, and therefore employees do not need to seek outside activity approval for the personal use of social media.

⁴ See OGE Legal Advisory LA-15-03, The Standards of Conduct as Applied to Personal Social Media Use (April 9, 2015) interpreting 5 CFR § 2635.702(b)

⁵ See OGE Legal Advisory LA-15-03, The Standards of Conduct as Applied to Personal Social Media Use, page 3 (April 9, 2015) (listing factors to consider when evaluating whether a reasonable person with knowledge of the relevant facts would conclude that the government endorses the social media communication).

⁶ See OGE Legal Advisory LA-15-03, The Standards of Conduct as Applied to Personal Social Media Use (April 9, 2015).

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Requirements to Establish an FDA Social Media Account

Before establishing a new social media account, Centers/Offices must contact OEA Web and develop a social media strategy and a social media plan. The plan will address the commitment of resources, as well as detailed direction needed to manage and maintain consistency within the account and to ensure all actions are in line with policy and the Center/Office social media strategy. Contact OEA Web for the OEA social media plan which can be used as a template.

All official uses of social media must be pre-approved by a Center/Office management in consultation with the appropriate communications office. The decisions made in the social media plan should be guided by and in line with the Center/Office's strategic communications plan.

The Agency-level accounts for Facebook, YouTube, Flickr, and Pinterest are currently the only accounts authorized for those social media platforms. To request permission to open a new account on these platforms, the requesting Center/Office must develop a business case (covering objectives, benefits, alternatives considered, etc.) and submit it to OEA Web and Digital Media Director. Once approved, the Center/Office will develop a social media strategy and social media plan.

To request permission to open a new account on a platform that FDA doesn't currently utilize, the requesting Center/Office must develop a business case (covering objectives, benefits, alternatives considered, etc.) and submit it to OEA's Web and Digital Media Director. Once approved, the Center/Office will develop a social media strategy and social media plan.

Policies and Considerations

The FDA will use only social media platforms and third-party sites that have been approved for Agency use, and such use must be in accordance with approved Terms of Service (TOS) agreements. More about TOS agreements can be found towards the end of this document.

The FDA must comply with applicable federal laws, regulations, and requirements including, but not limited to, Section 508 compliance, privacy, ethics, copyright, information security, and records management in its social media use.

Ensure Accessibility under Section 508

The FDA is committed to making content accessible to everyone in accordance with FDA's Accessible Electronic and Information Technology Policy:

<http://www.fda.gov/AboutFDA/AboutThisWebsite/Accessibility/default.htm>

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Privacy Protection

The statutes, regulations, and policies that govern privacy, the collection of personal information, and the protection of a user's personally identifiable information (PII) still apply when using social media. The applicable privacy requirements will depend on the types and uses of social media.

The FDA does not intend to share PII that is submitted by the public via FDA's third-party websites and applications.

Centers/Offices that apply for social media accounts must complete a privacy impact assessment (PIA). For more information and an example of a PIA document, visit <http://www.hhs.gov/pia/>

Consult with the Agency's Privacy Officer to determine privacy implications and specific requirements.

Ensure Integrity of Shortened Links

OEA Web recommends using Go.USA.Gov (<http://go.usa.gov>) to create short, trustworthy .gov URLs to use on online services with character restrictions. This service, which also provides basic metrics, shortens only government URLs. At this time, Hootsuite (<https://hootsuite.com>) is also an approved service for creating shortened URLs.

Ethics

When using social media tools and third-party sites, FDA employees are bound by the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635: <http://www.oge.gov/Laws-and-Regulations/OGE-Regulations/5-C-F-R--Part-2635--Standards-of-ethical-conduct-for-employees-of-the-executive-branch/>

Employees should not use their Government positions, titles, or authority to endorse any product, service, company, non-profit organization, or any other enterprise. Reference to product, service, and entities should be in furtherance of the agency's legal authority in carrying-out official functions. There are some exceptions but, generally, even if you are communicating solely within the FDA, you should be careful about giving an appearance of governmental sanction or endorsement.

Employees must avoid certain types of political activities that are prohibited by the Hatch Act, 5 U.S.C. §§ 7321-7326, including engaging in political activity while on duty and soliciting political contributions. Issues related to employee use of social media can arise under the Hatch Act, particularly as it relates to endorsement of political fundraising activities. For further guidance regarding the Hatch Act's restrictions and prohibitions or particular questions about how the Hatch Act might apply to a planned use of social media, please contact FDA's Division of Ethics and Integrity.

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Do not divulge nonpublic information. This includes any information designated as confidential, privileged, or any other type of information that may not be disclosed such as internal FDA deliberations.

Protect Copyright

Images, text, video, and audio files used in blogs or on third-party social media sites must comply with the Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code and other Federal policies and directives.

For questions regarding copyright, contact the Office of the Chief Counsel.

FDA Representation and Interaction

As technology evolves and online behaviors change, the social media landscape adjusts and adapts. Because of this, FDA will account for these changes within social media platform-specific plans. These plans will include direction and best practices based on the needs of the social media audience within the constraints of the platform.

- Each Center/Office will develop a process to administer comments in order to maintain a respectful and on-topic dialogue. Please see the FDA OEA comment policy. Any comment removed by FDA should be recorded and archived prior to deleting. For additional information or assistance with developing a plan for administering comments or more information on how to document comment policy violations, please contact OEA Web.
- FDA is able to link to websites outside of FDA.gov according to federal linking policies. Links to outside supporting material may be suitable in some instances but in most cases, the FDA should be the authoritative source. Consider FDA's regulatory mission when using links to any websites outside of FDA.gov.
- All official profiles in social media channels must be identified with the FDA name and/or official FDA logo and .gov website links. Before use of any logo other than the official FDA logo, the logo must be cleared by OEA's Office of Communications, in consultation with OEA Web.

Consider IT Security, Infrastructure, and Architecture Requirements

Social media tools and usage on FDA networks must comply with all requirements established in the Agency's IT Security policies and related procedures. You should contact the Center/Office Information Systems Security Officer (ISSO) for assistance with security requirements.

Consider Paperwork Reduction Act Requirements

Some FDA uses of social media may be subject to the Paperwork Reduction Act (PRA), which governs the solicitation and collection of information from the public by or for the federal government, whether that collection is voluntary or mandatory, and regardless of the format. The Office and Management and

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Budget (OMB), which administers the PRA, approves covered information collections, has issued a memorandum entitled “Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act,”

(https://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/SocialMediaGuidance_04072010.pdf) to help clarify which government uses of social media require OMB approval of an Information Collection Request (ICR) and which do not. Of particular note, the OMB document distinguishes uses of social media that are akin to general solicitations of comment that might be posed in a Federal Register notice or public meeting (and which do not require approval under the PRA) from use of social media to conduct surveys (which does require approval).

Before using social media to pose questions or invite comments on particular topics, please consult the OMB memorandum and FDA's Paperwork Reduction Act Team to determine whether the proposed activity requires preparation and approval of an ICR package. Adhere to ICR processes and procedures when applicable.

Maintain Records

In general, interactions on social media should reflect information found on FDA.gov and other official FDA sources, but it should not be source for original or new content. New content created within social media that qualifies as a federal record must be captured and maintained in a recordkeeping system according to the FDA's Records Management Policies. Consult the Center/Office Assistant Records Liaison Officer (ARLO) about retaining these records in accordance with the FDA's Records Management Program. The ARLO can help determine the most appropriate methods to capture and maintain records.

Correction of Errors

Ensuring that the work and views of agency employees are accurately represented by FDA on the agency's social media channels is critical to the agency. Therefore, an agency employee can request that an agency social media communication be corrected, amended, or clarified if

- 1) the communication is based upon the research or published work of the employee or purports to express the employees views by name or title; and
- 2) the communication is false, misleading, or confusing.

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Employees seeking a correction should raise their concerns with OEA. OEA will work with the employee and agency component that administers the social media account to determine what modification or supplement to the earlier social media communication, if any, would be appropriate to correct the prior statement or eliminate the confusion.

Terms of Service (TOS) Agreements

A federal-compatible Terms of Service (TOS) agreement is required for official government use of new and social media tools. These are special agreements negotiated by a coalition of federal agencies led by the General Services Administration (GSA) with vendors who offer free social media tools. These federal-compatible TOS agreements modify or remove problematic clauses in standard TOS agreements, and allow federal employees to legally use these tools. While these negotiated TOS agreements resolve the major legal issues of the sign-up process, agencies must still comply with laws and regulations on security, privacy, accessibility, records retention, ethical use, and other specific Agency policies and requirements when using the tools. FDA staff, managers, program or field offices are not authorized to negotiate or sign Terms of Service agreements on behalf of the FDA with social media sites.

As a member of the coalition, HHS signed federal-compatible TOS agreements (<http://www.hhs.gov/web/socialmedia/policies/tos.html>) on behalf of the entire department. OEA Web coordinates with HHS and also the FDA's Office of Information Management to determine what tools are allowed for the FDA's external use.

Some social media tools still need to be supported by the FDA's IT infrastructure and meet other requirements and/or additional considerations may be necessary. Contact OEA Web prior to initiating procurement actions for obtaining support and/or services for social media or other digital media tools. There may be a need to sign separate agreements to ensure compliance with all requirements for hosting a social media site that is approved for the FDA's official use.

Authority

- President Barack Obama, *Memorandum on Transparency and Open Government* (Jan. 21, 2009) http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment/
- OMB Memorandum M-10-06, *Open Government Directive* (Dec. 8, 2009) http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-06.pdf
- OMB Memorandum, *Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act* (April 7, 2010) http://www.whitehouse.gov/omb/assets/infoeg/SocialMediaGuidance_04072010.pdf
- OMB Memorandum M-10-22, *Guidance for Online Use of Web Measurement and Customization Technologies* (June 25, 2010) http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-22.pdf
- OMB Memorandum M-10-23, *Guidance for Agency Use of Third-Party Websites and Applications* (June 25, 2010) http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-23.pdf

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- Executive Order 13571, *Streamlining Service Delivery and Improving Customer Service* (April 27, 2011) <https://www.whitehouse.gov/the-press-office/2011/04/27/executive-order-13571-streamlining-service-delivery-and-improving-custom>
- The White House's Digital Government Strategy <http://www.whitehouse.gov/sites/default/files/omb/egov/digital-government/digital-government.html>
- President Barack Obama, *Memorandum on Building a 21st Century Digital Government* (May 23, 2012) http://www.whitehouse.gov/sites/default/files/uploads/2012digital_mem_rel.pdf
- Office of Management and Budget, *Digital Government: Building a 21st Century Platform to Better Serve the American People* (May 23, 2012) <http://www.whitehouse.gov/sites/default/files/omb/egov/digital-government/digital-government-strategy.pdf>
- OMB Memorandum M-13-10, *Antideficiency Act Implications of Certain Online Terms of Service Agreements* <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-10.pdf>

Additional Resources

Consider FDA's advice to regulated industry and be aware of developments including:

- Draft Guidance for Industry - Internet/Social Media Platforms: Correcting Independent Third-Party Misinformation About Prescription Drugs and Medical Devices <http://www.fda.gov/downloads/drugs/guidancecomplianceregulatoryinformation/guidances/ucm401079.pdf>
- Internet/Social Media Platforms with Character Space Limitations — Presenting Risk and Benefit Information for Prescription Drugs and Medical Devices <http://www.fda.gov/downloads/drugs/guidancecomplianceregulatoryinformation/guidances/ucm401087.pdf>

Information the FDA collects under the Privacy Act of 1974

<http://www.fda.gov/RegulatoryInformation/FOI/PrivacyAct/default.htm>

Summary Privacy Impact Assessments for the FDA Data Systems

<http://www.hhs.gov/pia/>

OMB M-10-23, "Guidance for Agency use of Third-party Websites and Applications," June 25, 2010

http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-23.pdf

Social Media Registry (tool to keep track of social media accounts managed by federal agencies)

<http://www.digitalgov.gov/services/social-media-registry/>

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HHS Policies that Apply to Social Media

<http://www.hhs.gov/web/socialmedia/policies/index.html>

HHS Social Media Policies Checklist

http://www.hhs.gov/web/socialmedia/getting_started/checklist_social_media_policies.pdf

HHS Comment Policy

<http://www.hhs.gov/web/socialmedia/policies/comment-policy.html>

HHS Terms of Service Agreements

<http://www.hhs.gov/web/socialmedia/policies/tos.html>

HHS-OCIO Policy for Social Media Technologies

http://www.hhs.gov/ocio/policy/policy_2010-0003.1_-_ocio.html

GSA's Guide to Official Use of Social Media (April 2011)

<http://www.gsa.gov/graphics/staffoffices/socialmedianavigator.pdf>

Federal Linking Policies

<http://www.digitalgov.gov/about/policies/>

HHS Web Records Policy & Guidance for Maintaining Web Records

<http://www.hhs.gov/web/policies/webpolicies/webrecords.html>

National Archives and Records Administration (NARA) on the Implications of Recent Web Technologies

<http://www.archives.gov/records-mgmt/initiatives/web-tech.html>

National Archives and Records Administration (NARA) Bulletin 2011-02, Guidance on Managing Records in Web 2.0/Social Media Platforms

<http://www.archives.gov/records-mgmt/bulletins/2011/2011-02.html>