

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



Laura D. Rose, Interim Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-042

AN ORDER to repeal and recreate chapter Adm 12, relating to electronic records management.

Submitted by **DEPARTMENT OF ADMINISTRATION**

02-18-00 RECEIVED BY LEGISLATIVE COUNCIL.

03-10-00 REPORT SENT TO AGENCY.

RNS:RW:jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 00-042

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

- a. In s. Adm 12.04 (3), the phrase "what is retained to be an" could be replaced with "the retained" without apparent loss of clarity or change in meaning.
- b. In s. Adm 12.04 (5), the second sentence should begin with "'Context" includes the origin of" The same format changes should be made in s. Adm 12.04 (14).
- c. In s. Adm 12.04 (9), the agency may wish to replace the colon with the phrase "including the." Also, the last sentence should use "in this subsection" instead of "here."
- d. In s. Adm 12.04 (11), "Record" should be lower case.
- e. In s. Adm 12.05 (intro.), the agency may wish to add the phrase "with regard to those records" after the word "following" to clarify the reference.
- f. In s. Adm 12.06 (6) (intro.), "do all of the following" should be inserted before the colon.

**PROPOSED ORDER OF THE
DEPARTMENT OF ADMINISTRATION**

The Department of Administration proposes an order to repeal and recreate Chapter Adm 12 of the Wisconsin Administrative Code.

ANALYSIS PREPARED BY THE DEPARTMENT OF ADMINISTRATION:

Statutory authority: ss. 16.611, 16.612 and 227.11(2)(a), Stats.

Statute interpreted: ss. 16.61 and 16.612 Stats.

1995 Wisconsin Act 27 amended the statutes relating to storage of public records under s. 16.611, and s. 16.612 Stats., to include storage of public records in electronic format. The statute directs the Department of Administration to adopt rules prescribing qualitative standards for the storage of public records in electronic format for state agencies under s.16.611 and for local units of government under s.16.612. The proposed rule repeals and recreates Chapter Adm 12 (Chapter) of the Wisconsin Administrative Code. The objective of the proposed rule is to ensure that the quality of public records in electronic format is maintained and that public records in electronic format remain accessible for their designated retention period.

This Chapter provides guidelines and standards for agencies wishing to maintain their public records electronically. Public records can be created and maintained with a variety of technologies including paper as well as various electronic methods. Electronic records may include but are not limited to scanned, imaged or word processing documents; electronic forms; sound or visual recordings; database entries and web-enabled records as well as others.

The Chapter defines terms used within and refers readers to the statutory definition of a public record found at s.16.61(2)(b). General provisions of the chapter are intended to ensure electronic records will be accessible through time and will comply with State record-keeping and confidentiality requirements. More specific provisions establish standards for information systems that are used to maintain agencies' public records where the electronic version is the exclusive agency record.

Initial Regulatory Flexibility Analysis:

Pursuant to s. 227.114, Stats., the rule is not expected to negatively impact on small businesses.

Agency Contact Person:

Amy K. Moran
Division of Technology Management
Department of Administration
101 E. Wilson Street, 8th Floor
Madison, WI 53707-7864

TEXT OF RULE:

SECTION 1:

Adm 12

Electronic Records Management — Standards and Requirements

Adm 12.01 Authority. This chapter is promulgated under the authority of ss.16.611, state public records, 16.612, local government records, and 227.11(2)(a), Stats., to implement 16.61, Stats.

Adm 12.02 Purpose. The purpose of this chapter is to ensure that public records in electronic format are preserved and maintained and remain accessible for their designated retention period.

Adm 12.03 Scope. This chapter establishes defined minimum requirements, standards and guidelines for state and local government accessibility of electronic public records from creation through active use, long-term management, preservation and disposition. This chapter does not require an agency to maintain public records in electronic format.

Adm 12.04 Definitions. In this chapter:

- (1) "Accessible" means information arranged, identified, indexed and maintained in a manner that permits the custodian of the public record to locate and retrieve the information in a readable format within a reasonable time.
- (2) "Accurate" means all information produced exhibits a high degree of legibility and readability and correctly reflects the original record when displayed on a retrieval device or reproduced on paper.
- (3) "Authentic" means what is retained to be an electronic record correctly reflects the creator's input and can be substantiated.
- (4) "Content" means the basic data or information carried in a record.
- (5) "Context" means the relationship of the information to the business and technical environment in which it arises. It can include, but is not limited to, such elements as the origin of the record; date and time the record was created; identification of the record series to which the information belongs. *and*
- (6) "Electronic format" includes information created, generated, transmitted or stored in digital form or analog form.
- (7) "Information system" means a system for generating, sending, receiving, storing or otherwise processing data.
- (8) "Legible" means the quality of the letters, numbers or symbols can be positively and quickly identified to the exclusion of all other letters, numbers or symbols when displayed on a retrieval device or retrieved by device or reproduced on paper.
- (9) "Life cycle" means all phases of a record's existence: design, creation, active use, preservation and management through to disposition. As used here, the term "disposition" includes permanent preservation as well as designation for destruction.
- (10) "Meaning" means a record carries its original content, context and structure throughout its life.
- (11) "Public Record" has the meaning given in s.16.61(2)(b), Stats.

- (12) "Readable" means the quality of a group of letters, numbers or symbols is recognized as words, complete numbers or distinct symbols.
- (13) "Reliable" means the electronic record produced correctly reflects the initial record each time the system is requested to produce that record.
- (14) "Structure" means the appearance or arrangement of the information in the record. (It can include, but is not limited to, such elements) as heading, body and form.

Adm 12.05 General Provisions. State and local agencies maintaining public records in electronic format shall do all the following:

- (1) Comply with the appropriate legal and administrative requirements for record keeping.
- (2) Ensure that electronic records are accessible, accurate, authentic, reliable, legible, and readable throughout the record life cycle.
- (3) Document policies, assign responsibilities, and develop appropriate formal mechanisms for creating and maintaining public records throughout the record life cycle.
- (4) Assure confidentiality or restricted access to records or records series maintained in electronic format limits access to those persons authorized by law, administrative rule or established agency policy.

Adm 12.06 Records and Information Systems Provisions. State and local agencies maintaining any public records exclusively in electronic format shall do all the following for those records:

- (1) Develop information systems that accurately reproduce the records they create and maintain.
- (2) Identify and document records created by information systems.
- (3) Document authorization for the creation and modification of electronic records and, where required, ensure that only authorized persons create or modify the records.
- (4) Design and maintain information systems so that these systems can provide the official record copy for those business functions accomplished by the system.
- (5) Develop and maintain information systems that maintain accurate links to transactions supporting the records created where these links are essential to the meaning of the record.
- (6) Ensure that information systems used to maintain public records under this section shall be able to:
do all ---
 - (a) Produce electronic records that continue to reflect their meaning throughout the records' life cycle.
 - (b) Delete electronic records created.
 - (c) Export records to other systems without loss of information.

- (d) Output record content, structure and context.
- (e) Allow records to be masked to exclude confidential or exempt information.

This rule shall take effect on the first day of the month commencing after publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Dated: 2-17-00


George Lightbourn, Secretary
Department of Administration

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON
GOVERNOR

GEORGE LIGHTBOURN
SECRETARY



SEP 07 2000

Office of the Secretary
Post Office Box 7864
Madison, WI 53707-7864
Voice (608) 266-1741
Fax (608) 267-3842
TTY (608) 267-9629

August 30, 2000

Honorable Fred Risser, President
Wisconsin Senate
220 South State Capitol
Madison, WI 53702

Honorable Scott Jensen, Speaker
Wisconsin Assembly
211 West, State Capitol
Madison, WI 53702

Dear Senator Risser and Representative Jensen:

RE: Clearinghouse Rule No. 00-042

Enclosed in final draft form is Chapter Adm 12, Wis. Adm. Code, relating to the storage of electronic public records by state and local governments. The rule repeals and replaces the current Chapter Adm 12, which is technologically limited to optical imaging. The fiscal estimate is also enclosed.

This rule has been drafted in response to requirements set out at s. 16.611 and s. 16.612 Stats., that the Department of Administration prescribe qualitative standards for the storage of public records in electronic format.

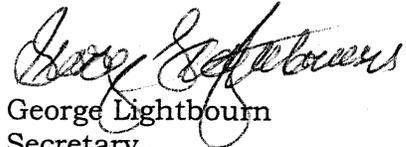
Enclosed is a copy of the Legislative Council staff clearinghouse report. All comments of the Clearinghouse have been addressed and incorporated in the rule. A public hearing was held on March 15, 2000 in Madison. The names of the persons who appeared at the hearing are provided on the enclosed hearing registration forms.

Also enclosed are the transcripts of the hearing and copies of the written comments received by the Department in response to the proposed rule. The final enclosure is a summary of the comments received by the Department and the Department's response to those comments. The document explains the modifications made to the proposed rule as a result of the comments received by the Department.

August 30, 2000
Page 2

We request submittal of the rule to the appropriate standing committees for review.

Sincerely,


George Lightbourn
Secretary

cc: Revisor of Statutes
Joint Committee for Review of Administrative Rules

**PROPOSED ORDER OF THE
DEPARTMENT OF ADMINISTRATION**

The Department of Administration proposes an order to repeal and recreate Chapter Adm 12 of the Wisconsin Administrative Code.

ANALYSIS PREPARED BY THE DEPARTMENT OF ADMINISTRATION:

Statutory authority: ss. 16.611, 16.612 and 227.11(2)(a), Stats.

Statute interpreted: s. 16.61, Stats.

1995 Wisconsin Act 27 amended the statutes relating to storage of public records under s. 16.611, and s. 16.612 Stats., to include storage of public records in electronic format. The statute directs the Department of Administration to adopt rules prescribing qualitative standards for the storage of public records in electronic format for state agencies under s.16.611 and for local units of government under s.16.612. The proposed rule repeals and recreates Chapter Adm 12 of the Wisconsin Administrative Code. The objective of the proposed rule is to ensure that the quality of public records in electronic format is maintained and that public records in electronic format remain accessible for their designated retention period.

This Chapter provides guidelines and standards for agencies wishing to maintain their public records electronically. The rule does not require public records to be maintained in electronic format, nor does the rule modify general regulations that apply to all public records.

Public records can be created and maintained with a variety of technologies including paper as well as various electronic methods. Electronic records may include but are not limited to scanned, imaged or word processing documents; electronic forms; sound or visual recordings; and records stored in automated systems regardless of computer platform.

The Chapter defines terms used within and refers readers to the statutory definition of a public record found at s.16.61(2)(b). General provisions of the chapter are intended to ensure electronic records will be accessible through time and will comply with State record-keeping and confidentiality requirements. More specific provisions establish standards for information systems that are used to maintain agency public records where the electronic version is the exclusive agency record.

Final Regulatory Flexibility Analysis:

Pursuant to s. 227.114, Stats., the rule is not expected to negatively impact on small businesses.

TEXT OF RULE:

SECTION 1: Adm 12 is repealed and recreated to read:

Chapter Adm 12

Electronic Records Management — Standards and Requirements

Adm 12.01 Authority. This chapter is promulgated under the authority of ss. 16.611, state public records, 16.612, local government records, and 227.11(2)(a), Stats., to implement s. 16.61, Stats.

Adm 12.02 Purpose. The purpose of this chapter is to ensure that public records in electronic format are preserved and maintained and remain accessible for their designated retention period.

Adm 12.03 Scope. This chapter establishes defined requirements, standards and guidelines for state and local government accessibility of electronic public records from creation through active use, long-term management, preservation and disposition. This chapter does not require an agency to maintain public records in electronic format.

Adm 12.04 Definitions. In this chapter:

- (1) "Accessible" means information arranged, identified, indexed or maintained in a manner that permits the custodian of the public record to locate and retrieve the information in a readable format within a reasonable time.
- (2) "Accurate" means all information produced exhibits a high degree of legibility and readability and correctly reflects the original record when displayed on a retrieval device or reproduced on paper.
- (3) "Authentic" means the retained electronic record correctly reflects the creator's input and can be substantiated.
- (4) "Content" means the basic data or information carried in a record.
- (5) "Context" means the relationship of the information to the business and technical environment in which it arises. "Context" can include, but is not limited to, such elements as: the origin of the record; date and time the record was created; identification of the record series to which the information belongs.
- (6) "Electronic format" includes information created, generated, sent, communicated or stored in electrical, digital, magnetic, optical, electromagnetic or similar technological form.
- (7) "Information system" means a system for generating, sending, receiving, storing or otherwise processing data.
- (8) "Legible" means the quality of the letters, numbers or symbols can be positively and quickly identified to the exclusion of all other letters, numbers or symbols when displayed on a retrieval device or retrieved by device or reproduced on paper.

- (9) "Life cycle" means all phases of a record's existence: creation, active use, preservation and management through to disposition. "Disposition" includes permanent preservation as well as designation for destruction.
- (10) "Meaning" means a record carries its original content, context and structure throughout its life cycle.
- (11) "Public record" has the meaning given in s. 16.61(2)(b), Stats.
- (12) "Readable" means the quality of a group of letters, numbers or symbols is recognized as words, complete numbers or distinct symbols.
- (13) "Reliable" means the electronic record produced correctly reflects the initial record each time the system is requested to produce that record.
- (14) "Structure" means the appearance or arrangement of the information in the record. "Structure" can include, but is not limited to, such elements as heading, body and form.

Adm 12.05 Provisions. State and local agencies shall comply with all statutes and rules relating to public records. With regard to public records stored exclusively in electronic format, state and local agencies shall do all of the following:

- (1) Maintain electronic public records that are accessible, accurate, authentic, reliable, legible, and readable throughout the record life cycle.
- (2) Document policies, assign responsibilities, and develop appropriate formal mechanisms for creating and maintaining electronic public records throughout the record life cycle.
- (3) Maintain confidentiality or restricted access to records or records series maintained in electronic format, limiting access to those persons authorized by law, administrative rule or established agency policy.
- (4) Utilize information systems that accurately reproduce the records they create and maintain.
- (5) Describe and document public records created by information systems.
- (6) Document authorization for the creation and modification of electronic public records and, where required, ensure that only authorized persons create or modify the records.
- (7) Design and maintain new information systems so that these systems can provide an official record copy for those business functions accomplished by the system.
- (8) Develop and maintain information systems that maintain accurate linkages, electronically or by other means, to transactions supporting the records created where these linkages are essential to the meaning of the record.
- (9) Utilize information systems that produce records that continue to reflect their meaning throughout the record life cycle.
- (10) Utilize information systems that can delete or purge electronic records created in accordance with the approved retention schedule.

- (11) Utilize information systems that can export records that require retention to other systems without loss of meaning.
- (12) Utilize information systems that can output record content, structure and context.
- (13) Utilize information systems that allow records to be masked to exclude confidential or exempt information.

Adm 12.06 Initial Applicability. This rule first applies to public records stored exclusively in electronic format and to information systems acquired or substantially modified after the effective date of the rule.

This rule shall take effect on the first day of the sixth month commencing after publication in the Wisconsin Administrative Register.

Dated: August 30, 2000


George Lightbourn, Secretary
Department of Administration

FISCAL ESTIMATE FORM

1999 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB #

INTRODUCTION #

Admin. Rule # Adm 12.01-12.06

Subject
 Electronic Records Management – Standards and Requirements

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

X Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Decrease Costs

Local: No local government costs

1. X Increase Costs
 X Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

The proposed rule replaces prior rules on electronic records management. The rule establishes standards and requirements regarding electronic records that must be used by state government agencies or by local governments. The rule does not require electronic records but if the choice is made to use such records, then it does set public standards.

Many of these same standards would apply to manual records and their management. The agencies and local governments constantly need to review record retention policies for both functional needs and legal uses. Cost for retention will be driven by records management more than by type or form of record.

Private sector vendors offer electronic record keeping at costs that range from \$0.06 to \$0.08 a page. Paper record retention may run higher with costly storage space and manual retrieval staff time factored in as costs.

Record retention or storage costs are a small part of overall IT costs. Regular records backup occurs as a general standard practice and is done on frequency schedules depending on the record, its uses, and desired retention.

Long-Range Fiscal Implications:

Agencies will need to manage electronic records as they manage other existing records, in all cases determining the best and most cost effective retention and management choices.

Prepared By: / Phone # / Agency Name
 Richard Wagner 608-266-0653

Authorized Signature / Telephone No.
 Chuck McDowell 608-267-3836

Date 1/21/00

WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING

CHAPTER ADM 12
ELECTRONIC RECORDS MANAGEMENT
STANDARDS AND REQUIREMENTS
MARCH 15, 2000
9:00 a.m.

REGISTRATION

NAME: Peter Cottlieb

ADDRESS: State Historical Society 816 State St.
Madison 53706

PHONE: 608/264-6480

REPRESENTING: State Historical Society

Please check applicable statement(s):

- Appearing in favor.
- Appearing in opposition.
- Appearing for informational purposes.
- I wish to testify.

WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING

CHAPTER ADM 12
ELECTRONIC RECORDS MANAGEMENT
STANDARDS AND REQUIREMENTS
MARCH 15, 2000
9:00 a.m.

REGISTRATION

NAME: Russ Whiteasel

ADDRESS: 608 Crawford Avenue
1 East Main - Suite 401

PHONE: (608) 266-0922

REPRESENTING: Public Records Board

Please check applicable statement(s):

- () Appearing in favor.
- () Appearing in opposition.
- () Appearing for informational purposes.
- () I wish to testify.

() Registering in favor

WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING

CHAPTER ADM 12
ELECTRONIC RECORDS MANAGEMENT
STANDARDS AND REQUIREMENTS
MARCH 15, 2000
9:00 a.m.

REGISTRATION

NAME: Karl C. Hillman Jr

ADDRESS: 610 N Whitney Way

MADISON WI 53707

PHONE: 608-267-2897

REPRESENTING: Public Service Commission of Wisconsin

Please check applicable statement(s):

- Appearing in favor.
 Appearing in opposition.
 Appearing for informational purposes.
 I wish to testify.

**WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING**

**CHAPTER ADM 12
ELECTRONIC RECORDS MANAGEMENT
STANDARDS AND REQUIREMENTS
MARCH 15, 2000
9:00 a.m.**

REGISTRATION

NAME: JESÚS G. Q. GARZA

ADDRESS: 310 PRICE PLACE
MADISON, WI 53705

PHONE: (608) 267-9540

REPRESENTING: WI, TECH. COLL. SYST. BD.

Please check applicable statement(s):

- Appearing in favor.
- Appearing in opposition.
- Appearing for informational purposes.
- I wish to testify.

**WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING**

**CHAPTER ADM 12
ELECTRONIC RECORDS MANAGEMENT
STANDARDS AND REQUIREMENTS
MARCH 15, 2000
9:00 a.m.**

REGISTRATION

NAME:

Valerie Clement

ADDRESS:

DOA, 9th fl

PHONE:

267-4574

REPRESENTING:

DOA

Please check applicable statement(s):

- Appearing in favor.
 Appearing in opposition.
 Appearing for informational purposes.
 I wish to testify.

WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING

CHAPTER ADM 12
ELECTRONIC RECORDS MANAGEMENT
STANDARDS AND REQUIREMENTS
MARCH 15, 2000
9:00 a.m.

REGISTRATION

NAME: Joyce E. Endres

ADDRESS: PO Box 7844

Madison WI 53707-7844

PHONE: 608-264-8506

REPRESENTING: Dept. of Administration

Please check applicable statement(s):

- Appearing in favor.
- Appearing in opposition.
- Appearing for informational purposes.
- I wish to testify.

WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING

CHAPTER ADM 12
ELECTRONIC RECORDS MANAGEMENT
STANDARDS AND REQUIREMENTS
MARCH 15, 2000
9:00 a.m.

REGISTRATION

NAME: Nancy Kunde

ADDRESS: B134 MEMORIAL LIBRARY

728 STATE ST MADISON

PHONE: 608 262-3284

REPRESENTING: UW MADISON

Please check applicable statement(s):

- Appearing in favor.
- Appearing in opposition.
- Appearing for informational purposes.
- I wish to testify.

WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING

CHAPTER ADM 12
ELECTRONIC RECORDS MANAGEMENT
STANDARDS AND REQUIREMENTS
MARCH 15, 2000
9:00 a.m.

REGISTRATION

NAME: Ken Moore

ADDRESS: 1015 18th Ave Suite B-111

Monroe, WI 53566

PHONE: (608) 325-3035

REPRESENTING: DEPT OF REVENUE

Please check applicable statement(s):

- Appearing in favor.
- Appearing in opposition.
- Appearing for informational purposes.
- I wish to testify.

**WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING**

**CHAPTER ADM 12
ELECTRONIC RECORDS MANAGEMENT
STANDARDS AND REQUIREMENTS
MARCH 15, 2000
9:00 a.m.**

REGISTRATION

NAME: Jeff Stence

ADDRESS: 4638 University Ave Rm 26

PHONE: 266-1661

REPRESENTING: _____

Please check applicable statement(s):

- Appearing in favor.
- Appearing in opposition.
- Appearing for informational purposes.
- I wish to testify.

WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING

CHAPTER ADM 12
ELECTRONIC RECORDS MANAGEMENT
STANDARDS AND REQUIREMENTS
MARCH 15, 2000
9:00 a.m.

REGISTRATION

NAME: Carolyn Perry

ADDRESS: 4638 University Ave, PO Box 8903

(Inter-D: Bldg L) Madison WI 53708-8903

PHONE: 266-2892

REPRESENTING: Dept. of Revenue

Please check applicable statement(s):

- Appearing in favor.
- Appearing in opposition.
- Appearing for informational purposes.
- I wish to testify.

**WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING**

**CHAPTER ADM 12
ELECTRONIC RECORDS MANAGEMENT
STANDARDS AND REQUIREMENTS
MARCH 15, 2000
9:00 a.m.**

REGISTRATION

NAME: Sherry Steffel

ADDRESS: P.O. Box 8911, Madison, WI 53708-8911

PHONE: 224-5029

REPRESENTING: Wis. Dept. of Agriculture, Trade &
Consumer Protection

Please check applicable statement(s):

- Appearing in favor.
- Appearing in opposition.
- Appearing for informational purposes.
- I wish to testify.

**WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING**

**CHAPTER ADM 12
ELECTRONIC RECORDS MANAGEMENT
STANDARDS AND REQUIREMENTS
MARCH 15, 2000
9:00 a.m.**

REGISTRATION

NAME: Susan Bleimehl

ADDRESS: DPI

PHONE: 266-2022

REPRESENTING: _____

Please check applicable statement(s):

- Appearing in favor.
- Appearing in opposition.
- Appearing for informational purposes.
- I wish to testify.

WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING

CHAPTER ADM 12
ELECTRONIC RECORDS MANAGEMENT
STANDARDS AND REQUIREMENTS
MARCH 15, 2000
9:00 a.m.

REGISTRATION

NAME: BOB CADIGAN
ADDRESS: 201 W WASHINGTON, SUITE 700
53701-1728
PHONE: 608 267-1089
REPRESENTING: WHE DA

Please check applicable statement(s):

() Appearing in favor.

() Appearing in opposition.

Appearing for informational purposes.

() I wish to testify.

WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING

CHAPTER ADM 12
ELECTRONIC RECORDS MANAGEMENT
STANDARDS AND REQUIREMENTS
MARCH 15, 2000
9:00 a.m.

REGISTRATION

NAME: Roman Kyweluk

ADDRESS: 4802 Sheboygan Ave, -Rm 201B
Madison, WI 53707-7982

PHONE: 608-266-2170

REPRESENTING: Wisconsin Dept. of Transportation

Please check applicable statement(s):

- () Appearing in favor.
- () Appearing in opposition.
- (X) Appearing for informational purposes.
- () I wish to testify.

WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING

CHAPTER ADM 12
ELECTRONIC RECORDS MANAGEMENT
STANDARDS AND REQUIREMENTS
MARCH 15, 2000
9:00 a.m.

REGISTRATION

NAME: Maria Kelleff
ADDRESS: WI DOR, Electronic Filing Office
PO Box 8977, Madison, WI 53708-8977
PHONE: 608 261 4906
REPRESENTING: WI DOR

Please check applicable statement(s):

- Appearing in favor.
- Appearing in opposition.
- Appearing for informational purposes.
- I wish to testify.

WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING

CHAPTER ADM 12
ELECTRONIC RECORDS MANAGEMENT
STANDARDS AND REQUIREMENTS
MARCH 15, 2000
9:00 a.m.

REGISTRATION

NAME: DAVID Speerschweider

ADDRESS: HF 5TB - DOT

PHONE: 608 267-0283

REPRESENTING: DOT

Please check applicable statement(s):

- Appearing in favor.
- Appearing in opposition.
- Appearing for informational purposes.
- I wish to testify.

**WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING**

**CHAPTER ADM 12
ELECTRONIC RECORDS MANAGEMENT
STANDARDS AND REQUIREMENTS
MARCH 15, 2000
9:00 a.m.**

REGISTRATION

NAME: Teresa Rasmussen

ADDRESS: 505 Broadway
Baraboo, WI 53913

PHONE: 608-355-3540

REPRESENTING: SAUK County

Please check applicable statement(s):

- Appearing in favor.
- Appearing in opposition.
- Appearing for informational purposes.
- I wish to testify.

WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING

CHAPTER ADM 12
ELECTRONIC RECORDS MANAGEMENT
STANDARDS AND REQUIREMENTS
MARCH 15, 2000
9:00 a.m.

REGISTRATION

NAME: PAUL KRONBERGER

ADDRESS: 201 WEST WASHINGTON AVE
MADISON, WI 53707

PHONE: 267-9459

REPRESENTING: DEPT. OF COMMERCE

Please check applicable statement(s):

- (X) Appearing in favor.
- () Appearing in opposition.
- (X) Appearing for informational purposes.
- () I wish to testify.

Public Hearing on Adm 12
Electronic Records Management - Standards and Requirements
March 15, 2000
9:00 a.m.

MAIN: Okay, we're on the record. The Department of Administration has set at this time and place a public hearing pursuant to ss. 16.004(1) and 227.11(2)(a), of the Wisconsin Statutes, to consider the repeal and recreation of rules relating to Electronic Records Management, Standards and Requirements.

My name is Edward Main and I'm the Legal Counsel for the Department of Administration. Sitting next to me on my left, your right, is Amy Moran, who did a lot of work on these rules. Her title is Information Technology Consultant for the Division of Technology Management in the Department of Administration.

In the February 29, 2000, issue of the Wisconsin Administrative Register, notice was given that a public hearing would be held to consider the adoption of this rule. In addition, copies of the rule were made available to interested parties. Copies of the notice were also hand-delivered to the Press Boxes in the State Capitol Building on March 2, 2000.

The purpose of today's hearing is to give all interested persons or their representatives an opportunity to present facts, views or arguments regarding the proposed rules. In addition to today's testimony, the Department will accept written comments or questions received by March 20, 2000. Please direct written comments to Donna Sorenson, Department of Administration, 101 East Wilson Street, P.O. Box 7864, Madison, Wisconsin 53707.

The statutes require that all persons present at this hearing have an opportunity to present their arguments and comments to the agency officer responsible for promulgating these rules. The Secretary of the Department of Administration has final responsibility for the promulgation of these proposed rules. The Secretary has determined that argument to him should be made in writing rather than by oral argument. Consequently, a transcript of this hearing, along with your written comments, will be provided to the Secretary so that your arguments and comments can be presented to the Secretary prior to promulgation all as required by s. 227.18(3), of the statutes.

The proposed rule repeals and recreates Chapter Adm 12 of the Wisconsin Administrative Code. The rule provides guidelines and standards for agencies wishing to maintain their public records electronically. General provisions of the chapter are intended to ensure electronic records will be accessible through time and will comply with state record keeping and confidentiality requirements. More specific provisions establish standards for information systems that are used to maintain agencies' public records where the electronic version is the exclusive agency record.

The proposed rule was submitted to the Wisconsin Legislative Council Clearinghouse on February 18, 2000 for their review, analysis and recommendations. The Legislative Council issued its report on the proposed rule on March 10, 2000. All of the comments suggested by the Legislative Council were excellent and have been incorporated in the rule.

I'll now go through the appearance slips to see who wants to give testimony on the rule. Are there any other appearance slips before I start? Does anybody else want to

give me a slip? Okay. Is Peter Gottlieb here? Peter do you want to testify? Please sit in the chair here. Would you state your name, who you are representing and whether you are in favor of the rule or not.

GOTTLIEB: My name is Peter Gottlieb. I'm representing the State Historical Society of Wisconsin and I'm speaking in favor of the rule.

MAIN: Okay, would you give us your testimony?

GOTTLIEB: I am the State Archivist and administrator of the Archives Division at the State Historical Society of Wisconsin. I represent the Director of the Historical Society on the Public Records Board and I'm a member of the staff team which drafted the rule for which this hearing has been called.

The rule creates the policy guidelines that can ensure that records created and maintained solely in electronic formats can be kept accessible and useable for as long as they are needed. It resolves a question concerning the status of electronic records by stating unequivocally that they are records according to Wisconsin statutes. It also clearly sets out general requirements for the creation and development of the information systems on which electronic records exist and stipulates that such systems have capabilities for maintaining the properties of records for as long as they are needed.

Though these performance criteria may appear to be elementary and obvious in today's world of electronic databases, documents and commercial transactions, we cannot make much progress in keeping electronic records useful without these criteria. If our computer systems do not maintain the formats that make records' internal structures meaningful and that reveal the relationship between one set of records and another, we cannot rely on them to keep evidence of public business. If these systems lack the capability to redact personal information in records about individual citizens, they cannot protect privacy in the ways Wisconsin laws and court decisions might require. By establishing basic performance requirements for electronic information systems, the proposed rule helps to ensure that these systems will maintain the records that we need.

As state archivist, my primary responsibility is to ensure the preservation and long-term access of Wisconsin public records with historical value. This rule provides a crucial framework within which I and my colleagues at the State Historical Society, university archivists around the state, and the Public Records Board can work on defining more specific guidelines and procedures for records preservation.

For more than twenty years, archivists and records managers have studied and experimented with ways to keep electronic records intact and useable. Over that time span, we in Wisconsin have conducted two separate investigations of how to preserve electronic records. The Public Records Board in 1993 issued guidelines for state agencies on managing electronic information. Though no single successful method for keeping electronic records has been developed and demonstrated, there is wide agreement among the professionals in my field that proper design of information systems and careful creation of electronic records as required by this rule are the keys to success. Without care for management and preservation requirements at the design phase of information systems, we will face impractical expenses--and at times insurmountable technical hurdles--to keeping electronic records.

As important as this rule is for establishing guidelines and basic requirements, it represents only a first step in developing the means for managing electronic records in Wisconsin. Public officials and state and local government employees will need specific procedures for maintaining electronic information and records in their desktop workstations, imaging systems, and mainframe operations. From the fundamental requirements set forth in this rule, we must derive practical steps that managers and users of information technology, and that means nearly everyone in state and local agencies today, can follow without undue difficulty. We will need to train public employees to use computer software so that accurate, authentic, reliable records are created and maintained.

The importance of this rule is commensurate with the value of information and records in any modern enterprise. Records and information are a key economic asset, and ready access to reliable records is indispensable to efficient government work. In Wisconsin, we also place a high value on public access to government records. This rule not only protects our economic investment in electronic information and records, it not only helps ensure that work in government offices can be conducted efficiently, it also provides necessary guidelines toward open government and open public records for the electronic information age.

MAIN: Okay. Thank you.

GOTTLIEB: You're welcome. Would you like a copy?

MAIN: Yes. Very good. Did you want to ask any questions?

MORAN: No, thank you.

MAIN: Did you want to cross-examine him? Thank you. I have a number of other appearance slips here but nobody else indicated that they wanted to testify. Is there anybody else that wants to testify or anybody else that has any questions? Russ, do you want to? Okay. Why don't you state your name and who you represent and whether or not you're in favor of the rules.

WHITESEL: My name is Russ Whitesel. I'm a senior staff attorney at the Legislative Council. I was recently elected as chairperson of the Public Records Board. I was a member of the drafting team that worked on the rule and a member of the Board when it encouraged the Department to undertake this important task. I'm not going to testify at any length. I'm late for a hearing already at the Legislature. But I do want to say for the record that I think the rule is a real vital first step in the systematic management of public records and electronic records. I think it's an important landmark type of adoption of setting the basis for future regulation. It took a lot of work and it's a lot of effort on a lot of people's part and I think what Peter Gottlieb said was true, it looks like basic fundamental guidance and I think that's exactly what it is. And I think that's where you have start if you're going to have some systematic management of electronic records. With that, I'd recommend the Department adopt the rule with its modification and send it to the Legislature for review.

MAIN: Okay. Thank you very much. Is there anybody else that would like to testify or anybody else that has a question? Why don't you come up to the table. We'll be nice to you, I promise. State your name and who you represent.

PERRY: I'm Carolyn Perry and I'm from the Wisconsin Department of Revenue.

MAIN: What's your last name?

PERRY: Perry, like in Mason.

MAIN: Perry, okay. I can remember that.

PERRY: I just had a question on the definitions. When we're developing systems, on the definition of authentic means what is retained to be an electronic record correctly reflects creator's input and can be substantiated. For example, if we're going to have an Internet application, will something like having a policy where the person filling in the information always has to put on something to say that they have checked their entries and this is correct? Is that adequate for substantiation?

MAIN: Amy, do you want to try to answer that question?

MORAN: I think there are a number of ways that this can be met. And this is part of the issues that, I think, when we talked about first steps and then when the rubber meets the road we may be looking at things a little differently. Clicking that they assent to a submission would be an important step in formulating the record. I think here that when we--what we're thinking of here is that whoever is inputting the record has a chance to look at the information so that it doesn't go off invisible to them and that it is, in fact, what they intended to put in there. So a click of assent would do that. I think there may be other ways as well. I'd like to ask if there are any other team members who have another way to address the question. Does anybody else have any thoughts on this?

MAIN: Okay, thank you. Any other questions or testimony? Okay, well, I thank you all for coming. And we'll proceed with promulgation of the rules.

MORAN: Written comments accepted--

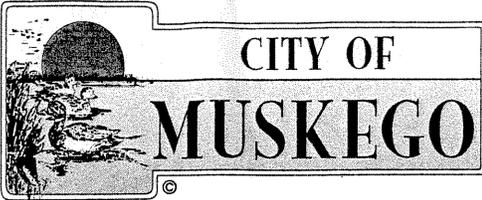
MAIN: Yes, we will accept written comments until the 20th.

MORAN: the 20th.

MAIN: So if you have other comments, or I'm sure that Amy would be pleased to get your phone call. What's your phone number?

MORAN: My phone number is 261-6616 also reachable by e-mail at Amy.Moran@doa.state.wi.us.

MAIN: So if anybody has any further questions or comments, let us know. Again, thanks for coming and we're off the record.



OFFICE OF THE CLERK-TREASURER

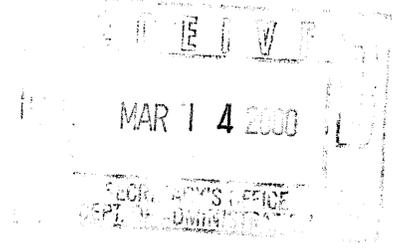
Jean K. Marena, CMC

Clerk-Treasurer

(414) 679-5625

262

March 13, 2000



Ms. Donna Sorenson
Department of Administration
P. O. Box 7864
Madison, WI 53707-7864

RE: Proposed Order of the Department of Administration to Repeal and Recreate Chapter Adm 12 of the Wisconsin Administrative Code

Dear Ms. Sorenson:

I am unable to attend the public hearing on March 15, 2000. However, I would like to submit my written comments.

I am totally in favor of storage of public records in electronic format. My only concerns about the proposed rule are found in the following sections:

1. Adm 12.06 Records and Information Systems Provisions: (3) - Document authorization for the creation and MODIFICATION of electronic records and, where required, ensure that only authorized persons create or MODIFY the records; and (6) (b) DELETE electronic records created.

I am concerned that there is no warning in that section about records that are required to be maintained permanently and which should be preserved in a way that they cannot be modified nor deleted. A novice record-keeper might think such records could be modified or deleted. Although there is reference in the definitions that "Life cycle" includes the term "disposition" which could include permanent preservation, I think it should be repeated in the above section.

Yours very truly,

Jean K. Marena
Jean K. Marena, CMC
Clerk-Treasurer



Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

**DIVISION OF BUSINESS
MANAGEMENT**
4802 Sheboygan Avenue
P.O. Box 7915
Madison, WI 53707-7915

March 20, 2000

George Lightbourn, Secretary
Department of Administration
101 E. Wilson Street
Madison, WI 53702

Dear Mr. Lightbourn:

The Department of Transportation welcomes the opportunity to review and comment on the repeal and recreation of Chapter Adm 12 of the Wisconsin Administrative Code, relating to Electronic records Management - Standards and Requirements. As custodian of public records on Wisconsin drivers and vehicles, as well many other public records, the department is very concerned with issues of public record access, privacy and security. We appreciate the efforts of the team drafting the proposed rule and recognize the administrative and technical challenges that fall under the term "records management."

Our major concern is that the proposed rule is being offered for adoption without an evaluation of the fiscal impact. If the rule will apply to existing electronic, or partially electronic, record systems, there will be an impact on agency information system development and annual operating budgets. This impact will be significant, especially if compliance is required within a short period of time. Unless this rule does not mandate any modifications to an existing record system, a fiscal impact statement must be developed. Although this rule does not require agencies to maintain public records in electronic format, the reality is that agencies do. It can reasonable be anticipated that public records will increasingly be maintained in electronic format. DOA should prepare a fiscal estimate.

A second concern is non-compliance with the proposed rule resulting from technological, software and hardware, obsolescence. Having just completed the Y2K remediation efforts, we are keenly aware of this issue and its fiscal and resource impacts. In many cases it is not possible to restore or recreate older systems and associated records. As a state agency we are concerned about being placed in a situation where we are not in compliance and have no way to comply. This situation must be addressed in the rule or in the conditions under which the rule is adopted.

Having reviewed the proposed rule and supporting materials, we conclude that the draft is moving in the right direction to provide guidance and a framework for addressing public record management when using electronic media. However, more definition and detailed guidance

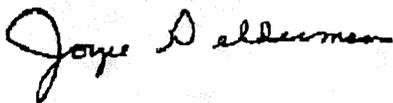
should be included. For example the term "life cycle," as used in this administrative context needs a clearer, more specific, definition. Other terminology is too broad to be used without further definition or clarification. Terms such as "export," "output," and "delete" are used in the body of Adm. 12.06 Records and Information Systems Provisions. These terms have many alternative and conflicting interpretations that will have to be resolved. While the drafting team stated that the goals of the proposed rule are to be "technology neutral" and to "stand over time," these goals may be very difficult if not impossible to achieve.

Finally, this rule fails to provide useful uniform guidance. For example, section Adm 12.05 provides that "State and local agencies maintaining public records in electronic format shall do all of the following: (1) comply with the appropriate legal and administrative requirements for record keeping." The rule should identify these requirements in a note citing the specific statutory and administrative rule provisions for the most important record keeping requirements. Section adm 12.06(4) requires state and local agencies to "design and maintain information systems so that these systems can provide the official record copy for those business functions accomplished by the system." This statement is so vague that it is virtually meaningless.

Unless this rule provides more specific guidance, state and local agencies will develop their own individual policies and procedures which will likely be inconsistent with the policies and procedures of other agencies. If this rule does not provide consistent uniform guidance, there is no need for the rule.

We will continue to participate in statewide initiatives to develop practical, workable strategies and methods for managing and preserving public records in the electronic age. Please contact David Speerschneider for additional information or follow up.

Sincerely,



Joyce Gelderman, Administrator
Division of Business Management

JSG:RK:mr

cc: Donna Sorenson, DOA
Robert Cook, DOT
James Thiel, DOT



State of Wisconsin

Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection

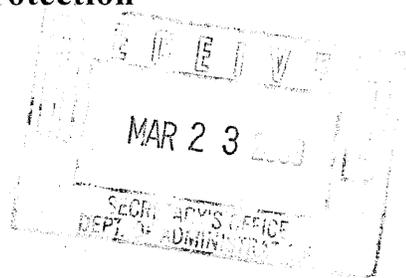
Ben Brancel, Secretary

DATE: March 20, 2000

TO: Donna Sorenson
Office of the Secretary, Department of Administration

FROM: Ben Brancel, Secretary *Ben Brancel*
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Electronic Records Management; Draft Rule**



Thank you for the opportunity to review this draft rule, which has important implications for state agency management and operations. Our chief legal counsel, Jim Matson, commented on the draft rule in June 1999. We were promised, but did not receive, a specific response to those comments.

We have discussed the rule with managers of this department, including Bureau of Information Technology Director Kate Nolan. The final draft rule does not address or resolve any of our prior comments. We continue to have the following comments and concerns regarding this draft rule:

GENERAL COMMENTS

1. The draft rule proposes to repeal existing ch. Adm 12. That chapter provides qualitative standards for records kept on optical disk. It is our understanding that local governments and the Department of Employee Trust Funds make extensive use of optical disks for record storage. The standards established in the current Adm 12 are important to the continued integrity of those records, as well as their public accessibility. Section 16.612 still requires that DOA prescribe rules for qualitative standards for storage on optical disks. Repeal of the entire current chapter should be seriously reconsidered.
2. The draft rule both goes beyond the statutory authority given to DOA for rulemaking under ss. 16.61-16.62, and fails to meet the statutory directive for rulemaking. Section 16.611(2)(d) states: **“The department shall prescribe, by rule, qualitative standards for the storage of public records in electronic format and for copies of public records stored in electronic format.”** In this draft, DOA attempts to make rules on other stages in the life cycle of a record (design, creation, active use, etc.). But, at the same time, the rule does not appear to establish any actual *qualitative standards on storage of electronic records*. Generalities, or statements directing state agencies to “comply with legal requirements” and to “develop systems” are not qualitative standards. Although some sections of the draft rule apply to records kept “exclusively” in electronic format, other sections are not so restrictive, broadening the rule requirements to records kept both in electronic and hard copy. (If the electronic versions must be kept in addition to the hard copy for the retention period, this actually doubles the storage requirements, though not necessarily the storage space.)

Bottom line: this draft rule does not give agencies and local governments qualitative standards for the storage and copying of electronic records. At the same time, it exceeds DOA's rulemaking mandate and poses unnecessary burdens on agencies and local governments.

SPECIFIC COMMENTS

- We assume that this rule does not *require* agencies to store information in electronic (as opposed to hard copy) form, but merely establishes storage standards for information that the agency *elects* to keep in electronic (as opposed to hard copy) form. The rule should state this more clearly.
- The draft rule requires agencies to ensure that electronic records are “accessible.” “Accessible” means “arranged, identified, *indexed* and maintained in a manner that permits the location and retrieval of the information in a *readable* format within a *reasonable* time.”
 - * We believe the word “indexed” is unnecessary and should be deleted. We are concerned that this provision imposes an affirmative indexing requirement, which goes beyond the technical information technology meaning of the term. Must we create substantive “digests” or “indexes” that organize information in ways that may be useful to all conceivable requesters?
 - * Does the rule require agencies to keep all data in a form that permits sorting (e.g., by subject matter or name) in ways demanded by a requester, even though the agency has no need for that sorting capability?
 - * Does this rule require agencies to keep, in current use and under current license, hardware and software capable of reading and portraying (in the preferred language of the requester) all electronic data kept in storage by the agency? (See discussion of the term “readable” below.)
 - * What is a “reasonable” time?
- The draft rule requires agencies to ensure that electronic records are “accurate.” “Accurate” means “all information exhibits a high degree of legibility and readability when displayed on a retrieval device or reproduced on paper.” It seems to us that the term “accurate” is redundant. (Why not just say that the information must be legible and readable?) It is also confusing, because the definition is inconsistent with the normal English usage of the word “accurate.” The use of the term “accurate” suggests a requirement of substantive accuracy (e.g., that DOA budget estimates are “accurate”).
- The draft rule requires agencies to ensure that electronic records are “authentic.”

“Authentic” means “what is retained ... can be substantiated.” We are concerned that this provision would require agencies to verify the “truth” of all electronic information stored by the agency, including huge volumes of information received from outside parties. (In the legal world, whole trials are held to determine the “truth” of information.) Even if this definition were narrowed to mean that the information has not been “tampered with” and is the same as when stored or entered, the definition would raise large questions of cost and security. Must agencies construct security systems to ensure that all information is “hacker-proof,” “tamper-proof” and “mistake proof?” Must agencies set up double and triple checking procedures on information entered into electronic format? Must they require additional key strokes to verify that information just entered is “authentic” (at least from the creator’s or data entry operator’s point of view)?

- The draft rule requires agencies to ensure that electronic records are “readable.” “Readable” means “the quality of a group of letters, numbers or symbols is recognized as words, complete numbers or distinct symbols.” This begs the question: Readable by what or by whom? At some point, data stored by obsolete systems or software may no longer be readable by hardware or software systems which the agency currently has available (or is currently licensed to use). Information may also be readable in machine language, but not in user languages. Does this rule require agencies to keep, in current use and under current license, hardware and software capable of reading and portraying (in the preferred language of the requester) all electronic data kept in storage by the agency? Does the rule require agencies to export or translate all electronic records maintained by the agency during their retention periods to the latest software language in order that the records be “readable” by potential users?
- The draft rule requires agencies to ensure that records are accessible, authentic, legible and readable *throughout the record life cycle*. “Life cycle” means:

“...all phases of a record’s existence: *design*, creation, active use, preservation and management through to disposition. As used here the term “disposition” includes permanent preservation as well as designation for destruction.” (We assume that the rule does not require permanent preservation, although it could be read that way.)

We believe the word “design” should be deleted from this definition. A record cannot exist before it is created. The word “design” suggests that an agency has a responsibility to keep and maintain under the rule, personal notes and preliminary drafts, which are not “records” under the public records law. (For example, this memo was “designed” and altered on a personal computer before it was circulated to others.) We understand that certain nonfinal “drafts” may be considered “records” under the public records law, but at that point they would also be deemed “created.” The word “design” is unnecessary and troublesome.

- The draft rule requires agencies to “Document policies, assign responsibilities, and develop appropriate formal mechanisms for creating and maintaining public records throughout the record life cycle.” We are not sure what this means, beyond the creation of RDA’s, the designation of public records custodians, and the normal assignment and documentation of work responsibilities. Is it necessary?
- The draft rule requires agencies to “Develop information systems that accurately reproduce the records they create and maintain.” We assume that this requirement is limited to records the agency *elects* to keep in electronic form.
- The draft rule requires agencies to “Identify and document records created by information systems.” We are not sure what this means. Beyond current RDA requirements, what does this require?
- The draft rule requires agencies to “Document authorization for the creation and modification of electronic records and where required assure only authorized persons create or modify records.” Can this provision be stated more precisely? Does it establish new security standards? Does it require additional documentation of current agency security standards? Does this require agencies to tell staff exactly what records they can create? What memos they can write?
- The draft rule requires agencies to “Design and maintain information systems so that these systems can provide the *official record copy* for those business functions accomplished by the system. What is meant by “official record copy?” May agencies delete electronic records that are kept in hard copy form?
- The draft rule requires agencies to “Develop and maintain information systems that maintain accurate links to transactions supporting the records created.” We assume that this refers to internal relationships (referential integrity) within an electronic database. The rule should not require agencies to extend the boundaries of existing data bases solely for purposes of complying with the rule. There are thousands of potential linkages between databases, many of which have not yet been achieved and may never be achieved. At the extreme, this provision could require hyper links in every memo to every stored item of information referenced in (or used in the development of) that memo.
- The draft rule requires that information systems used to maintain public records must be able to produce “electronic records that continue to *reflect their meaning* throughout the record life cycle.” “Meaning” is defined in terms of “content,” “structure” and “context” (terms also defined in the rule). Despite the definitions, we don’t know what this means. Is it merely a redundant statement of the requirement that records must be “authentic” (see discussion above)? Does it require every record (e.g., every memo and data entry) to include a preparer ID (source), date, time, and statement of purpose and context, so the information system can *output* the record “content,” “structure” and “context” as required by the rule? Does it mean that all

records must be “read only,” so that their “content,” “structure” and “context” cannot be altered?

- The draft rule requires that information systems used to maintain public records must be able to “[d]elete electronic records created.” Does this mean “delete” (in the information technology sense) or purge? In the information technology world, “delete” does not mean purge or destroy. A “deleted” record may still exist.
- The draft rule requires that information systems used to maintain public records must be able to “[e]xport records to other systems without loss of information.” To what other systems must the records be exportable? The requester’s choice of systems? Doesn’t state law actually prohibit the exportability of some confidential records? (See ss. 19.62 to 19.80, Stats.)
- The draft rule requires that information systems used to maintain public records must allow records to be “masked” to exclude confidential or exempt information. We are not sure what “masked” means. Must we “mask” the confidential information electronically and then provide the record in electronic form? Or can we generate hard copy and then “mask” the hard copy by manual methods?

The fiscal estimate with the draft rule indicates no mandatory costs associated with the rule. We strongly disagree. Requirements to maintain electronic records and the hard copies for their appropriate retention periods (rather than deleting the electronic and maintaining the hard copy) will be very expensive. Changes in software create changes in format when documents are transferred to the new software version. Requirements to update stored electronic records to the latest software versions (and then do the necessary “cleanup” on each document) to assure the electronic versions continue to “reflect their meaning throughout the records’ life cycle” will be very expensive also.

We appreciate the effort that has gone into this ambitious rulemaking proposal. But we are concerned that the very breadth and generality of this rule may cause unanticipated problems. We are also concerned that it expands in expensive and inappropriate ways, current agency responsibilities under the public records law.

We respectfully request additional discussion and review of this draft rule before forwarding it to the legislature. Since we note that s. 16.611(3), Stats., requires DOA to submit the proposed rule to the Public Records Board for recommendations, could you please send us a copy of the board’s recommendations?

Thank you for your consideration.

cc: Robert Rodriguez, Executive Assistant
Sue Buroker, Division of Management Services
Kate Nolan, Bureau of Information Technology
Jim Matson, Office of Legal Services

-----Original Message-----

From: Ladd, Mark [mailto:MarkL@racineco.com]

Sent: Wednesday, March 22, 2000 3:11 PM

To: Amy Moran (E-mail)

Subject: Admin 12

Amy,

Just a quick note to confirm the position of both, Racine County and the WRDA regarding the current Optical Imaging Administrative Rule.

While this was a functional rule at the time it was adopted, it is no longer adequate to address the technology needs and options available to county offices today. In fact, it restricts us in ways that unnecessarily increase our costs when we need to upgrade or replace technology that was originally implemented under its guidelines.

Having reviewed the proposed electronic records rule, both Racine County and the WRDA support the repeal of the existing rule in favor of the proposed new rules.

I hope this information is helpful to you as you move forward with this project.

Mark (Dr. Deeds) Ladd
Racine County Register of Deeds
President, Wisconsin Register of Deeds Association

markl@racineco.com <mailto:markl@racineco.com>

262-636-3709

-----Original Message-----

From: Matson, James K DATCP

Sent: Friday, August 18, 2000 11:17 AM

To: Moran, Amy

Cc: Main, Ed; Whitesel, Russ; Kernats, Mike; Rodriguez, Robert A DATCP;

Nolan, Kate DATCP; Steffel, Sherry M DATCP

Subject: Electronic Records Rule; Proposed Adm 12

Amy,

This is to confirm our telephone conversation earlier this week.

We have reviewed final draft revision 3.7, which we understand to be the latest draft of the above rule. We believe that this draft represents an improvement over prior drafts. While we might prefer additional changes, we believe that this draft is "workable" and we will not oppose it. We appreciate the changes that DOA has made in response to our comments.

Because the rule is drafted in rather general terms, it may be open to a variety of interpretations which may have an effect on technology costs, records management and public records requests. We trust that the rule will be interpreted in a practical and realistic manner, with input from the agencies affected. We would be happy to consult on significant interpretation issues that may arise.

Thanks for the consideration,

Jim Matson

-----Original Message-----

From: Kernats, Mike
Sent: Thursday, August 24, 2000 3:12 PM
To: Moran, Amy
Cc: Gelderman, Joyce; Speerschneider, David; Kyweluk, Roman
Subject: RE: Electronic Records Management Administrative Rule

Amy, the Department of Transportation has no objection to the latest draft of Chapter ADM 12, the electronic records rule. As I noted previously, we are glad that the effective date of the rule is delayed for 6 months. We again ask that the effective date be delayed for a year if possible, but this is not an objection.

-----Original Message-----

From: Moran, Amy
Sent: Thursday, July 20, 2000 5:20 PM
To: Kernats, Mike
Cc: Gelderman, Joyce; Speerschneider, David; Kyweluk, Roman
Subject: RE: Electronic Records Management Administrative Rule

Mike,

We have made a couple small changes since the last draft I sent you and have marked them onto the attached.

For your ease of locating them, here is what has changed:

Rule Rev. 3.6 incorporated the Legislative Clearinghouse's recommend word change in the 12.04(3) definition of "authentic" to replace the rather awkward phrasing "what is retained to be an" with the simpler "the retained."

Rule Rev 3.7 reflects a minor change in Section (2) (1) so that it now reads "This rule first applies to public records stored exclusively in electronic format and to information systems acquired or substantially modified after the effective date of the rule."

I am attaching a Word 6.0 version of the latest marked up draft for your review.

I will be on vacation from July 24 - August 7. Please feel free to contact Russ Whitesel with any questions in the meantime, and please copy Bruce Reines in any responses to the Department in my absence (or even when I'm here, for that matter).

I will be available tomorrow if you have any questions. We look forward to receiving your support.

Regards.

Amy

<< File: word 6.0 version 2.1 marked up to 3.7.doc >>

Revisions to Adm 12 based on comments received from the Rules Clearinghouse, Public Hearing testimony and Written Comments received by the Department of Administration

Changes made to draft dated February 17, 2000 and reviewed by the Legislative Clearinghouse and published for Public Hearing on March 17, 2000.

Analysis paragraph 2 was changed by adding the sentence: "The rule does not require public records to be maintained in electronic format nor does the rule modify the general regulations that apply to all public records." This change was made in response to concerns expressed by DOT and DATCP that the rule required them to follow all guidelines for all electronic records, public or otherwise.

Analysis paragraph 2 in the current draft is new placement for what had been the second sentence in paragraph 2 of the former draft. The phrase "and records stored in automated systems regardless of computer platform" has been inserted to replace the terms "database entries and web-enabled records as well as others." This change has been made to add language clarity.

Analysis paragraph 4, last sentence, the word "agencies" has been changed for language clarity to read "agency."

Adm 12.03 Scope sentence 1 was changed to remove the word "minimum" from the phrase "minimum requirements" as DATCP found the term confusing.

Adm 12.04

12.04 (1) definition of accessible was modified to read ". . . information arranged, identified, indexed or maintained," removing the prior use of the "and" and replacing it with "or" in response to concerns expressed by DATCP.

12.04 (3) replaced the phrase "what is retained to be an" with "the retained" on suggestion of Rules Clearinghouse.

12.04 (5) Rules Clearinghouse suggested a wording change in the second sentence; suggesting replacing "'Context' can include" with "'Context' includes." This change was not made as drafters see a meaning change in the suggested rewording and find the original wording better expresses their intent.

12.04 (6) Definition of electronic format has been changed by replacing the word "transmitted" with the words "sent, communicated" and replacing the term "digital or analog form" with the phrase "electrical, digital, magnetic, optical, electromagnetic or similar technological form" to meet concerns raised by DATCP.

12.04 (9) Rules Clearinghouse offers suggestion to replace colon with the phrase "including the". Team chose not to make this change. The definition of life cycle was changed by deleting the word "design" in response to concerns expressed by DOT and DATCP. The phrase "As used here, the term 'disposition'" was replaced with the word "Disposition" for clarity in response to suggestion by Rules Clearinghouse to replace the word "here" with the phrase "in this subsection." The new sentence structure parallels that used in the definition of "context."

12.04 (10) The word "cycle" was added to the end of the definition of "meaning" for consistency with other references to information life cycle in the rule.

12.04 (11) Initial letter of word "record" has been changed to lower case as recommended by Rules Clearinghouse.

12.04 (14) Second sentence restructured to begin with the word "Structure" as suggested by the Rules Clearinghouse. Sentence now reads "Structure can include, but is not limited to,"

Adm 12.05

12.05 (title) the term "General" has been removed from title to now read "Provisions." This change was made as the current redraft removes what had been a section heading, s. 12.06, containing specific provisions. (See comments on s. 12.06 below)

12.05 (intro.) The first sentence of the introduction is the sentence that had been numbered 12.05 (1) in the hearing draft. This change was made for clarity at the same time that the second sentence was reworked. Rules Clearinghouse suggested addition of words "with regard to those records" after the word "following" to clarify the reference. To meet this and the DATCP concern regarding possible misinterpretation of the applicability of the section, the sentence with the unclear reference has been reworked to now read, "With regard to public records stored exclusively in electronic format, state and local agencies shall do all the following:"

12.05 (1) The phrase "statutes and rules relating to public records" replaced " the appropriate legal and administrative requirements for recordkeeping" in response to concerns raised by DOT. This whole phrase was subsequently moved from its location as item (1) up into the introduction to section 12.05 (see above).

12.05 Renumbering of provisions

12.05 (1) to (3) in the current draft are provisions that had been 12.05 (2) to (4) in the earlier draft.

12.05 (4) to (13) in the current draft are provisions that had been 12.06 (1) – (6 (e)) in the earlier draft.

12.05 (1) The phrase “Ensure that” has been replaced with the word “Maintain,” the word “public” has been inserted before the term “records” and the word “that” has been inserted before the phrase “are accessible” in response to concerns expressed by DOT and DATCP.

12.05 (2) the word “electronic” has been inserted before “public records” to address DATCP concerns.

12.05 (3) The term “Assure” has been replaced with the term “Maintain” in response to DOT and DATCP concerns and the word “limits” was changed to “limiting” for improved language.

[prior 12.06] Section, title and introduction have all been deleted in this draft in response to concerns expressed by DOT and DATCP. Deleted section title was “Records and Information Systems Provisions” and deleted introduction read: “ State and local agencies maintaining any public records exclusively in electronic format shall do all the following for those records.” The concept of the rule applying to records kept exclusively in electronic format was captured in the rewording of the introduction to the current section 12.05.

12.05 (4) [prior 12.06 (1)] The phrase “Utilize” has replaced the phrase “Develop” to meet concerns expressed by DOT that the rule would require them to develop to new systems.

12.05 (5) [prior 12.06 (2)] The term “Describe” has replaced the term “Identify” and the word “public” has been inserted before the term “records” to add clarity to the meaning in response to comments from DATCP.

12.05 (6) [prior 12.06 (3)] The word “public” has been inserted between the terms “electronic” and “records” to add clarity as to scope of the rule in response to comments from DATCP.

12.05 (7) [prior 12.06 (4)] In response to concerns expressed by DOT and DATCP, the word “new” has been inserted before “information systems” to clarify that the rule does not intend a retrofit of existing systems. The word “an” has been substituted for the word “the” in the phrase “an original record copy” to clarify agency flexibility in what they designate as the public record.

12.05(8) [prior 12.06 (5)] The word “links” has been changed to “linkages” to meet concerns expressed by DATCP. The phrase “electronically or by other means” has been added to reinforce agency flexibility following concerns expressed by DATCP.

[prior 12.06 (6) intro] This section was removed in response to comments received from DATCP and DOT and the subsequent subsections have been renumbered. Deleted text read “Ensure that information systems used to maintain public records under this section shall be able to:” Rules Clearinghouse suggested inserting “do all the following” before the colon in

the phrase at the end of the sentence. This change becomes inapplicable with the deletion of the section. Provisions that were numbered 12.06(6) (a) to (e) in the draft reviewed by the Clearinghouse are currently numbered s. 12.05 (9) to (13).

12.05 (9) – (13) [prior 12.06 (6) (a) to (e)] The phrase “Utilize information systems that can” has been inserted at the beginning of each of these five sections for sense and to replace wording that had been embodied in s. 12.06 (6) (intro) in the prior draft.

12.05 (9) [prior 12.06 (6) (a)] The term “electronic” was removed from phrase “electronic records” to allow flexibility of output following concerns expressed by DATCP. The possessive form of the word “records” was replaced with the word “record” for improved language use.

12.05 (10) [prior 12.06 (6) (b)] The phrase “or purge” has been added to the term “delete” in response to comments received from DOT that not all systems are capable of deleting a record. The phrase “in accordance with the approved retention schedule” has been added at the end of the sentence in response to DOT and DATCP requests for improved clarity on the requirement.

12.05 (11) [prior 12.06 (6) (c)] The phrase “that require retention” has been added to clarify which records must be able to be exported in response to concerns raised by DATCP. The term “meaning” has been substituted for the term “information” at the end of the second sentence for added clarity, in response to concerns expressed by DATCP.

Adm 12.06 Initial Applicability. This section has been added in response to concerns expressed by DOT and DATCP. The added language reads: "This rule first applies to public records stored exclusively in electronic format and to information systems acquired or substantially modified after the effective date of the rule."

In response to a request for a delayed implementation date, the effective date has been moved out six months in the current draft by adding the word “sixth” before the word “month.” The delay was inserted to address concerns expressed by DOT, who in discussion in March, expressed their preference for a one year deferral. It was felt that by the time the rule is promulgated it would be nearly a year from that time and so a six month period was chosen.