



Recommendation 90-5

Federal Agency Electronic Records Management and Archives

(Adopted December 17, 1990)

Federal agencies increasingly create, use, and store records in electronic rather than paper form. As this occurs, legal requirements and management efforts designed for paper records become progressively less satisfactory to ensure an adequate legal and historical record of government decision-making. Administrative Conference Recommendation 88-10 and the accompanying report addressed electronic acquisition of information and public access to and dissemination of electronic information. These recommendations complement Recommendation 88-10, and are not intended to amend that recommendation.¹ They focus on internal agency electronic records management, affecting long-term accessibility of public records through the National Archives. They are intended to make agencies sensitive to the issues involved.

Recommendation 1(a) parallels part A of Recommendation 88-10. It starts with the premise the basic policy balances have already been struck and does not seek to reopen them. Existing policy reflected in the records statutes² and in National Archives and Records Administration (NARA) and General Services Administration regulations and guidelines should be applied to the new electronic formats, with the objective that changing from paper to electronic media should not diminish the historical record of the government or its accessibility. There are some instances in which a rule designed for paper information, when applied to electronic information, may produce significant differences in result. In other instances, electronic formats present entirely new issues for records management, as with relational databases,³ whose content is constantly changing, and whose use is different in character from traditional documents. In these instances, NARA and other agencies should identify explicitly the records management and records preservation issues presented and seek to resolve them in accordance with the basis purposes of a government-wide records management and archives

¹ These recommendations do not address such important issues as protection of trade secrets or privileged commercial information, invasion of personal privacy, or the need for Congress and agencies to consider allocating budgetary resources. Nor do they address computer security issues, which constitute an important, complex and specialized subject deserving independent consideration. Nothing in these recommendations is intended to diminish access to agency records through depository libraries.

² See, for example, the Federal Records Act and related statutes in 44 U.S.C. chaps. 21, 22, 29, 31, 33 (1988).

³ A "relational database" is composed of separate tables from which data are extracted and presented to a user as though they came from one database. A relational database is sometimes also a "distributed" database, meaning that it is made up of tables physically located at different places on a network.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

system. The recommendation is not intended to discourage agencies from taking advantage of an enhanced ability to preserve additional records that may result from technological change.

Recommendation 1(a) also states that shifts toward electronic formats should not have the effect of changing the substantive legal rules or the opportunity for, or scope of, judicial review. This means that the evolution of rules concerning standing to enforce the requirements, and of the relationship between the Freedom of Information Act and the records statutes should continue, and that agency treatment of records in electronic formats should be subject to the same scrutiny as is applied to records in paper formats having the same content. In sum, the guiding principle should be the content of the record, and not the format of its storage, should control the rules governing its retention and accessibility.

Recommendations 1(b) and 1(c) extend the basic principle of Recommendation 1(a) to public access. Electronic information formats have the potential to permit enhanced public access even as the volume of information grows, because of the potential for better indexes that are computer searchable and the possibility of free-text search. However, a great threat to long-term public access to electronic information formats is technological obsolescence, the possibility that, by the time someone wants to read information stored on electronic media the information will not be available. This threat must be avoided—not by refusing to accept electronic information formats, but by working to develop and adopt standards for information exchange. Such standards must also accommodate newer more sophisticated document and database structures such as hypertext—or other compound documents composed of graphical, audio, and video, as well as textual components—and relational distributed databases. Otherwise, solutions to technological obsolescence will themselves become obsolete as agencies adopt future technologies.

Recommendation 1(d) urges that records managers and archivists avoid archival practices that impair the use of electronic information technology in carrying out the agencies' programmatic activities. For example, it might not necessarily serve the public interest to prohibit stand-alone microcomputers on the grounds that records management functions can be accomplished with greater effectiveness on time sharing or other network systems.

Recommendation 1(e) encourages agencies to coordinate their use and development of electronic record-keeping technology and standards with the private sector to the fullest extent possible, and to avoid technologies and standards that, because of proprietary restraints or other limitations, would impede access to agency information and transfer to the National Archives.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Recommendation 2 addresses problems relating to preservation of the electronic records of agencies and commissions that are established on a temporary basis.

Recommendation 3 urges that NARA take a more active role in showing agencies how to harmonize records preservation objectives with agency modernization, and in exploring standards that can mitigate potential problems of incompatibility and technological obsolescence. While NARA's reluctance to adopt document transfer or database transfer standards that do not have an established commercial base is appropriate, NARA should also take the initiative in promoting the development of appropriate standards through private standard-setting organizations,⁴ and should encourage agencies to make use of available commercial products embracing the most promising standards.

Agencies also need guidance with respect to questions relating to admissibility of electronic records as evidence and other reliability issues.⁵ The Conference encourages the Department of Justice and the Office of Management and Budget to expedite their current efforts in this regard.⁶

In carrying out these recommendations, agencies are reminded to comply with the Federal Information Processing Standards.⁷

Recommendation

1. Federal agencies, including those responsible for archival and records policy, should ensure:

(a) Changes in the technology of record-keeping, including the use of electronic systems in creating records and the transfer of records from paper to electronic formats, do not (i) alter the criteria for identifying material to be retained as a temporary or permanent record for eventual transfer to the National Archives, (ii) have the effect of altering the opportunity for, or

⁴ See ACUS Recommendations 78-4, Federal Agency Interaction with Private Standard-Setting Organizations in Health and Safety Regulation, 1 CFR 305.78-4.

⁵ Legal issues relating to reliability include signature requirements and contract documentation. See, for example, the federal statutory counterpart to the Statute of Frauds, 31 U.S.C. 1501.

⁶ The Conference is prepared to work with the Department of Justice and the Office of Management and Budget to provide appropriate guidance for agencies.

⁷ "FIPS" Publications are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce, pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949, as amended by the Computer Security Act of 1987, Public Law 100-235.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

scope of, judicial review of agency compliance with records law, or (iii) otherwise alter the substance of records law;

(b) Changes in the format of agency information from paper to existing and future electronic media do not reduce the accessibility of information to the public;

(c) Accessibility is not degraded by technological obsolescence of electronic formats;

(d) Policies and procedures aimed at enhancing records management complement and, in any event, do not impair the utility of information systems for the performance of agency missions; and

(e) Maximum use is made of generally available technology and, whenever feasible, that agencies conform to standards that are widely agreed to and in use in the private sector.

2. Temporary agencies and commissions should, in consultation with the National Archives and Records Administration (NARA), manage their electronic record-keeping (consistent with the agency's mission) in such a way as to ease the transfer and preservation of their records upon the agency's dissolution.

3. NARA should promote the development and implementation of standards for text, database, and other forms of electronic records, and should seek out opportunities for pilot and demonstration projects, covering candidates for standards for text and database information that can ensure the transferability of such information from agencies to NARA and ensure long-term accessibility to the public. NARA and the White House Office of Administration should develop concepts for a turnkey presidential records system that could go to a presidential library along with electronic presidential records, providing immediate public access to records to which access is permissible.

Citations:

55 FR 53270 (December 28, 1990)

__ FR ____ (2011)

1990 ACUS 23