

Section 301(d) written or electronic rulemaking docket
Rulemaking docket: Paper or electronic

In what format should the docket, rules, and other items be maintained -- electronic or paper?

- **Arkansas**
 - o The law should provide that these documents must be maintained without prescribing format.
 - o Arkansas law states that agencies maintain copies of all rules and that they are made available to the public. Also, our statute only began requiring "electronic" copies of rules in 2001, so, anything before that would have to be in paper form. Those paper copies would have to be acquired from either the agency or the SOS office. Paper copies are still considered the "official" records in Arkansas. Nowhere in Arkansas statute does it speak to rule format.
- **Colorado**
 - o Alternative 2, [(d) upon request, the agency shall provide a written docket.] fits best with our model of rule filing and record keeping.
 - o Colorado's APA states that the secretary of state shall publish electronically and may publish in print, CRS 24-4-103(11) (b). The Secretary of State's office maintains an electronic log of all rule-making filings with all filed documents remaining in electronic format. We have few requests for print copies of this material, but will provide them upon request. Unless the documents are large, it is unlikely that we would charge for them.
 - o The law also states that state agencies shall maintain a record of rule-making, CRS 24-4-103(8.1), and while the provision does not specify the format of the documents, it is likely that many of these documents exist in print rather than electronic format.
- **Delaware**
 - o In Delaware we maintain regulation filings in both electronic and paper versions.

Florida

I think they can be maintained in either format. If they are kept in electronic format, and if they have long term retention, archival and records management guidelines should be followed to insure access and preservation. Rule 1B-26 of the Florida Administrative Code sets guidelines for electronic public records in Florida (we are currently updating this rule. In Florida, the legislature is proposing legislation to require all materials incorporated by reference be submitted in electronic format. I am sure at some point in the near future dockets and rules will be filed electronically.

- **Idaho**
 - o In Idaho a "docket" is made up of the rulemaking notice and rule text and both are published in the Administrative Bulletin in hard copy and electronic formats. As the publisher, all of the documents that my office maintains are in electronic and hard copy formats and are available in both formats. That is not always the case with each promulgating agency.
 - o Each agency is required to maintain a rulemaking record for each rule being promulgated that will become a final (permanent) rule. This record is made up of all documents related to the rulemaking including written comments received from the public, public hearing testimony, memos, etc., as well as the documents that publish in the Bulletin. This rulemaking record remains open for public inspection and copying for two years after the rule becomes final. Many of these documents are created electronically but not all. Mandating that all of these documents be made available in an electronic format may be an expensive proposition for many cash-strapped agencies, especially since such requests are rare. Transcribing a lengthy public hearing or creating electronic records from hard copy can be expensive and time consuming.

- I, too, think that statutory language should be neutral and not prescribe a specific format. For many obvious reasons the electronic format is the preferable format to most of us who publish rules and maintain archives. Having the statutory flexibility to evolve with the available technology and move toward electronic only formats is necessary. Equally important is the public's ability to access official documents regardless of the format.
- Allowing an agency the flexibility to provide services as cost effectively as possible makes sense as long as the services are being provided. In Idaho, when applying the provisions of the Public Records Act, an agency may charge a fee to cover the cost of responding to the request for paper copies.
- **Montana**
 - I too agree with the thoughts that the law should ensure proper documents are retained and accessible, but steer clear from prescribing a format.
 - Montana law requires the Secretary of State to keep and maintain a permanent register of all notices and rules filed and that the register must be open to public inspection (2-4-306, MCA). It also requires the Office maintain a permanent set of the registers. These requirements are currently being fulfilled by retaining a printed log of submittals and copies of the printed publications.
 - As for state agencies, the statute provides that rulemaking records can be requested from state agencies by the administrative rule review committee. Thus, state agencies should maintain rulemaking records to demonstrate compliance of elements described in 2-4-305, MCA.
- **New Mexico**
 - There is no requirement for centralized docketing in New Mexico. A few agencies maintain rulemaking records, but there are no standards that I could find requiring a specific format. From what the agencies tell me, they maintain a mix of electronic and paper files in their rulemaking files.
 - According to the State Rules Act, adopted rules must be filed in paper and electronic formats. Section 14-4-3 NMSA 1978 reads:
 - *Each agency promulgating any rule shall place the rule in the format and style required by rule of the records center and shall deliver one original paper copy and one electronic copy to the records center. The records center shall note thereon the date and hour of filing. The records center shall maintain the original copy as a permanent record open to public inspection during office hours and shall have the rule published in a timely manner in the New Mexico register and compiled into the New Mexico Administrative Code. At the time of filing, an agency may submit to the records center an additional paper copy, for annotation with the date and hour of filing, to be returned to the agency.*
 - This requirement was added to the State Rules Act in 1995 preparatory to creating the New Mexico Administrative Code. Prior to that, seven paper copies of each rule were filed. The requirement for filing electronic documents greatly assisted with the process at that time; however, now the stipulation of paper and electronic versions could be a detriment. We would like to adopt electronic rule filing in the future but may have to amend the act before we could do that. If we do amend the act, we would most likely place language that would allow filing in accordance with rules established by my agency. I feel it is better to establish the system without requiring a specific format. My agency takes this approach with the record retention schedules we produce. We tell agencies the format of a document does not change what the document is. For example, it does not matter if a letter is electronic or paper, it is still correspondence and follows the requirements established in the retention schedule.
- **New York**
 - In New York, current statute does not regulate how long hard copy notices must be maintained. The hard copy rule making submissions are maintained in hard copy for one year. We keep them for one year for our own reference. After one year we throw them out. The electronic copy of rule making notices (issues of the weekly Register) are maintained on the Department of State's (DOS) website indefinitely. The official filing (Certification signed by agency head attached to the text of the rule amendment) is maintained at the DOS in hard copy for two

years, then forwarded to the NYS Archives. The original rule filings become the property of the Archives. The public may contact the Archives to view the documents or to request copies of rule amendments.

- **Oregon**
 - o I agree with Ken Hansen that the law should provide that these documents must be maintained without prescribing format. Oregon Statute ORS 183.330(2) says that each state agency that adopts rules shall maintain copies of all rules adopted by the agency and be able to provide information to the public about those rules and rulemaking proceedings. The statute is silent as to format.
- **Texas**
 - o Texas law (Government Code Sec.2001.004 and Sec. 2001.005) requires state agencies to index and make available for public inspection "all rules and other written statements of policy or interpretations...." The law does not specify what format agencies must use. A related law (Government Code, Chapter 2002) permits the Texas Register to "maintain on microfilm or on an electronic storage and retrieval system" the information published in the Texas Register.
 - o The copy of record of documents as submitted to the Texas Register by agencies is still maintained on paper. We have discussed creating an imaging-style electronic repository, as well as asking the legislature to declare the Internet database of the rules as the "official copy".
 - o Both of these options raise cost and accuracy issues. In fact one potential flaw in the Internet-as-official-record option is that it would dictate a specific format.
- **Utah**
 - o The law should provide that these documents must be maintained without a prescription of format. This is what Utah's statute does.
 - o Following alternative 2, the law should provide that individuals may request a paper copy of these documents for a nominal fee covering the cost of responding to the request.
- **Virginia**
 - o I agree with others who have responded that the language should be neutral regarding format to give states flexibility to address their specific needs.
 - o Virginia law presently places responsibility on each state agency for maintaining a complete list of its currently operative regulations for public consultation, making available a complete file of the full texts of its regulations, and allowing public copying of the files or making copies available either without charge, at cost or, or on payment of a reasonable fee. The agency is also mandated to maintain as a public record a complete file of its regulations that have been superseded on and after June 1, 1975.
 - o In addition, the Registrar's office serves as the central repository for state agency regulations and maintains complete files of all pending and final regulatory actions of all state agencies. Once a regulation becomes obsolete, after five years it is transferred to the State Library and Archives for permanent retention.
 - o The Virginia Register of Regulations as posted on the Virginia Code Commission's website is the official version. According to a recent report by the American Association of Law Libraries, the Virginia Register is Virginia's only online legal resource that is considered official.

To what extent do consumers of government information in your state access official documents from your agency through the internet, and to what extent do people come to the agency office and want to see a paper document?

- **Arkansas**
 - o Arkansas law states that agencies maintain copies of all rules and that they are made available to the public. Also, our statute only began requiring "electronic" copies of rules in 2001, so, anything before that would have to be in paper form. Those paper copies would have to be acquired from either the agency or the SOS office. Paper copies are still considered the "official" records in Arkansas. Nowhere in Arkansas statute does it speak to rule format.

- **Colorado**
 - o Most users prefer to access documents through the internet. At this point, versions of rules prior to 2006 remain in print. Users wanting prior versions are referred to the Colorado Supreme Court Library as they maintain a complete archive of superseded rules.
- **Delaware**
 - o Our office produces 4 versions of the monthly register, three of which are electronic. Official documents are kept electronically and an authenticated version is available online for many regulations. We receive less than 10 requests per year for paper copies of filings.

Florida

The Florida Department of State has some records available through the internet and constantly tries to provide additional materials on-line. My experience is that the public wants electronic access to government information. I know that with the State Archives digitization of collections has really increased access to the materials we have. The internet allows researchers to use materials without coming to Tallahassee.

Idaho

- o Most consumers are accessing rule documents via the Internet. Requests for individual rule chapters in hard copy are so infrequent that I generally provide a copy at no charge to anyone requesting one since it actually costs more to process the payment for a hard copy than the hard copy itself costs to produce and mail. It is extremely rare that someone comes into the office to inspect copies of rules.

- **Montana**

- o While individuals may prefer to access information through the web, the information available is still limited for research purposes. State agencies now submit filings and replacement pages in an electronic format to us. However, this electronic record only exists for the past 7 years. Further, only the current version of the Administrative Rules of Montana is available online. We do have past years of the Montana Administrative Register available on our website dating back to July 1999. Individuals needing information prior to that date or needing a copy of the official version (still the printed publication here) would contact us directly. Typically we don't have folk's walk-in -- they call and we either send the information by email, fax or regular mail.
- o We do need to position ourselves now to allow for enhanced digital functionality 5 or 10 years from now. Customer needs are ever evolving and expectations are growing in relation to public access to government publications and records via the Internet. There remains the need to strike the right balance and flexibility in law would be most beneficial.

- **New Mexico**

- o The New Mexico Register and New Mexico Administrative Code websites are both official. The Register also has an official paper version, but there are only six paying subscribers. Most people use the Register website. The NMAC is only available electronically. It was designed in 1995 to be electronic; there has never been an official paper version of the NMAC. However, as seen above, the State Rules Act stipulates that the original paper filing is the copy of record that is open to the public. If the NMAC varies from the original paper filing, the original paper filing wins. We only certify the original paper filing; we do not certify the NMAC. That being said, most people access the rules through the NMAC website, not in person at our office.
- o There is an interesting conflict between access and preservation when it comes to rules. We establish electronic systems that make all the text easily available to the public. However, those electronic systems rarely consider long-term storage of permanent records. Because we are the State Archives, the preservation of rule text is a major consideration in my agency. Although we have the electronic NMAC, the original paper rule filings are considered permanent state records and are sent to the State Archives when no longer current. Ultimately, the paper is what people in the future will see, not the website.

- In summary, because of the conflicting requirements between access and preservation and because of variances in practice and procedure between the states, I feel the text of this section of the MSAPA should be kept more general in nature. I think a wise approach is to establish that the agency should make the rule material available. The details of how that is accomplished, in my opinion, are more appropriate in rule. This is how it functions in my state. My agency has the authority to issue rules that establish the administrative detail of how rules are made available to the public. These rules can change as technology does. In the MSAPA, the best approach may be to add comments after the text that describes how agencies can make rule material available to the public.
- **New York**
 - In New York, current statute does not regulate how long hard copy notices must be maintained. The hard copy rule making submissions are maintained in hard copy for one year. We keep them for one year for our own reference. After one year we throw them out. The electronic copy of rule making notices (issues of the weekly Register) are maintained on the Department of State's (DOS) website indefinitely. The official filing (Certification signed by agency head attached to the text of the rule amendment) is maintained at the DOS in hard copy for two years, then forwarded to the NYS Archives. The original rule filings become the property of the Archives. The public may contact the Archives to view the documents or to request copies of rule amendments. The DOS charges .25 cents per page for photocopies of Register pages.
 - Article 6-a of the Executive Law sets procedure for the format, schedule, distribution and fees for the NYS Register. Section 149 (2) (e) of such article describes the Action Pending Index (API). The Department of State maintains an index of all proposed rule makings that are pending final action. The API is published each week as part of the Register. Final actions are removed and new proposals are added. The API includes the Proposed Rule Making's I.D. No., Expiration Date, Subject Matter, and Purpose.
 - Article 6-a, Section 147(3) establishes the Quarterly Index. The Quarterly Index is a supplement to the Weekly Register. It is a cumulative alphabetical listing by agency of all rule making actions for the year. Every action affecting a particular rule making is included. The index includes the subject, purpose and date of publication of each notice; the type of notice must be denoted, i.e., proposed, adoption, emergency, etc.
 - Individual rule making notices include the name and contact information of whom comments may be submitted to. They also include the minimum comment period. (Usually 45 days after publication of the notice).
 - The NYS Register maintains a hearing calendar. The listing includes the Rule I.D. number, subject, purpose, date, time and location of the hearings to be held for pending rule makings.
 - The tracking of NYS rule makings is simple due to the prescribed numbering scheme of rule making submissions used in conjunction with the Action Pending Index and Quarterly Index.
 - The Department of State performs an average of 100 hard copy NYCRR/Register searches each year. We photo copy pages from the Register and/or previously published NYCRR pages. The statutory fee is .25 cents per page. I anticipate that the number of searches will decrease as the public becomes aware of the new DOS searchable Register. (Just posted today)
 - Visit <http://www.dos.state.ny.us/info/register.htm> to view PDF versions of the Register from 2003 to present. The layout of the API and Quarterly Index can be viewed by choosing the PDF versions. There is also the new link to the Register that is now ADA compliant and fully searchable. (January 2007 to present).
- **Oregon**
 - Researchers in Oregon can begin administrative rules research electronically/on the internet, but if their research takes them to previous versions or official versions, they need to access the paper documents filed. They can get copies by coming to the State Archives or by e-mailing, faxing or phoning the State Archives for research assistance and copies. Access to most all Oregon official documents is handled in this manner.
- **Texas**
 - People use the Internet publication--the Secretary of State databases of the Code and Register or individual state agency web sites--far more often than sources. Many people probably are

unaware that a paper repository even exists. We receive requests for the filed originals only for very old documents that are not available in electronic format.

- **Utah**

- The researchers we typically see want to research administrative rules electronically. Since 2003, the official copies of rules publications are electronic and available on the Internet. Researchers are frustrated when they have to drive to a specific location and make photo copies. They prefer to download an electronic copy of the documents.

- **Virginia**

- Currently, the Virginia Register can be viewed online beginning in June 1998. The Virginia Administrative Code online is updated each day and provides public access to all agencies' regulations currently in effect on any given day. Presently, Virginia does not have versioning of its Virginia Administrative Code in place, but we are working towards that goal. In the meantime, online research of regulations can be performed on the online Virginia Registers. Prior to June 1998, issues of the Register must be researched in paper copy. Our office receives an estimated 35-40 requests a year to aid in this research.
- Most Executive Branch agencies are required by Governor's Executive Order to use the Department of Planning and Budget's Virginia Regulatory Townhall (<http://www.townhall.virginia.gov>) to electronically conduct the required Executive Branch review and approvals of regulations prior to filing the approved regulations with the Registrar. My understanding is that no paper copies transfer hands during the Executive review process. The Townhall contains complete information on each regulatory action that is made available to the public after the information is filed for publication in the Virginia Register. We have worked with the Department of Planning and Budget to so that our respective servers communicate and allow the agencies to "re-sync" regulatory text to the Townhall so that it is the same text that is published in the Register.