

**North Carolina
Guidelines for Managing Public Records
Produced by Information Technology Systems**

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Introduction

A critical need by government agencies for more efficient methods for the creation, storage, and retrieval of public records has led to the adoption of varied information technology systems for managing records. These include optical disk and CD ROM systems as well as more established media such as microform and magnetic disk and tape. While the advantages of such systems are many, the complexity of safeguarding the integrity of records has increased, requiring greater attention to issues relating to security, accuracy, reliability, and accountability.

This publication provides North Carolina state, county, and municipal agencies, and other subdivisions of government suggested guidelines for establishing methods and procedures in the preparation of records produced by information technology systems. Implementation of the guidelines should increase the reliability and accuracy of records regardless of the type of storage media employed, thereby enhancing their admissibility and acceptance by the courts as being trustworthy. Admissibility of printouts of optical disk or CD ROM files is yet to be widely tested, but it is expected that they will be treated similarly to printouts from magnetic disk or tape files, i.e., accepted as originals if it is shown that they reflect the data accurately. Amendments to several statutes in 1999, including the Photographic Reproductions of Business and Public Records as Evidence Act (G.S. §8-45.1), should work to foster this acceptance. Appendix A contains excerpts of relevant North Carolina statutes, and Appendix B describes an electronic records production self-warranty process and includes a model warranty form.

The suggested guidelines and self-warranty are expected to serve as a basis for establishing State standards in the future. While not now required, it is suggested that agencies employing an information technology system consider their implementation. The model form in Appendix B may be reproduced by agencies choosing to begin warranting the production of electronic records.

Regardless of the information technology system employed, public records must be made accessible unless otherwise exempt from inspection by statute. Requests for copies must be filled as promptly as possible, and the person making the request may elect to have the copies in any and all media that the agency is capable of providing. While not addressed specifically in these guidelines, the capability of an information technology system to permit inspection and examination of records is critical. Such capability should be planned for and built into the system, particularly if confidential and nonconfidential information are commingled. For specifics on this requirement see applicable provisions of the public records law, G.S. §132.

Nothing in this publication or the appendixes changes current records retention and disposition scheduling procedures nor authorizes the destruction of records, originals or copies.

Agencies may obtain a copy of this publication from the State at no charge from the following address:

North Carolina Department of Cultural Resources
Division of Archives and History
4610 Mail Service Center
Raleigh, N.C. 27699-4610

Tel: 919/733-7305
Fax: 919/733-8807

It also is accessible via the World Wide Web at <http://www.ah.dcr.state.nc.us/e-records/manreocrd/manreocrd.htm>.

The North Carolina guidelines are based on those contained in the Association for Information and Image Management (AIIM) technical report series, *Performance Guidelines for the Legal Acceptance of Records Produced by Information Technology Systems* (AIIM Catalog No. TR31). The technical reports may be purchased from AIIM.

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Applicability of Suggested Guidelines and Self-Warranty

These suggested guidelines are designed to be applicable to public records produced by any *information technology system*, as the term is defined below, regardless of the physical characteristics of the record media or technology employed. The suggested self-warranty certification (Appendix B) is designed for officials with responsibility for *electronic records*. *Electronic record* also is defined below.

Definitions

- D. Information Technology System:** Any *process or system* that employs a mechanical, photo-optical, magnetic, electronic, or other technological device for producing or reproducing records.
- E. Process or System:** Any *information technology system*.
- F. Record:** Information preserved by any technique in any medium, now known or later developed, that can be recognized by ordinary human sensory capabilities either directly or with the aid of technology.
- G.**
- H. Public Record:** Chapter 132, section 132-1(a), of the North Carolina General Statutes defines *public records* as meaning “. . .all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.” (See Appendix A for excerpts of other relevant North Carolina statutes.)
- I. Electronic Record:** A record created or reproduced in any medium by means of any system requiring the aid of electronic technology to make the record readable or otherwise comprehensible by ordinary human sensory capabilities. (This definition does not apply to microform records, which can be read with the aid of a magnifying glass.)
- J. Original Record:** A record prepared in the first instance or any counterpart intended to have the same effect by a person executing or issuing it. If data are stored in a computer or similar device, any printout or other output readable by sight shown to reflect the data accurately is an “original.”

Original records preserve information over time in the identical or functionally equivalent form to the original information. Original records may present information in a form different from the original information without affecting its quality. For example, information preserved in digital format may be printed on paper using different print fonts at different times.

- K. Duplicate Record:** A record that is produced by the same impression as the original, or from the same matrix, or by any other technique that accurately reproduces the original.

Duplicate records accurately reproduce original records, except that duplicates may contain production, control, indexing, certification, or other data not related to informational content of the records and which do not affect the content of the records.

Image enhancement techniques may be used provided that they do not change the information content of the records.

Note: Classifying *electronic records* as either *originals* or *duplicates* may have little practical value; the reliability and accuracy of the process or system used to produce the records will likely be a more important consideration by the courts in determining whether or not to admit them into evidence. (Many such records can be expected to have indexing or other control data added for purposes of location and retrieval, making them *duplicates* by definition.)

Use of Records Prepared by Information Technology Systems in Legal Proceedings

- L. Rules of Evidence.** Modern rules of evidence are based on statutes and special rules prescribed by the courts, rather than on individual court decisions. The federal government follows the Federal Rules of Evidence while most states have adopted one or more uniform laws that establish the admissibility of records in evidence such as the *Uniform Business Records Act*, the *Uniform Photographic copies of Business and Public Records as Evidence Act*, and the *Uniform Rules of Evidence*. North Carolina statutes have incorporated language accomplishing a similar result.
- M. Laying a Proper Foundation.** Now, rules of evidence permit original and duplicate records to be admitted into evidence provided that a proper foundation is laid by a showing that the records are authentic.

Laying a foundation is “the practice or requirement of introducing evidence of things necessary to make further evidence relevant, material or competent. . .” (Black’s Law Dictionary). For example, visible records produced with a computer in the form of computer printouts or computer output microfilm (COM) are considered originals if an appropriate witness convinces the court that they accurately reflect the information in the computer files. Information processing methods commonly employed in the business world are readily accepted as reliable, while new information system technologies are subject to greater scrutiny.

- N. Life Expectancy of Media and Admissibility of Records.** The life expectancy of the media per se has no bearing on the admissibility of the records maintained on the media. This means that for some technologies it may be necessary to periodically convert, regenerate, copy, or transfer the records from one medium or technology to another in order to preserve them.
- O. Admissibility of Records Transferred or Converted to Another Medium.** The transfer or conversion of records from one medium or technology to another should not affect their admissibility as evidence provided that quality and accuracy do not functionally change. Procedures followed during the transfer or conversion should be carefully documented.

Records Quality Criteria

The following features of a record should appear with sufficient clarity so that each can be recognized.

- ◆ Individual letters, numbers, and symbols
- ◆ Combination of letters, numbers, and symbols forming words or sentences
- ◆ Graphics such as signatures, logos, pictures, etc.
- ◆ Sounds
- ◆ Other features of records such as color, shape, texture, etc., that relate to the content of the information

In other words, a record should be legible, accurate, and complete in that all features essential to an accurate reading or comprehension of the record should be present.

Characteristics of the Process or System Used to Prepare Records

Certain characteristics of an information technology system used to prepare records ensure the accuracy of the information. The presence of these characteristics demonstrates that the process or system is reliable and accurate, hence capable of producing trustworthy records.

P. Records Produced As Part of a Regularly Conducted Activity. Records produced in the regular course of business are admissible if it can be established that the process or system used to produce them is reliable and accurate. A regularly conducted activity may include a regular pattern of activity to produce the records on a daily, weekly, monthly, yearly, or other cyclical schedule.

A regularly conducted activity may also include records created as part of a regular program of the organization, but at irregular times. For example, when a planned program results in the one time reproduction of records created prior to a specific year, this will be viewed as a program proceeding in the regular course of business, even though the reproduction only occurred once.

Q. Accuracy. Records produced by methods to ensure or enhance accuracy will be more readily admissible in evidence. This process may include systematic quality control and audit procedures, as well as operational oversight by someone with detailed knowledge of the process or system used to produce the records.

R. Timeliness. Records produced within a short period after the event or activity occurs tend to be more readily acceptable as accurate than records produced long after the event or activity. However, a challenge to admissibility of a later-produced record can be overcome by a showing that the time lapse had no effect on the record's contents. For example, a computer printout of a statistical report produced annually in the regular course of business can be shown to accurately consolidate data compiled over the course of a year.

S. Separation of Confidential and Nonconfidential Information. The characteristics of the information technology system must include the ability to separate confidential and nonconfidential information. A system's inability to carry out this function cannot be used to deny inspection or examination of public records. Because the agency must bear the costs associated with separating such information, it is recommended that the system have this function built in to save time and expense when requests for inspection or copies are filled.

VI. Components of the Process or System Used to Prepare Records

The components of a process or system can be reviewed to determine how well the preparation of records is controlled. The admissibility of records can successfully be defended from challenge to the trustworthiness of the process if the process or system includes adequate procedures, training programs, audit trails, and audits.

- T. Procedures.** The establishment of procedures through the use of detailed steps to be followed when creating, modifying, duplicating, destroying, or otherwise managing records provide for consistent quality control, problem resolution, and other activities that might otherwise be subject to inconsistent action, multiple interpretation, or misinterpretation.

Established procedures demonstrate what an organization plans to do in managing and controlling the process or system—as opposed to what it actually does. The trustworthiness of an organization's records offered in evidence might well be judged by the established procedures and how closely they are followed. Deviations can be expected to be closely scrutinized, especially if the deviations are from legally required procedures.

- U. Training Programs.** Formal training programs for staff on details of the system procedures raise a strong presumption that the procedures were correctly followed. If an organization can show the court that staff knew what procedures they were supposed to follow, it can also show that there is a high likelihood that the procedures were in fact followed.

- V. Audit Trails.** Audit trails document how the records were created, modified, stored, and reported, who used the system, when they used it, what they did while using the system, and what were the results. Properly implemented audit trails can automatically detect who had access to the system, whether staff followed standard procedures or whether fraud or other unauthorized acts occurred or might be suspected. They provide independent confirmation that proper procedures were in fact followed.

- W. Audits.** Audits performed periodically confirm that the process or system produces accurate results. Audits must compare the procedures stated in the procedure's documentation with procedures actually followed. They confirm that the process or system adheres to this guideline.

The term *audits* as used here is different from quality control specified in most system procedures. Quality control can be performed by individuals creating the records to verify the accuracy at the time of creation. This ensures the accuracy of the system for operational purposes.

Audits may be used to confirm the accuracy of the process or system for purposes of admissibility of records in evidence. When ruling on the admissibility of the records, courts may require that audits be performed by an independent source (i.e., persons other than those who created the records or persons without an interest in the content of the records, such as a trained auditor having organization-wide audit responsibilities).

No particular method of auditing is required for a record, original or duplicate, to be admitted as evidence. Audits should be designed to evaluate the process or system's accuracy, timeliness, adequacy of procedures, training provided, and the existence of audit trails.

For purposes of original records, audits also should focus on whether the records incorporate the information of the acts, events, or activities leading to the record.

For duplicates, audits also should confirm that the duplicates accurately reproduce the originals. This normally involves comparing statistically valid samplings of originals to their corresponding reproductions prior to any destruction of the originals.

VI. Documentation

Documentation of the process or system provides an enduring verification of the process or system followed to produce or reproduce the records. Without documentation, witnesses must rely solely on memory—a form of evidence that, over time, becomes less trustworthy and susceptible to contradiction. Documentation preserves the information about the process or system independent of the individuals involved and can be used to prepare exhibits to guide witness testimony. Generally speaking, the documentation can be introduced into evidence for the jury to scrutinize during their deliberations.

- X. Content.** A knowledgeable person should prepare and maintain documentation for the process or system used to produce the records. Documentation should be complete and up-to-date. This enables staff to be aware of and follow the most current procedures. It also ensures that reliable system documentation is immediately available if needed for court proceedings. Documentation should be sufficient to demonstrate the steps required to get from the beginning to the end of the process and should describe the system hardware and software. In some proceedings, a general, non-technical description of the process or system will be sufficient. In others, more detailed documentation may be required by the courts, including verification that any equipment or software involved operated properly at the time the records were produced.

Training documentation should include documentation of distribution of the written procedures, course materials, attendance of individuals at training sessions, remedial or refresher training programs, certifications of training completion, and other relevant information, including dates.

Actual audit trail records demonstrate what activities actually took place as part of the process or system. The actual audit reports indicate whether the statistically valid sampling of records produced accurate results and what remedial procedures were followed if the expected level of accuracy was not achieved.

For purposes of laying a foundation for admissibility of records in evidence, actual system procedures followed during the period that the records in question were produced should be maintained in sufficient detail to enable a qualified witness (e.g., the records custodian) to rely on the documentation in describing the process or system to the court. The documentation should explain what should have been done, and what was actually done, and explain any deviations from standard procedures. The training, audit trail, and audit documentation should also be presented to confirm the accuracy of the process or system.

- Y. Retention.** At least one set of documentation should be maintained during the period for which the records produced by the process or system could likely be subject to court review. When the documentation changes, the old versions should continue to be maintained for the requisite period. The court will determine the admissibility of the records in evidence based on the accuracy of the process or system in effect *at the time the records were produced*.

VI. Availability of Process or System for Outside Inspection.

The courts encourage pretrial discovery of computer programs and related materials, recognizing that such information facilitates effective cross-examination. The guideline applies this principle to records produced by any information systems technology.

The process or system used to produce or reproduce records introduced into evidence is subject to outside inspection by opposing parties and the court. Outside inspection may include:

- ◆ Review of procedures documentation
- ◆ Review of system operation
- ◆ Independent inspection and quality control tests
- ◆ Independent audit
- ◆ Testing of process or system operation
- ◆ Review of equipment design and software documentation
- ◆ Review of training programs
- ◆ Any other matter related to the operation of the process or system

If the records were produced on the current or substantially similar system, access to the system may be required to be provided to outside parties upon request to process their own test data. If the system used to produce the records no longer exists, any existing documentation described above must be made available. Failure to produce pertinent documentation because it no longer exists may jeopardize admissibility of the records if their trustworthiness cannot otherwise be established.

In sum, the hardware and software used and any relevant step of the process or system can be reviewed by the outside party.

VII. Legal Status of Records Offered as Evidence.

When determining the admissibility of records into evidence, the court will consider the reliability and accuracy of the process or system used to produce or reproduce the records. The particular form or format of the records shall have no bearing on their legal status regarding admissibility. Likewise, the destruction of original records after reproduction shall not affect the legal status of duplicate records regarding their admissibility.

All that is required for records to be deemed admissible is a *prima facie* showing that the process or system is trustworthy in terms of producing an accurate result. Once the records are admitted, the trustworthiness of their content will remain subject to challenge. For example, a computer printout of a record is admissible if it is shown to be an accurate reflection of the source data used to create the record, but this does not mean the source data is necessarily correct.

VIII. Other Considerations

The use of an information technology system should be carefully planned. A thorough examination of an agency's entire records keeping system should precede the purchase of any system, and deficiencies corrected prior to implementation. System documentation, metadata, and information maintained by that system must be listed in an approved records retention and disposition schedule prior to their destruction or other disposition. The Division of Archives and History is able to assist agencies with this process, and with the review of planning documentation previously mentioned.

When planning system use, it also is recommended that records or information retention be considered before implementation. Records or information with relatively short retention requirements may best be suited to traditional paper media or electronic systems. Microfilm should be used as an alternative to computer readable media if long-term or permanent retention is necessary. Its stability, ease of duplication, and immunity from obsolescence make it more suitable as a preservation duplicate.

Following the identification of retention requirements, the agency should make provisions for routine upgrades to the proposed information technology system if it is determined that the system provides the best storage method. Upgrades or migrations to new hardware and software, particularly on an enterprise-wide scale, can be expensive. Agencies therefore should consider future budgetary implications prior to purchasing an information technology system. Because it is difficult at best to predict those costs, it is recommended that a certain percentage of the startup cost be built into initial budgets to accomplish future conversions.

Other records management factors that commonly are thought only to apply to paper-based systems also should be addressed. These include security, access to and examination of data, duplication procedures to meet public requests, and rendition and revision control of inactive or archived records. Other considerations, such as identifying and cataloging metadata, are unique to information technology systems. It is thought that these guidelines will serve as a basis for future recommendations concerning such unique characteristics.

To further the goals of G.S. §132-6.1, a separate set of guidelines are available that outline requirements for electronic database indexing. Copies of those guidelines can be obtained free of charge.

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The publication also is accessible via the World Wide Web at <http://www.ah.dcr.state.nc.us/e-records/pubdata/default.htm>.

Appendix A

Excerpts of Relevant North Carolina General Statutes

Chapter 121. Archives and History

G.S. 121-4 Powers and duties of the Department of Cultural Resources.

(2) To conduct a records management program, including the operation of a records center or centers and a centralized microfilming program, for the benefit of all State agencies, and to give advice and assistance to the public officials and agencies in matters pertaining to the economical and efficient maintenance and preservation of public records.

G.S. 121-5. Public records and archives.

(a) State Archival Agency Designated. - The Department of Cultural Resources shall be the official archival agency of the State of North Carolina with authority as provided throughout this Chapter and Chapter 132 of the General Statutes of North Carolina in relation to the public records of the State, counties, municipalities, and other subdivisions of government.

(b) (Effective October 1, 1994) Destruction of Records Regulated. - No person may destroy, sell, loan, or otherwise dispose of any public record without the consent of the Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, mutilates, or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction only fined at the discretion of the court.

Chapter 132. Public Records

G.S. 132-1. "Public records" defined.

(a) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

(b) The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, 'minimal cost' shall mean the actual cost of reproducing the public record or public information.

G.S. 132-3. (Effective January 1, 1995) Destruction of records regulated.

(a) Prohibition. - No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with G.S. 121-5, without the consent of the Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction only fined not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00).

G.S. 132-8.1. Records management program administered by Department of Cultural Resources; establishment of standards, procedures, etc.; surveys.

A records management program for the application of efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of official records shall be administered by the Department of Cultural Resources. It shall be the duty of that Department, in cooperation with and with the approval of the Department of Administration, to establish standards, procedures, and techniques for effective management of public records, to make continuing surveys of paper work operations, and to recommend improvements in current records management practices including the use of space, equipment, and supplies employed in creating, maintaining, and servicing records. It shall be the duty of the head of each State agency and the governing body of each county, municipality and other subdivision of government to cooperate with the Department of Cultural Resources in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient management of the records of said agency, county, municipality, or other subdivision of government.

G.S. 132-8.2. Selection and preservation of records considered essential; making or designation of preservation duplicates; force and effect of duplicates or copies thereof.

In cooperation with the head of each State agency and the governing body of each county, municipality, and other subdivision of government, the Department of Cultural Resources shall establish and maintain a program for the selection and preservation of public records considered essential to the operation of government and to the protection of the rights and interests of persons, and, within the limitations of funds available for the purpose, shall make or cause to be made preservation duplicates or designate as preservation duplicates existing copies of such essential public records. Preservation duplicates shall be durable, accurate, complete and clear, and such duplicates made by a photographic, photostatic, microfilm, micro card, miniature photographic, or other process which accurately reproduces and forms a durable medium for so reproducing the original shall have the same force and effect for all purposes as the original record whether the original record is in existence or not. A transcript, exemplification, or certified copy of such preservation duplicate shall be deemed for all purposes to be a transcript, exemplification, or certified copy of the original record. Such preservation duplicates shall be preserved in the place and manner of safekeeping prescribed by the Department of Cultural Resources.

Chapter 8, Article 3 Public Records

G.S. 8-34. Copies of official writings.

(a) Copies of all official bonds, writings, papers, or documents, recorded or filed as records in any court, or public office, or lodged in the office of the Governor, Treasurer, Auditor, Secretary of State, Attorney General, Adjutant General, or the State Department of Cultural Resources, shall be as competent evidence as the originals, when certified by the keeper of such records or writings under the seal of his office when there is such seal, or under his hand when there is no such seal, unless the court shall order the production of the original. Copies of the records of the board of county commissioners shall be evidence when certified by the clerk of the board under his hand and seal of the county.

(b) The provisions of subsection (a) of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. Nonerasable computer-readable storage media shall not be used for preservation duplicates, as defined in G.S. 132-8.2, or for the preservation of permanently valuable records as provided in G.S. 121-5(b), except to the extent expressly approved by the Department of Cultural Resources pursuant to standards and conditions established by the Department.

CASE NOTES

"Copy" Defined. - A copy, within the meaning of this section, is a transcript of the original, i.e., a writing exactly like another writing. *State v. Champion*, 116 N.C. 987, 21 S.E. 700 (1895); *Wiggins v. Rogers*, 175 N.C. 67, 94 S.E. 685 (1917).

Certification of Copy. - The power of an officer, who is the keeper of certain public records, to certify copies is confined to a certification of their contents as they appear by the records themselves, and the records must, therefore, be so certified, for he has no authority to certify to the substance of them, nor that any particular fact, as a date, appears on them. *Wiggins v. Rogers*, 175 N.C. 67, 94 S.E. 685 (1917).

Original Record Is Admissible. - This section does not prevent the admission in evidence of the original record itself. *State v. Voight*, 90 N.C. 741 (1884); *State ex rel. Carolina Iron Co. v. Abernathy*, 94 N.C. 545 (1886). See *State v. Hunter*, 94 N.C. 829 (1886); *Charles S. Riley & Co. v. Carter*, 165 N.C. 334, 81 S.E. 414 (1914); *Blalock v. Whisnant*, 216 N.C. 417, 5 S.E.2d 130 (1939).

While certified copies of records are admitted in evidence, the originals are not thereby made incompetent. *State v. Joyner*, 295 N.C. 55, 243 S.E.2d 367 (1978).

Chapter 8, Article 4A Photographic Copies of Business and Public Records.

G.S. 8-45.1. Photographic reproductions admissible; destruction of originals.

(a) If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any

memorandum, writing, entry, print, representation, X ray or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity or unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

(b) The provisions of subsection (a) of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. Nonerasable computer-readable storage media shall not be used for preservation duplicates, as defined in G.S. 132-8.2, or for the preservation of permanently valuable records as provided in G.S. 121-5(b), except to the extent expressly approved by the Department of Cultural Resources pursuant to standards and conditions established by the Department.

Editor's Note. — Notwithstanding the above citation, G.S. 121-5 (b) and G.S. 132-3 (a) require the consent of the Department of Cultural Resources before any public record, original or copy, may be destroyed.

CASE NOTES

Admissibility of "Written Hearsay". - North Carolina countenances the introduction of test results, certified copies of official documents and records, as well as other writings, which, but for statute or decisional authority, would be written hearsay. In re Arthur, 27 N.C. App. 227, 218 S.E.2d 869 (1975), rev'd on other grounds, 291 N.C. 640, 231 S.E.2d 614 (1977).

Evidence Reproductions Are Primary. - Reproductions are made and kept among the records of many banks in due course of business. Their accuracy is not questioned. As proof of payment they constitute not secondary but primary evidence. State v. Shumaker, 251 N.C. 678, 111 S.E.2d 878 (1960).

Photostatic copies of deposit slips and checks made by an employee of a bank in the usual course of business and identified by such employee are competent as primary evidence without proof of the loss or destruction of the originals. Jones v. Metropolitan Life Ins. Co., 5 N.C. App. 570, 169 S.E.2d 6 (1969).

Photocopies are admissible as originals. - Pinner v. Southern Bell Tel. & Tel. Co., 60 N.C. App. 257, 298 S.E.2d 749, cert. denied, 308 N.C. 387, 302 S.E.2d 253 (1983).

Business records are admissible as an exception to the hearsay rule when they (1) are made in the regular course of business, at or near the time of the events recorded; (2) are original entries; (3) are based on the personal knowledge of the individual making the entries; and (4) are authenticated by a witness familiar with the system by which they were made. Pinner v. Southern Bell Tel. & Tel. Co., 60 N.C. App. 257, 298 S.E.2d 749, cert. denied, 308 N.C. 387, 302 S.E.2d 253 (1983).

Failure to Show That Copy Was Made in Regular Course of Business or by Whom It Was Made. - A photostatic copy of a purported written designation of plaintiff by deceased as the beneficiary of deceased's governmental life insurance benefits should not be admitted as evidence where plaintiff failed to show that the copy was made in the regular course of business or activity of any federal agency or by whom it was made. *Jones v. Metropolitan Life Ins. Co.*, 5 N.C. App. 570, 169 S.E.2d 6 (1969).

G.S. 153A-436. Photographic reproduction of county records.

(a) A county may provide for the reproduction, by photocopy, photograph, microphotograph, or any other method of reproduction that gives legible and permanent copies, of instruments, documents, and other papers filed with the register of deeds and of any other county records. The county shall keep each reproduction of an instrument, document, paper, or other record in a fire-resistant file, vault, or similar container. If a duplicate reproduction is made to provide a security copy, the county shall keep the duplicate in a fire-resistant file, vault, or similar container separate from that housing the principal reproduction.

If a county has provided for reproducing records, any custodian of public records of the county may cause to be reproduced any of the records under, or coming under, his custody.

(e) A reproduction, made pursuant to this Article, of an instrument, document, paper, or other record is as admissible in evidence in any judicial or administrative proceeding as the original itself, whether the original is extant or not. An enlargement or other facsimile of the reproduction is also admissible in evidence if the original reproduction is extant and available for inspection under the direction of the court or administrative agency.

(f) The provisions of subsection (a) of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. Nonerasable computer-readable storage media shall not be used for preservation duplicates, as defined in G.S. 132-8.2, or for the preservation of permanently valuable records as provided in G.S. 121-5(b), except to the extent expressly approved by the Department of Cultural Resources pursuant to standards and conditions established by the Department.

G.S. 160A-490. Photographic reproduction of records.

(a) General Statutes 153A-436 shall apply to cities. When a county officer is designated by title in that Article, the designation shall be construed to mean the appropriate city officer, and the city council shall perform powers and duties conferred and imposed on the board of county commissioners.

(b) The provisions of subsection (a) of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. Nonerasable computer-readable storage media shall not be used for preservation duplicates, as defined in G.S. 132-8.2, or for the preservation of permanently valuable records as provided in G.S. 121-5(b), except to the extent expressly approved by the Department of Cultural Resources pursuant to standards and conditions established by the Department.

Appendix B

Electronic Records Production Control Self-Warranty

Purpose of Self-Warranty

The increased complexity of safeguarding the integrity of public records produced by means of information technology requires greater attention to issues relating to security, accuracy, reliability, and accountability. The Electronic Records Production Control Self-Warranty is designed to be used as a self-evaluation tool in an effort to ensure that electronic records produced by state, county, and municipal agencies, and other subdivisions of government are created, reproduced, and otherwise managed in accordance with guidelines that will enhance their reliability and accuracy.

Implementation Suggested but Not Required

While the warranting of *electronic records*, as the term is defined below and in section II of the guidelines, is suggested, it is not now required. Agencies choosing to begin the process may reproduce the model self-warranty form. It should be signed by the agency records officer or other responsible official and retained by the originating agency. The warranties should be made available to records analysts and auditors.

Limitation of Self-Warranty

The self-warranting of records in itself does not authorize the destruction of records, originals or copies, nor does it change current records retention and disposition scheduling procedures.

Self-Warranty Based on Guidelines Publication

The self-warranty form is based on the suggested guidelines set forth in this publication. A copy of the guidelines can be obtained by contacting the Division of Archives and History of the North Carolina Department of Cultural Resources, 4610 Mail Service Center, Raleigh, North Carolina 27699-4610, telephone no. (919)733-7305, fax no. (919)733-8807. The guidelines also are accessible via the World Wide Web at <http://www.ah.dcr.state.nc.us/e-records/manrecrd/manrecrd.htm>.

Authority

Chapters 121 and 132 of the North Carolina General Statutes define public records and assign responsibility for regulating their preservation and destruction to the Department of Cultural Resources. This responsibility is carried out through the Archives and Records Section of the Division of Archives and History. Under this program, the section analyzes the records created by state agencies, counties, municipalities, and other subdivisions of government, prepares records retention and disposition schedules, maintains the State Archives, and provides services related to records retention and disposal. It is contemplated that at some time in the future the Division will use the suggested guidelines and self-warranty in creating rules which would be applicable to electronic records with regard to the Division's duties under Chapters 121 and 132.

Electronic Record Defined

Electronic Record is defined as a record created or reproduced in any medium by means of any system requiring the aid of electronic technology to make the record readable or otherwise comprehensible by ordinary human sensory capabilities. (This definition does not apply to microform records, which can be read with the aid of a magnifying glass.)

Responsibility for Ensuring Integrity of Electronic Records

The government agency producing electronic records and/or reproductions is responsible for ensuring their authenticity and accuracy. The State Archives and Records Section is in no position to certify the authenticity and accuracy of any records, whether originals or reproductions, produced by the originating agency.

North Carolina Department of Cultural Resources
Division of Archives & History

Electronic Records Production Control Self-Warranty

Self-Warranty Based on Guidelines Publication

This self-warranty form reflects the guidelines set forth in the North Carolina Department of Cultural Resources publication, *North Carolina Guidelines for Managing Public Records Produced by Information Technology Systems*. Appendix B of the guidelines defines the purpose of the warranty procedure and provides other relevant information.

Cautionary Note

This form is a self-warranty only. It does not authorize either the transfer or destruction of records, originals or copies, nor does it change current records retention and disposition scheduling procedures. This Self-Warranty must be completed and submitted with a request to amend a records retention and disposition schedule (Form RC-3). The submittal of this documentation begins the process of amending an official retention schedule, and must be carried out prior to the destruction or other disposal of public records that are, or will be, stored in information technology systems.

Applicability and Disposition

The warranty is applicable to *electronic records*, as the term is defined in the guidelines. The completed form should be signed by the agency records officer or other responsible official and retained by the originating agency. It should be made available to records analysts and auditors.

Part A

Identification of Originating Government Office and Specified Records

Type of Government Office: State County Municipal *Other

For *Other*, enter name of "parent" agency unless unassigned.

**Other* includes assigned and unassigned offices (authorities, boards, bureaus, commissions, councils etc.)

Name of Office:

Address:

Telephone:

Fax:

If a State agency, name of

Unit:

Branch:

Section:

Division:

Department:

Records Series (item no.) if assigned:

(Note: If not assigned, contact the Records Services Branch)

Records Retention & Disposition Schedule Title:

Brief Description of Records:

**Part B
Self-Warranty**

I certify that to the best of my knowledge and belief the records specified in Part A of this form (record series number _____) are prepared in accordance with the suggested guidelines as indicated by the following statements.

1. Quality—The specified records are legible, accurate, and complete.
2. The records are produced or reproduced as part of a regularly conducted activity.
3. Detailed, documented procedures are in place and followed when the records are created, copied, or duplicated.
4. The person(s) who creates, copies, or duplicates the records receives formal training on detailed system procedures prior to records preparation.
 - 4a. Details of the training received are adequately documented.
5. Audit trails document who creates, duplicates, or otherwise prepares the records, what they do in the process, when they do it, and describe the results.
6. Audits are performed periodically to confirm that the process or system produces accurate results.
 - 6a. The audits confirm that procedures actually followed are in accordance with procedures stated in the procedure's documentation.
 - 6b. The audits confirm that the process or system produces accurate results.
 - 6c. The audits are performed by an independent source (i.e., persons other than those who create the records or persons without an interest in the content of the records).
 - 6d. The audits are adequately documented.
7. The process or system hardware and software are adequately documented.

Signature of Official: _____

Name of Official: _____

Title of Official: _____

Date: _____