

Note: [31 Oct 2014] – The following is a consolidation of ASC Rule 15-503. It incorporates the amendments to this document that came into effect on October 31, 2014. This consolidation is provided for your convenience and should not be relied on as authoritative.

ALBERTA SECURITIES COMMISSION RULE 15-503
PRODUCTION OF RECORDS

PART 1 – INTERPRETATION

Definitions

1. In this Rule

“Act” means the *Securities Act*, R.S.A. 2000, c. S-4, as amended;

“custodian” means an individual who has possession or control of a record during the time(s) referred to in a production order, or, if no time is specified in a production order, means an individual who has possession or control of a record either at the time a record was created or the time a production order is received, and includes, in the case of an electronic record, an individual responsible for creating the record or who accessed the record in its electronic format;

“electronic records” means data stored on any type of electronic media, including but not limited to computers, hard disk drives, removable disk drives, compact discs, DVD discs, Universal Serial Bus (USB) drives, mobile or smart phones, electronic tablets, Global Positioning System (GPS) devices, digital recorders, digital answering systems, and tape drives;

“load file” means an electronic file used to retrieve or import specific electronic data sets from an electronic database, or to define the relationships between data sets within the electronic database, based on unique criteria in the load file;

“metadata” means all the electronic data relating to electronic records, including but not limited to the descriptive, structural, administrative, and organizational data used to describe, format and manage a document electronically;

“native format” means the electronic file format in which an electronic record was created;

“original record” means a record in the form it exists at the time a production order is received by a respondent;

“production order” means an order made under section 40 of the Act or a summons or notice issued under subsection 42(1) of the Act;

“record” means any information, document, record, security, derivative, or thing, whether in physical or electronic form, required to be produced to the Commission pursuant to a production order;

“record number” means a unique number, or combination of letters and numbers, identifying each record produced by a respondent in response to a production order;

“remote electronic custodian” means an entity or person in possession or control of electronic records of a respondent, if the electronic records are at a location other than the respondent’s physical location but over which a respondent has access, control, or direction;

“respondent” means a person or company required to produce records pursuant to a production order;

“staff” means the staff of the Commission, including the Executive Director of the Commission, and any counsel representing staff, but does not include the members of the Commission;

“true copy” means an identical copy of a record, whether in electronic or physical format, where

- (a) colours are reproduced, where such colours affect the meaning of the record,
- (b) all text, notations, highlighting, marginal notes, date stamps, headers, footers, and similar markings are reproduced clearly and legibly, and
- (c) in the case of a physical record that includes removable notes, highlighting, flags, or other additional markings that obscure or conceal text or other information, copies of the record both with such markings in their original position and without such markings, so as to reveal any information obscured or concealed by such markings.

2. (1) In this Rule, references to specific electronic file formats have the meaning set out in the Library and Archives Canada *Local Digital Format Registry File Format Guidelines for Preservation and Long-term Access*.
- (2) Unless otherwise defined in this Rule, terms defined in section 1 of the Act apply.

PART 2 – GENERAL PROVISIONS

Solicitor-Client Privilege

3. Nothing in this Rule shall be interpreted so as to affect the privilege that exists between a solicitor and the solicitor's client.

Preservation of Records

4. (1) Upon receipt of a production order, a respondent must not destroy, delete, dispose of, or otherwise damage or alter records described in the production order, either by deliberate action or by failing to take reasonable steps to preserve records that are subject to scheduled or periodic deletion, overwriting, or replacement.
- (2) A respondent must take reasonable steps to promptly and clearly notify affected employees, agents or contractors not to destroy, delete, dispose of, or otherwise damage or alter records described in the production order.
- (3) A respondent must take reasonable steps to promptly and clearly notify any remote electronic custodian not to destroy, delete, dispose of, or otherwise damage or alter records described in the production order.
- (4) When notification is provided in accordance with subsections (2) or (3), any employee, agent, contractor or remote electronic custodian receiving such notification is subject to the obligations in subsection (1) with respect to the records described in the notification that are in its possession or control.
- (5) Unless otherwise specified in a production order or further notice in writing by staff, where a respondent routinely employs electronic methods of storing true copies of records in lieu of storing original paper or other physical records, such electronic storage constitutes adequate preservation for the purposes of this section.
- (6) Unless otherwise specified in a production order or further notice in writing by staff, the obligations in this section remain in effect for a period of two years from the date the production order is received by the respondent.

Multiple Copies

5. (1) If a respondent has multiple copies of a record and the copies differ from one another by having different notations, highlighting, edits, signatures, other intentional markings, or other material additions or alterations, each copy must be treated as a distinct record and, unless otherwise specified in a production order or otherwise in writing by staff, a respondent must make reasonable efforts to provide each copy.
- (2) Notwithstanding subsection (1), where the only difference between multiple copies of a record is that one copy is in physical form and one or more other copies are electronic records, a respondent is only required to provide the electronic records.
- (3) If a respondent has multiple copies of a record and the copies are identical to one another, the respondent is only required to provide one copy of the record but must identify, to the extent reasonably practicable, the custodians of all copies of the record.

Cover letter

6. (1) When producing true copies of records to the Commission, respondents must provide an electronic cover letter that includes, to the extent reasonably practicable
 - (a) a list of each piece of media or other storage device through which records are produced, identified by a unique identifier and labelled accordingly,
 - (b) a list of record numbers for the records produced, cross-referenced as appropriate to the unique media identifiers used for each piece of media or other storage device submitted,
 - (c) a list or table of the custodians or sources from which, or from whom, the records were obtained, cross-referenced to the particular records provided from each custodian or source, and
 - (d) a declaration made by the respondent, or by an individual on behalf of the respondent if the respondent is not an individual, certifying that, to the best of their knowledge the records described in and provided with the cover letter
 - (i) are all of the records in the respondent's custody and control that are specified in the production order,
 - (ii) are true copies of the said records, or, if any original records are provided, that the specified records are originals, and
 - (iii) have been provided and numbered in accordance with this Rule.

- (2) Notwithstanding subsection (1), if a respondent is producing records solely in paper format or if authorized in writing by staff, a respondent may provide the information set out in subsection (1) in paper format.

Delivery of Records

7. Unless otherwise authorized by staff in writing, a respondent providing records pursuant to a production order must deliver such records, including media containing electronic records, by personal delivery, mail, courier, or similar form of delivery.

Original Records

8. (1) Unless otherwise specified in this Rule or if a record cannot reasonably be copied, respondents must produce true copies of records rather than originals.
 - (2) Except when a respondent has provided staff with original records and such records have not yet been returned, a respondent must remain able and prepared to produce originals of the true copies of records provided to the Commission for a period of not less than two years after receipt of a production order, or such longer period as may be set out in a production order or notice in writing from staff.
 - (3) Notwithstanding any other provision of this Rule, staff may require a respondent to produce original records in accordance with the Act.

PART 3 – PHYSICAL RECORDS

Paper Only Records

9. (1) If a production order applies to records that a respondent holds or has access to only in paper or other printed format, the respondent must provide true copies of such records
 - (a) in paper or other printed format, or
 - (b) as true, accurate and complete electronic images of the paper or other printed records.
- (2) If a production order applies to records that a respondent holds or has access to only in paper or other printed format, the respondent must take reasonable steps to provide true copies of such records

- (a) grouped according to the person or location from whom or from which they were obtained,
 - (b) grouped in the same order as they were in their native format, and not re-organized or re-sorted,
 - (c) in a manner that ensures that
 - (i) the true copies are not less legible than the originals,
 - (ii) all marginal notes, footers, and similar features are not obliterated, masked or inadvertently lost in the copying process,
 - (iii) if a record includes information on both sides of one or more pages, both sides of such pages have been copied or imaged,
 - (iv) folded or partly folded paper (including “dog-eared” pages) is unfolded prior to copying or imaging, and
 - (v) paper (or image) size is appropriate to legibly reproduce all of the information on the original record, and
 - (d) in a manner that maintains the grouping and relationship of the records in their native format, and in particular by using paper or electronic slip sheets, staples, paper clips, or similar objects to keep related pages of records together where appropriate.
- (3)** If a respondent produces records to staff under paragraph (1)(a) in paper or other printed format, such records must each be marked with a sequentially numbered record number.
- (4)** If a respondent produces records to staff under paragraph 1(b) in the form of electronic images,
- (a) such electronic images must each contain a unique identifying number that is
 - (i) in a format specified in the production order, or if no format is specified or the respondent is unable readily to use the format specified, sequentially numbered in the order of the records produced, and
 - (ii) electronically affixed to each image, in a manner that does not obscure text or other existing information on the image,

- (b) to the extent reasonably practicable, the media containing the images must be accompanied by such embedded information or additional electronic files that enable staff to
 - (i) relate each electronic image file to the unique identifying number affixed to each image (for single-page image files), or to the range of unique identifying numbers affixed to multiple images (for multi-page image files),
 - (ii) relate each electronic image file to a specific source and custodian from which it was obtained, and
 - (iii) load the electronic image files, together with the corresponding unique identifying numbers and the source and custodian information relating to each electronic image file, into a database, and
- (c) to the extent reasonably practicable, the following formats must be used:
 - (i) black and white images must be provided either
 - (A) in the form of Group IV single-page TIFF files with a resolution of at least 300 dpi, or
 - (B) in the form of PDF files, where each PDF file represents a distinct record and is not a compilation of multiple records, and
 - (ii) colour images must be provided in the form of JPEG files with a resolution of at least 150 dpi.
- (5) Any gaps in the sequence of unique number marks placed on records produced in accordance with this section must be identified, with a brief explanation, at the time of producing the records.
- (6) Upon request, and notwithstanding anything in this section, staff may authorize a respondent to produce records that a respondent holds or has access to only in paper or other printed format in a manner other than as prescribed in subsections (2), (3), and (4).

Other Physical Records

- 10. (1) If a production order applies to physical records other than paper or printed records, a respondent must provide true copies of such records
 - (a) in the same physical format as the original, or

- (b) electronically, by copying the records in question in a manner that is accurate, complete, and that can be reviewed using commercially available systems or tools.
- (2) Notwithstanding subsection (1), if it is impractical to reproduce a true copy of a physical record other than paper or printed records either in physical or electronic format, a respondent must produce the original of such record.

PART 4 – ELECTRONIC RECORDS

Native Format

- 11. (1) Except as otherwise provided in this Rule, whenever reasonably practicable, electronic records must be provided in their native format.
- (2) Notwithstanding subsection (1), if electronic records in their native format can only be reviewed or interpreted by the use of non-commercially available, proprietary systems or software, a respondent must identify such records to staff and
 - (a) make available to staff the systems or software to enable review and interpretation of the records,
 - (b) provide copies of the records in an alternative electronic format that accurately and completely captures the content of, and available metadata relating to, the records in their native format, or
 - (c) provide a reasonable alternative electronic means of reviewing or interpreting the records or copies of the records, which does not compromise the accuracy or completeness of the records as they exist in their native format.

Access to Electronic Records

- 12. If access to review electronic records, including review of metadata, is restricted by means of passwords, encryption, archiving, or other forms of storage resulting in access limitations, the respondent providing the records must also provide the means through such restrictions so as to enable staff to review the records.

Electronic Messaging

- 13. (1)** If a production order applies to records of any form of electronic messaging or text messaging, and if a respondent is unable to provide such records in their native format, the records must be provided in another electronic format that accurately and completely captures the content of, and available metadata relating to, the records in their native format.
- (2)** Notwithstanding subsection (1), a respondent may provide records in another electronic format that is authorized in writing by staff.

Audio and Video Files

- 14.** If a production order applies to audio or video files, the respondent must take reasonable steps to provide all metadata for audio and video files that are produced, including
 - (a) file names,
 - (b) the dates the files were created, and
 - (c) if an audio or video file is a recording of a telephone conversation (call), the identity, if known, of the party or parties calling (caller) and the party or parties called (recipient); the telephone numbers of the caller(s) and recipient(s); and the date and time of the call.

Records Stored With a Remote Electronic Custodian

- 15.** If a production order applies to records in the possession or control of a remote electronic custodian, a respondent must take reasonable steps to provide
 - (a) all of the source records which were provided to the remote electronic custodian,
 - (b) the metadata, if available, relating to the records, and
 - (c) copies of the records as they were modified, presented, published, or retained by the remote electronic custodian.

PART 5 – EXEMPTIONS

- 16.** Upon an application, the Commission or the Executive Director may grant an exemption from all or any part of this Rule, and any such exemption may be made subject to any terms and conditions.
- 17.** This Rule comes into force on March 1, 2014.

[as amended on October 31, 2014]