

# UPDATED INITIAL STATEMENT OF REASONS

## February 25, 2010

### UPDATE OF INITIAL STATEMENT OF REASONS

The information contained in the Initial Statement of Reasons (ISR) at the time of Public Notice remains unchanged with the exception of the following modifications.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Government Code section 12168.7(a) establishes the statutory framework for the Secretary of State to adopt uniform statewide standards for the purpose of storing and recording permanent and nonpermanent documents in electronic media. Section 12168.7(b) gives the Secretary of State authority to adopt regulations, in consultation with the Department of General Services, approving and adopting appropriate standards established by the American National Standards Institute (ANSI) or Association for Information and Image Management (AIIM). In addition SB 2067, Chapter 569, Statutes of 2000, which amended section 12168.7 required that reproduction of those records be done in compliance with minimal standards or guidelines, or both, recommended by ANSI or AIIM.

The proposed regulations create a new chapter, “Trustworthy Electronic Document or Record Preservation” to adopt minimal standards that must be met when moving to a new system after a specific date for storing, recording or reproducing permanent and nonpermanent documents, as provided in the Government Code, and with the goal of providing clearer rules and instructions concerning documents or records in the electronic media. It also provides recommendations for existing systems.

These regulations establish the minimum standards all county government offices, including the Board of Supervisors, County Recorder, County Auditor, County Treasurer, and social service agencies; city government offices; special districts; and the State Registrar of Vital Statistics are required to follow.

In addition, Government Code section 12168.7(c)’s definition of “trusted system” will be further clarified by adopting AIIM’s published minimal conditions.

**Section 23010.** (ISR, page 1) The proposed regulation provided the purpose for the proposed regulations. It has been amended to delete references about the adoption of standards by the International Organization for Standardization (ISO) because all ISO standards that were incorporated by reference in sections 23050, 23060, 23070 and 23080 have been deleted.

**Section 23020.** (ISR, page 1) The initially proposed regulation provided the applicability of electronic documents or records created or stored as the official record. It has been amended to delete the reference in section (d) to the ISO standard and change the order of acronyms for clarity.

**Section 23030.** (ISR, page 1) The initially proposed regulation provided definitions for key terms used in the proposed regulations. It has been amended to add the definition of CGATS, Trusted System, and Official documents or records.

**Section 23040.** (ISR, page 1) The initially proposed regulation required that all electronic versions of official documents or records, (including records converted from hard copy or electronically originated documents or records) be stored and managed in a trusted system. The guideline being incorporated by reference has been amended to include section 6.2 to address systems that are adopted after a date certain by entities subject to these regulations and systems that are in use prior to that date certain. The original proposed regulations were not clear as to whether the requirements applied to both current systems or only to systems to be built in the future.

**Section 23050.** (ISR, page 1) The initially proposed regulation required a document management policy be prepared prior to system implementation and be updated regularly following appropriate policies and procedures associated with the creation, management, and storage of electronic documents or records. It has been amended to delete the reference to ISO 15801 and the availability of the document from ISO.

**Section 23060.** (ISR, page 2) The initially proposed regulation required that electronic documents or records follow compression technologies identified in ISO 12033 to ensure electronic documents or records can be accessed after being converted from hard copy format. It has been amended to delete the reference to ISO 15801 and replace it with a similar section in 5.4.2.4 Document image compression of “AIIM ARP1 – 2009 Analysis, Selection, and Implementation of Electronic Document Management Systems.”

**Section 23070.** (ISR, page 2) The initially proposed regulation required that to ensure every official electronic document is considered to be a true and accurate copy of the original information received and before the original copy may be destroyed, at least two (2) separate copies of the official document or record *must* be created on electronic media meeting all the conditions of a trusted system as identified in ISO 15801. It has been amended to delete the reference to ISO 15801 and reference only section 5.3.3 Trusted system and legal considerations of “AIIM ARP 1 – 2009 Analysis, Selection, and Implementation of Electronic Document Management Systems ISO 15801 is then mentioned in the body of the text incorporated by reference as a standard that should be considered.

**Section 23080.** (ISR, page 2) The initially proposed regulation required that documents or records converted from hard copy format into electronic format be maintained in a trusted system using PDF/A format in accordance with ISO 19005. It has been amended to delete the reference to ISO 19005; add section 5.4.1.4 Image formats of “AIIM ARP 1 – 2009 Analysis, Selection, and Implementation of Electronic Document Management Systems ”; and require compliance with ANSI/AIIM/CGATS/ISO 19005-1:2005 only if PDF/A is chosen as the file format for long term storage. This provides entities with more options in selecting file formats.

## **LOCAL MANDATE DETERMINATION**

The proposed regulations do not impose any mandate on local agencies or school districts.

## ALTERNATIVE DETERMINATIONS

The Secretary of State has determined that no alternative would be more effective in carrying out the purpose for which these regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

## TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

The costs for the standards or guideline that are recommended in the updated proposed regulations or in the guideline itself would be revised as shown below:

Standard	Description	Price
ISO TR 15801:2004 (optional)	Electronic imaging – Information stored electronically – Recommendations for trustworthiness and reliability	\$ 135.00
ISO TS 12033:2001 (optional)	Electronic imaging – Guidance for selection of document image compression methods	\$ 73.00
ANSI/AIIM/CGATS/ISO 19005-1:2005 (incorporated by reference)	Document Management – Electronic File Format for Long-term) Preservation – Part 1: Use of PDF 1.4 (PDF/A-1)	\$ 92.00
AIIM ARP1-2009	Recommended Practice – Analysis, Selection, and Implementation of Electronic Document Management Systems (EDMS)	Free
	Cost Range Total	\$ 92.00 to 300.00

## SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF JULY 17, 2009 THROUGH SEPTEMBER 25, 2009

The original proposed regulations were made available for public comment for at least 45 days from July 17, 2009, through August 31, 2009, and again during the public hearing on September 15, 2009, followed by an extension of time through September 25, 2009. Thirteen written comment letters were received, eight of which were received between the public hearing on September 15, 2009, and the close of the extended public comment period on September 25, 2009. Pursuant to Government Code sections 11346.9(a)(3) and (a)(5), the Secretary of State summarizes and responds to those comments as follows:

### **California Department of Health letter dated August 6, 2009**

**Comment A1: Government Code Section 12168.7(b):** The commenter states “the Secretary of State's proposed regulations go beyond the statute by requiring standards that meet or exceed the recommendations of not only AIIM or ANSI but also ISO (Section 23020(d), 23050, 23060, 23070, 23080).”

The commenter cites Government Code section 12168.7(b), which “requires the Secretary of State, in consultation with the Department of General Services, to adopt

standards established by the American National Standards Institute (ANSI) or the Association for Information and Image Management (AIIM) for storing and recording permanent and nonpermanent documents in electronic media.” Commenter also cites Government Code section 12168.7(c), which “specifies that these standards shall apply to county government offices, including the Board of Supervisors, County Recorders, County Auditors, County Treasurers, social service agencies; city government offices; special districts; and the State Registrar of Vital Statistics (CDPH). Government Code section 12168.7(c) also requires that the standards include a trusted system defined as ‘a combination of techniques, policies, and procedures for which there is no plausible scenario in which a document retrieved from or reproduced by the system could differ substantially from the document that is originally stored.’”

**Accept:** The requirement to meet or exceed the recommendations of ISO has been removed and replaced with references to only the standards or guidelines adopted by AIIM or ANSI. Specifically, in sections 23020(d) and 23050, the references to ISO have been removed. In section 23060, the reference to ISO 12033 guidance for the selection of document image compression has been removed and replaced with the incorporation by reference of section 5.4.2.4 for Document image compression in “AIIM ARP1-2009 Analysis, Selection, and Implementation of Electronic Document Management Systems.” In section 23070 the incorporation by reference in the proposed regulations for the definition of trusted system would remain unchanged; but the reference to ISO 15801 has been removed. In section 23080 the reference to ISO 19005 has been replaced with ANSI/AIIM/CGATS/ISO 19005-1:2005, Document Management – Electronic File Format for Long-term Preservation – Part 1: use of PDF 1.4 (PDF/A-1), which is adopted by AIIM, and the equivalent of ISO 19005, but the copyright is owned by AIIM and NPES; and the reference to section 5.4.1.4 Image formats in “AIIM ARP1-2009 Analysis, Selection, and Implementation of Electronic Document Management Systems” has been added. The proposed regulations were also modified to provide more options in selecting file formats. ISO standards may be referenced but the reference is within the body of the guideline.

**Comment A2: Government Code section 12168.7(b):** The commenter states the proposed regulations require adherence to standards that are in documents incorporated by reference that do not include revision dates (sections 23060, 23070, 23080).

**Accept:** The Secretary of State agrees that documents incorporated by reference should include the revision dates. Revision or approved dates have been added as appropriate.

**Comment A3: Section 23010 of the proposed regulations:** The commenter specifies “that the purpose of the regulations is to list minimum standards or guidelines. Section 23020 specifies that the lack of adoption of a particular standard in this chapter does not preclude the use of other standards so long as they meet or exceed the recommendations of AIIM, ANSI, or ISO.” The commenter’s concern is that “The proposed regulations contain conflicting requirements. Section 23080 requires the use of PDF/A. This contradicts the stated purpose (20310) and the statement that the chapter does not preclude the use of other standards (23020). Section 23060 requires that only those compression technologies identified in ISO 12033 shall be used.”

**Accept:** Section 23010(d) that allowed the user to use other standards has been deleted from the proposed regulations and the references to specific ISO standards in sections 23060 and 23080 of the proposed regulations have been replaced with similar technology topic sections of “AIIM ARP1-2009 Analysis, Selection, and Implementation of Electronic Document Management Systems” and “ANSI/AIIM/CGATS/ISO 19005-1:2005, Document Management – Electronic File Format for Long-term Preservation – Part 1: use of PDF 1.4 (PDF/A-1)” where appropriate.

**Comment A4: Costs to CDPH to convert to PDF/A:** The commenter expresses concern that “The adoption of the new PDF/A standard would require a re-engineering and possible re-procurement of CDPH's Office of Vital Record's (OVR) current enterprise image repository. In addition, the systems designed to ‘feed’ and ‘retrieve and/or redact’ the image repository would also need to be redesigned. Finally, the images currently in the electronic repository would need to be converted when paperless processes start or the decision to destroy paper documents is made. Based on CDPH's past history with conversion and imaging projects the estimated costs associated with an undertaking of this size would be in the range of \$5 to \$10 million dollars and take at least 5 years to complete. These costs would have to be paid by fee increases, which would have to be approved by the Legislature via the Budget Act.”

**Reject:** The Secretary of State disagrees that the proposed regulations will require CDPH to incur a re-engineering or possible re-procurement. The regulations do not require a back-file conversion of existing electronic versions of official records to meet AIIM or ANSI standards or guidelines. The regulations are not requiring a new “feed,” or “retrieval and/or redact” process, only that the electronic versions of the official record, in lieu of the original version be stored in an AIIM recommended format, which could be PDF/A.

**County of Orange letter dated August 28, 2009**

**Comment B1: Unfunded State mandate:** Commenter expresses concern that the regulations represent an unfunded State mandate that carries a high cost. The cost is not just the \$324 of buying standards published by AIIM and ISO, but estimates cost of software modifications necessary in Orange County to comply with the proposed standards of at least \$400,000. The commenter states for the Secretary of State to insist that any additional cost associated with the proposed changes “would be related to the statute and not the regulations” is not accurate because the statute establishing the authority to set standards (SB 2067) was chaptered in 2000.

**Reject in part/accept in part:** The Secretary of State disagrees that the proposed regulations will generate an unfunded mandate. Even if the proposed regulations are not adopted, Orange County will still be required to comply with Government Code section 12168.7 (c) and (d) such that “state officials shall ensure that microfilming, electronic data imaging, and photographic reproduction are done in compliance with minimum standards or guidelines, or both, as recommended by ANSI or AIIM for recording of permanent records or nonpermanent records.” The Secretary of State has updated the proposed regulations to remove direct references to specific ISO standards and instead

has replaced with references to the AIIM guideline or AIIM standard as noted in the response to Comment A1. This gives the county the flexibility it needs to maintain its current system in compliance with AIIM and ANSI guidelines and standards as currently required in the code.

**Comment B2: Section 23080:** Commenter expresses concern that requiring the use of PDF/A or a file format that meets or exceeds it is unnecessarily restrictive and explains the county's current file format TIFF Type IV and its policies and procedures in place.

**Accept:** The Secretary of State has removed all references to ISO standard 19005 and instead incorporates by reference the section in "AIIM ARP1-2009 Analysis, Selection, and Implementation of Electronic Document Management Systems," which suggests the use of PDF/A and other formats, and cautions against the use of TIFF. See the response to Comment A1.

**Comment B3: Government Code section 12168.7 and regulation section 23020(d):** Commenter states Orange County's system qualifies as a "trusted system" under Government Code 12168.7 and expresses concern that the use of language "meet or exceed" in section 23020(d) would prevent the county from defining TIFF as a file format that "meets or exceeds" the security features of PDF/A and prevent the county from defining TIFF as a file format that "meets or exceeds" the security features of PDF/A and is a poison pill.

**Accept in part/reject in part:** The language in section 23080 has been changed to allow the use of TIFF as a file format. As a result, no changes are considered necessary for Section 23020(d).

**Comment B4: Government Code section 25105:** Commenter states "Government Code section 25105 gives authority to the Board of Supervisors to authorize an electronic records system and to determine what constitutes a trusted system. Neither Government Code section 25105 nor 12168.7 specifies a file format or burrows into features tied to specific software. We respectfully submit that the proposed additional sections to the California Code of Regulations as written impede the authority of each Board of Supervisors to authorize a trusted system for their County." The commenter describes its verification process and application controls that would meet the definition of trusted system to ensure original documents are not modified. The commenter states "Cost is a substantial issue with the proposed regulations, particularly with governments' precarious budgets. Besides the required software modifications, Orange County would incur costs for additional hardware storage space and processing, as well as maintaining old and new systems, policies and infrastructure. The storage issue is critical: Orange County uses compressed TIFF files that require significantly less storage space than PDF and can be processed faster. We would incur hardware costs for many more servers than we currently need and our processing times would increase."

**Accept in part/reject in part:** The Secretary of State has removed the incorporations by reference of ISO standard 19005 regarding the use of PDF/A as a file format, and ISO standard 12033 regarding the use of standardized compression technologies, and instead

replaced the language with similar but more flexible sections in “AIIM ARP1-2009 Analysis, Selection, and Implementation of Electronic Document Management Systems.” The Secretary of State disagrees that the use of PDF/A would increase processing times or requires more storage space, but supports the county’s controls in place that offset the concerns in using TIFF. The use of PDF/A and updated compression technologies have been reported to use less space than older compression technologies commonly used by vendors implementing variations of the TIFF specification.

**Comment B5: Section 23020:** The commenter states “the proposed regulations suggest Orange County could sidestep the electronic storage issue by designating microfilm as our official record. Section 23020 applies the regulations to ‘electronically originated documents or records that are maintained as official documents or records.’ All counties in California using microfilm as the official record do so by first transferring TIFF images to film. If TIFF is an unacceptable file format for storage, is it equally unacceptable as a transfer medium? It’s a Catch-22.”

**Accept in part/reject in part:** If the commenter’s reference to “sidestep” means that the regulations do not apply if their records are stored to microfilm, then the Secretary of State agrees. How the county transfers official documents or records to microfilm is not addressed in the proposed regulations.

**Comment B6: Section 23070:** The commenter states they “respectfully contend that local governments should retain the authority to determine what constitutes a trusted system based on the needs of each County.”

**Accept in part/reject in part:** The Secretary of State agrees local governments need the flexibility to determine what meets their requirements for electronic storage of information, but rejects the idea that this can be accomplished without following industry standards, as stated in Government Code section 12168.7 and as specifically referenced in the updated proposed regulations.

**Comment B7: Public Notice:** The commenter states they are “troubled that California recorders were not specifically notified of the proposed rule changes by the Secretary of State, per your notification list. Neither was our statewide advocacy group, the County Recorders Association of California. This oversight was unfortunate and robbed our ability for a full discussion of the issue before comment and other deadlines approached.” The commenter “respectfully request that the Secretary of State give a full airing of the implications of these proposed regulations. Expecting action six months from the proposed adoption of the regulations is unreasonable given the costs and potential system modifications needed.”

**Reject:** The Secretary of State sent notice of the proposed regulations to over 1,800 interested parties, including cities, Boards of Supervisors, state agencies, non-profit organizations, and a representative number of small business enterprises. The Board of Supervisors was chosen as the method for distribution because these regulations affect all local government, not just recorders. Paul Bates, Chair of the Board, whom the commenter included as a cc in its letter, was sent the public notice. The Secretary of

State rejects that more than six months is unreasonable, especially given the changes proposed in the updated regulations. See also the Secretary of State's response to commenter's first question above in B1.

**Rapone Anderson (California Department of Social Services/County Welfare Department workgroup) e-mail dated August 31, 2009**

**Comment C1: Section 23040:** The commenter states the language “does not make it totally clear if the requirements apply to both current systems or only to systems to be built in the future.” The commenter provided suggested language if the intent is only to have the regulations apply to future systems, such as “...are stored and managed in a trusted system, *all future* electronic content management systems shall be designed following appropriate procedures...”. The commenter states that if the intent is to apply these standards to all current systems, “at least three years and adequate resources will be needed to retrofit current systems.” and that “the window for requesting state funding has closed for 2010/11. Any funding request will need to wait for the 2011/12 state fiscal year” and that “needed changes can take several years to plan, procure, and implement.”

**Accept in part/reject in part:** The proposed section has been revised for clarity and the language has been changed to address existing and future systems, but without addressing the level of effort or duration to comply with existing Government Code requirements. The level of effort is not addressed because not all efforts to comply will require a retrofit; or three years to plan, procure and implement.

Also, Government Code section 12168.7 was enacted in 2000 and has required specified electronic documents be stored to a trusted system so there is no plausible scenario in which a document retrieved from or reproduced by the system could differ substantially from the document that is originally stored. The intent of the proposed regulations is to clarify what is already required under Government Code section 12168.7, not to require something new.

The code states, “a trusted system means a combination of techniques, policies, and procedures” but does not include the conditions required for an electronic storage and management system to be considered a “trusted system.” The proposed regulations clarify what the conditions are for a trusted system by adopting AIIM's definition of “trusted system.”

In addition, “policies and procedures” is further defined by adopting section 6.17 of the Business practices documentation of “AIIM ARP1-2009 Analysis, Selection, and Implementation of Electronic Document Management Systems.”

**Comment C2: Section 23070:** The commenter states that a revision is necessary to clarify that the language: “at least two (2) separate copies of the official document or record must be created on electronic media,” does not mean storing in two different types of electronic forms or systems. The commenter suggests rewording the section: “...a primary and a back up copy of the official document or record must be created on a electronic media....”

**Reject:** The proposed revision is rejected because the term in the proposed regulations “two (2) separate copies” is consistent with the terminology used in “AIIM ARP1-2009 Analysis, Selection, and Implementation of Electronic Document Management Systems” guideline, which is also incorporated by reference in this section.

**Comment C3: Section 23080:** The commenter states generally that a revision is necessary to reword the section to refer only to the standard ISO 19005 and not the file format PDF/A. Specifically, the commenter requests that the section “... records shall be maintained in a trusted system as defined in section 23070, Trusted Storage of Official Electronic Documents or Records, using standard PDF/A format in accordance with ISO 19005 ...” be revised to state: “... records shall be maintained in a trusted system as defined in Section 23070, Trusted Storage of Official Electronic Documents or Records, using the ISO 19005...” The reason given to remove the reference to the PDF/A format is specifically because of “rapidly developing standards for electronic file and document preservation.”

**Accept in part/reject in part:** The proposed section has been revised to exclude the reference to PDF/A by replacing the reference to ISO with a reference to section 5.4.1.4 Image formats of “AIIM ARP1-2009 Analysis, Selection, and Implementation of Electronic Document Management Systems.” This change allows for other standardized image formats, including PDF/A and provides caution about the use of variants of the general TIFF specification that is not standardized.

The change will also address commenter’s concern about rapidly developing standards because the guideline states that non-standard or proprietary file formats should not be used.

The request to reference only standard ISO 19005 and remove the reference to PDF/A in the proposed regulations is rejected because PDF/A –1 is part of the title of ISO 19005, and the topic of the entire standard is PDF/A. Instead, the proposed regulations have been modified to reference section 5.4.1.4 Image formats as noted above. See also the response to Comment A1 and C3.

**City of Pinole e-mail dated August 31, 2009**

**Comment D1:** The commenter applauds the Secretary of State's office for developing criteria, but is concerned "that while many cities have asked for criteria to develop their request for proposals, many cities have adopted digital imaging without knowing what the criteria for a 'trusted system' would be. If I understand Question 5 on page 2, this regulation will apply only to newly created or stored electronic documents after 12/31/09. I cannot over-emphasize the need for training sessions and hope those will be forthcoming before the standards are imposed." The commenter believes, after communicating with their vendor, that the vendor will support the technologies required in the proposed regulations and request training at their City Clerk Association of California (CCAC) meeting.

**Accept:** The Secretary of State agrees there is a need to clarify the criteria for "trusted system" and is one reason why the regulations have been proposed. Government Code 12168.7 states, "that a trusted system means a combination of techniques, policies, and procedures" but does not include the conditions required for an electronic storage and management system to be considered a "trusted system." The proposed regulations clarify what the conditions are for a trusted system by adopting AIIM's definition of "trusted system."

In addition, "policies and procedures" is further defined by adopting section 6.17 of the Business practices documentation of "AIIM ARP1-2009 Analysis, Selection, and Implementation of Electronic Document Management Systems."

**Individual e-mail dated August 31, 2009**

**Comment E1: Sections 23010 through 23080:** The commenter asks if these requirements are also part of the Charter School requirements as a Local Education Agency.

**Reject:** The comment is rejected because it is not about the proposed regulations; it is a question about whether the proposed regulations would apply to charter schools. The commenter should ask for advice from the charter school's attorney.

**Comment E2: Sections 23010 through 23080:** The commenter asks various questions about Los Angeles Unified School District's records and the inability to access those records.

**Reject:** The statements and questions presented by the commenter in the e-mail are irrelevant to the proposed regulations as they make general statements or ask specific questions about Los Angeles Unified School District's records and the inability to access those records. These regulations do not mandate any records be made accessible nor do they address record retention schedules or storage in the State Archives.

**Charles Booz Comments at the Public Hearing held on September 15, 2009:**

**Comment F1:** The commenter states that the concern from the Association for Records Managers and Administrators is the preservation of documents. However, he does not believe AIIM has enough of a specialty with records management or is focused enough on record preservation to be cited in the proposed regulations.

**Reject:** Government Code section 12168.7 (b) states the Secretary of State, in consultation with the Department of General Services, shall approve and adopt appropriate standards established by ANSI or AIIM. The Secretary of State is adopting regulations as required by statute.

**Comment F2:** The commenter states, “not enough foundation was set in regards to the code used for writing the proposed text.” The commenter believes it was a good idea to construct the proposed regulations, but does not believe the regulations should be detailed as specifically as they are in the text. The Secretary of State should not identify what specific standards should be adopted. The rulemaking regulations should serve as guidelines. The Commenter agrees the regulations should define the functional requirements but would leave the specific standards to be used as guidelines and left to the discretion of the organizations complying with the regulations.

**Accept in part/reject in part:** The incorporation by reference of ISO standards has been removed and replaced with sections of “AIIM ARP1-2009 Analysis, Selection, and Implementation of Electronic Document Management Systems” which is a guideline. See the response to Comment A1.

**Comment F3:** The commenter asked that the Secretary of State’s office identify its consultant’s resources and qualifications.

**Accept:** The consultant’s resources and qualifications are described in Question #2 in the Frequently Asked Questions posted on the Secretary of State’s website at [www.sos.ca.gov/admin/electronic-docs-regs/faqs-development-of-regs.pdf](http://www.sos.ca.gov/admin/electronic-docs-regs/faqs-development-of-regs.pdf).

**Comment F4:** The commenter asserts that the AIIM ARP1-2009 guideline does not speak very much of records management, that the document only includes a subparagraph of a subparagraph regarding the topic, and that the report is not current with the technology nor the current direction of thinking within records management science and practice.

**Reject:** The regulations are not intending to focus on records management but to “adopt uniform standards for the purpose of storing and recording permanent and nonpermanent documents in electronic media” as stated in Government Code 12168.7(a).

**Comment F5:** The commenter stated that the problem he saw with the proposed text is the exact specification of the document format (e.g., PDF/A); and that the regulations do not need to be so specific since other reliable document formats are available. For example, TIFF has always been an acceptable document format to use, but is not included in the proposed regulations.

**Accept:** See the response to comments A1 and B4.

**Comment F6:** The commenter suggested that the Secretary of State focus should be based on the functional goals to be achieved within the regulation, while offering guidelines, suggestions, and best practices as acceptable means to achieve the goals. Also, that the Secretary of State's office needs to be more careful in how it constructs regulations and the unintended consequences that will follow with the implementation of these regulations.

**Accept in part/reject in part:** The Secretary of State agrees with offering guidelines and best practices. See the response to comments A1 and B4. The Secretary of State disagrees that its office is not already being careful how the regulations are being constructed.

**Gladwell Governmental Services, Inc. letter dated September 14<sup>th</sup> for submission at the Public Hearing held on September 15, 2009:**

**Comment G1: Various Code Sections Cited:** The commenter states "it may be helpful to analyze the proposed regulations within the constraints of California law as it currently exists. These laws will still take precedence over the proposed California Code of Regulations (and therefore will continue to be legal mandates, unless they are amended)" and cites various code sections including, Evidence Code section 1550 [Applies to Cities, Counties and Special Districts]; Government Code section 12168.7 [Applies to Cities, Counties and Special Districts]; Government Code sections 26205, 26205.1, and 26205.5 [Applies to Counties]; Government Code section 34090.5 [Applies to Cities]; Government Code section 60203 [Applies to Special Districts]; and ANSI/AIIM TR25-1995 12168 [Applies to Cities, Counties and Special Districts].

**Accept in part/reject in part:** The Secretary of State is aware of the code sections cited. In addition, other code sections that may need to be considered include Government Code section 25105 affecting the Board of Supervisors, Government Code section 27322.2 affecting recorders, Government Code section 60203 affecting the legislative body of a district, Government Code section 26907 affecting the auditor or ex officio auditor, and Government Code section 27001 affecting the treasurer, to name a few. However, it is not for the Secretary of State to interpret each code section's application to its organization but to adopt standards, in consultation with the Department of General Services that meet the intent of Government Code section 12168.7. However, in an effort to encourage more public comment participation from legal organizations, the Secretary of State has expanded its list of interested parties to include legal organizations at the city and county levels.

**Comment G2:** The commenter states the proposed standards all use the word "should" (versus "shall" or "must"), and is uncertain what legal impact this would have...because they are incorporated in the CCRs, does compliance with these standards create a mandate or not? It is the commenter's opinion that most of the regulations comprise "Best Practices," and that organizations that are imaging records, and then destroying the paper version to rely on the image as the original (whether in analog microform, or digital

format), should have all these policies and procedures in place, with certain exceptions and lists recommendations.

**Accept:** See the response to comments A1 and B4.

**Comment G3:** The commenter states the “conversion of millions of images into the PDF/A format would be very expensive for most organizations.”

**Reject:** The regulations are not requiring a back-file conversion effort of existing records to meet AIIM or ANSI guidelines or standards, only records created after a certain date.

**Comment G4:** The commenter notes that Adobe now owns the copyrights to both file formats (TIFF and PDF).

**Accept in part/reject in part:** The Secretary of State is aware that Adobe owns the copyright to the TIFF specifications. With regard to PDF, Adobe owns the copyright for PDF file formats version 1.0 through version 1.7 but when ISO 32000-1 was published, this gave ISO ownership of the copyright for that version and became an internationally recognized standard file format in ISO TC/171. PDF/A has been adopted by the United States as a nationally adopted International Standard, and the CGATS/AIIM copyright is owned by AIIM and NPES under “ANSI/AIIM/CGATS/ISO 19005-1:2005.”

**Comment G5:** The commenter recommends the following:

- 1) Ask for a legal opinion from the Secretary of State’s attorneys on the following potential impacts of the proposed regulations:
  - a. If a (city, county, or special district) wants to image an original record (e.g. a signed contract), destroy the paper version, and rely on the digital image as the legal original, is the digital image required to be placed on “optical media” that cannot be altered or changed – or are images stored on magnetic file servers sufficient to meet various Evidence and Government Codes?
  - b. Does WORM Tape (LDO or UDO) meet this requirement as the statutes are currently written?
  - c. Is the “optical media” required to be stored in a “safe & separate” location?
  - d. Are the mandates from the Evidence and Government Codes altered at all by the adoption of the proposed regulations? Are there any conflicts?
  - e. Since the (ISO, AIIM) standards proposed to be adopted by the proposed CCR’s all state “should” (e.g. AIIM ARP1-2009 is a “Recommended Practice”), are jurisdictions under any obligation to follow them? In other words, are local jurisdictions free to not follow the (ISO, AIIM) standards

(which use the terms “should”, not “must” or “shall”), even though they are incorporated into the CCR’s?

- f. Can they define 23020(c) – “official documents or records”? This should be included in Section 23030. I think this will pose a significant problem, especially when taken within the context of the Public Records Act – the scope will probably cover all electronic records.
- 2) After the legal impacts and context are more accurately understood, expand the “Stakeholder” group to include other interest groups, including commercial service bureaus that provide scanning, indexing and quality checking services to local governments, and ECM vendors that provide the software and train government employees on the implementation and utilization of the systems. Discussions relating to file formats (TIFF, PDF, or PDF/A), and relating to the standards for quality checking (e.g. inspect every page of every document, and compare page counts) will have significant impacts on their software, operations, and the cost of their services when they are performing their services to local governments ... which will have to be passed on to local jurisdictions. MS SharePoint is being utilized by many jurisdictions – how do the proposed standards affect documents stored in SharePoint document libraries and worksites?
- 3) After the accurate legal mandates, cost, and operational impacts are more accurately understood, the discussion relating to the proposed standards can proceed in a more efficient manner.

**Reject:** The questions need to be answered by counsel representing the entity asking the question.

**Comment G6:** The commenter appreciates the progress made so far and all the contributions of participants, lists the work done so far with California local governments with their records management programs, and states this is simply intended to assist the Secretary of State in developing an efficient, effective regulation.

**Accept:** The Secretary of State agrees there has been a lot of progress made so far and updates to the proposed regulations will be made, as appropriate.

**Municipal Water District of Orange County letter dated September 14, 2009, for submission at the Public Hearing on September 15, 2009:**

**Comment H1: Public Notice:** The commenter expressed concern with lack of adequate notice of the comment period, and the lack of direct notification of affected agencies. The commenter stated that direct notification of the agencies affected by these regulations “would have ensured greater awareness of the proposal and perhaps allowed for more agencies to submit written comments.”

**Accept in part/reject in part:** The Secretary of State sent the notice to over 1,800 interested parties, including cities, Boards of Supervisors, state agencies, non-profit

organizations, and a representative number of small business enterprises. Notice was sent to the California Special Districts Association, who in turn agreed to forward the notice to their membership (more than 1,000 entities).

**Comment H2: Unfunded State mandate:** The commenter expresses concern that compliance with the standards “would likely require either new or modified software, as well as additional network and hardware storage and processing. Given the anticipated costs involved in complying with this new state mandate, we believe the State should reimburse agencies that are required to invest in new software and/or hardware to comply....”

**Reject in part/accept in part:** The Secretary of State disagrees the proposed regulations will generate an unfunded mandate. Even if the regulations are not adopted, the state official will still be required to comply with Government Code section 12168.7 (c) and (d) such that “state officials shall ensure that microfilming, electronic data imaging, and photographic reproduction are done in compliance with minimum standards or guidelines, or both, as recommended by ANSI or AIIM for recording of permanent records or nonpermanent records.” However, the Secretary of State has updated the proposed regulations to remove direct references to specific ISO standards and instead has replaced them with references to the AIIM guideline as noted in the response to Comment A1. This should give the district the flexibility it needs to maintain its current system if compliant with AIIM and ANSI standards as currently required in the code.

**Comment H3: Section 23070:** The commenter states: “It is our understanding that we would also be required to maintain at least two (2) separate electronic copies of the document and that they would need to be created and stored meeting all conditions of a ‘Trusted System’ in which the copy cannot be altered. This would require maintaining a special network storage server with applicable software and subsequently require us to maintain two archiving systems.”

**Reject:** The comment is incorrect, because the proposed regulation requiring “two (2) separate copies” does not require a second “trusted system” be maintained for the storage of the second electronic copy. The specific requirements may be found in the “AIIM ARP1-2009 Analysis, Selection, and Implementation of Electronic Document Management Systems” guideline, which is also incorporated by reference in this section.

**Comment H4: Sections 23060 through 23080:** The commenter states: “it is most appropriate for local agencies to determine for themselves the format by which its documents should be archived and the type of trusted system they should utilize.”

**Accept:** The Secretary of State agrees that local governments need the flexibility to determine what meets their requirements for electronic storage of information and has removed the incorporations by reference of ISO standard 19005 regarding the use of PDF/A as a file format and ISO standard 12033 regarding the use of standardized compression technologies and instead replaced the language with similar but more flexible requirements in “AIIM ARP1-2009 Analysis, Selection, and Implementation of Electronic Document Management Systems.”

**County of Placer comments presented at the Public Hearing held on September 15, 2009:**

**Comment I1: Electronically-generated records:** The commenter states that “it appears that the proposed regulations would require per Sect. 23020(a) and (c) and in 23030(c), that ... digitally created documents and records be stored in the PDF/A-1 format as promulgated by ISO 19005-1:2005.” Placer County currently converts electronically created records to TIFF files, which are converted to microfilm to serve as the official records. Creating a trusted system for electronic storage appears to be necessary. Commenter continues: “Accordingly, we urge that the proposed regulations not be adopted as presented or at a minimum, we would ask that Sect. 23020 of the proposed regulations be amended to add ‘(d) The provisions of this chapter shall not apply to any electronically originated documents or submitted documents or records which the county clerk or recorder has microfilmed for preservation purposes or preserved as otherwise permitted by Sect 27322.2 of the Government Code.’”

**Accept in part/reject in part:** The incorporation by reference of ISO standards has been removed and replaced with references to sections in “AIIM ARP1-2009 Analysis, Selection, and Implementation of Electronic Document Management Systems” that are similar but more flexible. The guideline provides alternatives for file formats and image compression, but the ISO standards are listed within the body of the text in the guideline or in Annex A for information purposes. These changes make the language proposed to section 23020(d) unnecessary.

**County of Orange comments presented at the Public Hearing held on September 15, 2009:**

**Comment J1:** The comments made on behalf of the County of Orange at the Public Hearing were the same as those contained in its letter dated August 28, 2009. (See comments B1-7 above.)

**Accept in part/reject in part:** The Secretary of State’s response is the same as the response given with respect to the comments contained in the letter from the County of Orange dated August 28, 2009. (See comments B1-7 above.)

**County of Sacramento comments presented at the Public Hearing held on September 15, 2009**

**Comment K1:** Section 23020: The commenter asks “What is the definition of ‘Official Record’ as referred to in the regulations?”

**Accept:** The term “official record” is defined in statute and defined differently for different entities impacted by the regulations. Section 23030 has been updated to have each entity use its statutory definition and clarifies what to do if not defined in statute.

**Comment K2:** Funding: The commenter states that the “California Records’ Offices utilize TIFF format for electronic document storage. The proposed regulations would

mandate all Recorders to perform a very costly conversion to the specified PDF/A format. What funding mechanism is available for this conversion?”

**Response:** The comment about an unfunded mandate has already been addressed. (See the responses to comments to B1 and H2.)

**Comment K3:** Section 23070: The commenter asks: “If a document management system has already been implemented, is there a certification process to test for its trustworthiness?”

**Response:** The Secretary of State is not aware of any formal certification process.

**Comment K4:** Section 23070: The commenter asks: “Is there a window of time to obtain a trusted system?”

**Response:** There is not a window of time to obtain a trusted system because a trusted system is already required under Government Code section 12168.7. See also the response to Comment C1.

**Comment K5:** Section 23070: The commenter states: Many, if not most, of the counties utilize a Kodak Archiverwriter (an industry standard) to create microfilm from the digital images for the Official Record. Because the Archiverwriters do not support PDF/A format, how should the counties go about creating their film archives? Is TIFF format acceptable as a ‘transitional’ format?

**Response:** The intent of the regulations is to apply to the storage of the official record, not the transitional format. Other than the change of incorporating by reference sections in “AIIM ARP1-2009 Analysis, Selection, and Implementation of Electronic Document Management Systems” rather than ISO, no other changes are being made. See the response to Comment A1.

**Comment K6: General:** The commenter asks: With County Recorders moving forward with electronic recording and electronic submission of documents, are these records exempt from the regulations as long as the Official Record is kept in microfilm format?

**Response:** The Secretary of State agrees that the regulations would not apply if the Official Record is kept in microfilm format; however, it would be prudent to follow section 23050 of the proposed regulations related to Business Practices Documentation to ensure that appropriate policies and procedures associated with the creation and management and storage, in this case to microfilm, of electronic documents or records are documented. If microfilm or microfiche ceases to be the official copy of a record and an electronic copy becomes the official record, then the regulations may apply.

**Comment K7: Compliance:** The commenter asks “What are the repercussions of not being in compliance with the regulations?”

**Response:** Regulations have the same force and effect of law. Your legal counsel can best advise you on what the penalties would be for failing to adhere to these regulations, should they be adopted.

**PFA, Inc. comments presented at the Public Hearing held on September 15, 2009**

**Comment L1: Sections 23050 and 23080:** The commenter stresses the need to develop best practices for protecting, preserving, and recovering electronic documents in the custody of the County Recorder and notes that “although converting TIFF images to a PDF/A format is possible, we know from our work experience that data conversions can create opportunities to lose information and, therefore, should only be undertaken for good reason using a well thought out effort. It is my opinion that, in our current environment where bi-tonal pictures of documents are preferred, secure TIFF images serve us well and have not yet reached any criteria for a change in format.”

**Accept:** The Secretary of State has removed the reference to ISO 19005 requiring PDF/A. See also the response to Comment A3.

**MISAC letter dated September 24, 2009 during the open comment period after the hearing**

**Comment M1: Sections 23010 to 23080:** The commenter asks for a definition of the required archival process.

**Reject:** The Secretary of State’s role is not to dictate what process shall be followed when archiving documents or records. That decision to store electronically, on microfilm or other media rests with each local or state agency as stated in its laws, rules, regulations or policies and procedures.

**Comment M2: Section 23080:** The commenter questions the file format PDF/A as it relates to storage, conversation and costs.

**Accept:** The Secretary of State has removed the reference to ISO 19005 requiring PDF/A. See also the response to comments A3 and B2.