

ORDER of the DEPARTMENT OF ADMINISTRATION

The Wisconsin Department of Administration proposes an order to amend Wis. Admin. Code §§ 70.03, 70.03 (Note), 70.04, and 70.07, relating to updating standards to implement the Uniform Real Property Electronic Recording Act.

Rule Analysis prepared by the Department of Administration

1. Citations to statutes interpreted:

Sections 227.11(2)(a) and 706.25(4), Stats.

2. Citations to statutory authority:

Sections 227.11(2)(a) and 706.25(4)(a), Stats.

3. Explanation of the agency's statutory authority to promulgate the rule under the statutes cited:

The Wisconsin Statutes provide explicit authority for the Electronic Recording Council to adopt standards implementing the Uniform Real Property Electronic Recording Act (URPERA), codified at Wis. Stat. § 706.25, and for the Department of Administration to promulgate these standards by rule. Specifically, § 706.25(4)(a) provides that the Council “shall adopt standards to implement this section” and further provides that the “[Department] shall promulgate by rule the standards adopted, amended, or repealed by the council under this paragraph.” Additionally, Wis. Stat. § 227.11(2)(a) provides explicit authority for an agency to “promulgate rules interpreting the provisions of any statute enforced or administered by the agency.”

Section 706.25(4)(b) states, “To keep the standards and practices of registers of deeds in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this section and to keep the technology used by registers of deeds in this state compatible with technology used by recording offices in other jurisdictions that enact substantially this section, the electronic recording council . . . shall consider all of the following:

1. Standards and practices of other jurisdictions.
2. The most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association.
3. The views of interested persons and governmental officials and entities.
4. The needs of counties of varying sizes, populations, and resources.

5. The need for security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.”

The proposed rule interprets the provisions of Wis. Stat. § 706.25 and sets forth standards for its implementation which are developed and approved by the Electronic Recording Council consistent with these provisions.

4. Related statutes or rules:

The Property Records Industry Association (PRIA) standards - currently incorporated by reference into Adm §§ 70.03 and 70.04.

5. Brief plain language summary of the proposed rule:

The Council is responsible for reviewing and updating the rules implementing the URPERA, but it has not suggested any updates since chapter Adm 70 was promulgated in 2009. Over time, eRecording has proven that less is more: Indexing and formatting rules have changed, as fewer prescriptive rules for indexing and formatting can make things easier for both submitters and recorders. Current technological tools provide more effective image processing and improved quality of electronic documents using PRIA-MISMO XML Data Standards.

After reviewing updated PRIA standards/guidelines and legislative changes to Wisconsin law, the Council has chosen to adopt the updated standards to continue to implement the URPERA; update contact information in a few note sections, and update statutory citations.

6. Summary of, and preliminary comparison with, any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

The Uniform Electronic Transactions Act (UETA) and the URPERA are state model acts adopted by Wisconsin with the intention of preempting the application of the federal Electronic Signatures in Global & National Commerce Act (ESIGN). *See* Wis. Stats. §§ 137.12(2p), 706.25(6)(a). ESIGN expressly authorizes states to modify, limit, or supersede its application with respect to state law. *See* 15 U.S.C. § 7002(a).

Therefore, except as specifically provided in Wis. Stat. § 705.25(6)(b), Wisconsin’s URPERA supersedes the federal ESIGN Act to the extent there is overlap between the two.

7. Comparison with similar rules in Illinois, Iowa, Michigan, and Minnesota:

N/A

8. Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:

N/A

9. Effect on small business:

None.

10. Any analysis and supporting documents used in support of the agency's determination of the rule's effect on small business or in preparation of economic impact report:

N/A

11. Email address and telephone number of agency contact person:

Sharon Martin
Washington County Register of Deeds
Chair, Wisconsin Electronic Recording Council
262-306-2225
Sharon.Martin@washcowisconsin.gov

12. Place where comments are to be submitted [and deadline for submission (if known)]:

A public hearing was held remotely on February 3, 2022. Comments could be submitted at the hearing, by postal mail, or by email to Sharon.Martin@washcowisconsin.gov. The published deadline for submission of comments was 5:00 p.m. on February 3, 2022.

No members of the public attended the hearing, and the Department received no comments by mail or email.

RULE TEXT

SECTION 1: Adm 70.03, 70.03 (Note), and 70.04 are amended to read:

Adm 70.03 Standards. A trusted submitter shall submit an electronic recording file to a county register of deeds in a manner that is consistent with state statutes and the technical standards contained in ~~Document 2.4.1 -October 2007 and the XML Implementation Guide dated April 2007~~ How to Get Ready for eRecording, Submitters' Guide and How to Get Ready for eRecording, Recorders' Guide, July 14, 2009, both developed by PRIA. The council shall annually review these standards and guidelines and propose, to the department, necessary amendments to the standards and guidelines adopted in this section.

Note: Copies of the PRIA technical standards and guidelines imported by reference in s. Adm 70.03 and business requirements imported by reference in s. Adm 70.04 may be obtained from PRIA at:

Property Records Industry Association
~~2501 Aerial Center Parkway, Ste. 103~~ 110 Horizon Dr., Ste. 210
~~Morrisville, NC 27560~~ Raleigh, NC 27615
Telephone: 919.459.2081
FAX: 919.459.2075
Website: <http://www.pria.us/>

Locally copies may be obtained from the legislative reference bureau or from the council at the mailing address and website shown in s. Adm 70.04.

Adm 70.04 Business requirements and guidelines. In addition to council developed business requirements, a trusted submitter shall comply with the requirements contained in ~~Business Requirements Document for Recording Electronic Document Formatted Recordable Instruments, dated March 2008~~, eRecording Best Practices for Recorders, August 30, 2021, developed by PRIA and the mortgage industry standards maintenance organization. The council annually shall review the business requirements and propose, to the department, necessary amendments to the requirements adopted in this section.

SECTION 2: Adm 70.07 is amended to read:

Adm 70.07 Notarization of documents. An electronic document shall be notarized under standards adopted in chs. 137 and 140, Stats. The notary's commission date shall be contained on the document or the document shall be authenticated as required in s. 706.06 and ch. 140, Stats.

SECTION 3: EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION

Kathy K. Blumenfeld, Secretary

Date