

Rule 43-I. Record of a Regularly Conducted Activity; Public Record; Photographic Copies

(a) RECORD OF A REGULARLY CONDUCTED ACTIVITY. A record of an act, event, condition, opinion, or diagnosis is not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness, if:

(1) the record was made at or near the time by—or from information transmitted by—someone with knowledge;

(2) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(3) making the record was a regular practice of that activity;

(4) all these conditions are shown by the testimony of the custodian or another qualified witness or by other means as may be provided by statute; and

(5) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

(b) PUBLIC RECORDS. A record or statement of a public office is not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness, if:

(1) it sets out:

(A) the offices' activities;

(B) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(C) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(2) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

(c) PHOTOGRAPHIC COPIES.

(1) *In General.* The reproduction of a record or an enlargement or facsimile of the reproduction, when satisfactorily identified, is as admissible in evidence as the original, whether the original is in existence or not, 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:

(A) kept or recorded any memorandum, writing, entry, print, representation or combination thereof of any act, transaction, occurrence or event; and

(B) 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 appears to accurately reproduce or form a durable medium for reproducing the original,

(2) *Admission of Original.* The introduction of a reproduced record, enlargement, or facsimile does not preclude admission of the original.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

The rule was also amended to make it more consistent with federal practice. Section (a) adopts language from *Federal Rule of Evidence* 803(6), except that the reference to “a certification that complies with [*Federal Rule of Evidence*] 902(11) or

(12)” was replaced with “by other means as may be provided by statute.” While the majority of states permit authentication of domestic or foreign business records by a certification under 902(11) or (12), this jurisdiction does not currently permit it.

Section (b) adopts language from *Federal Rule of Evidence* 803(8). Section (c) maintains the Superior Court practice of permitting photographic copies.