

Can Any of These Regulations

Be Good for the Bottom Line?

By Jim Teske

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When it comes to evaluating all of the various regulations and compliance issues facing records and information managers these days, there are substantial challenges for both customers of offsite data protection services as well as the providers of such services. And while I'm admittedly a "glass half full" (or even overflowing) kind of guy, I recently stepped back and looked at some of the fundamentals of our industry as it pertains to all this regulation. Most certainly there is an impact on our cost of doing business. However those that focus on understanding both the customer and vendor issues as thoroughly as possible have the best chance of minimizing the negatives and maybe even turning a few of the negatives into positives.

What Does Regulatory Compliance Mean to You?

If you operate a commercial records center these days, one of the most important set of regulations within our industry from the vendor perspective are the codes and standards issued by the NFPA (National Fire Protection Association). You may therefore already be familiar with recent votes taken by the NFPA that went in favor of our industry eliminating proposed requirements for transverse flue spaces being installed every four to five feet and eliminating a proposed requirement for in-rack sprinklers to be installed at the junction of every transverse and longitudinal flue. Our industry was also successful in these efforts before the NFPA Standards Council, which is responsible for all NFPA documents. PRISM International has a Regulatory Affairs Committee that obviously was very successful in working with a number of our members to impact the new regulations as proposed by the sprinkler industry.

Some records center owners may be aware that there is "grandfather clause" that may allow records centers to maintain properly permitted existing racking and sprinkler configurations regardless of changes in the code. However an "Authority Having Jurisdiction" (AHJ being typically, but not always, the local fire marshal) can use their own interpretation of the then current code to require a records center to make wholesale changes to racking and sprinkler systems to ensure ongoing compliance. Such a determination by an AHJ would be based on either perceived risks associated with the

racking/sprinkler system or fire history issues in general. Certainly there are advocates and consultants one can work with, such as Mr. Warde Comeaux of The Fire Protection International Consortium, either proactively or when challenges with an AHJ arise. So while there is no intent here to be an alarmist or create undue concern, compliance with fire code potentially represents one of the more costly, but also necessary, regulations to impact owners of commercial records centers. Facility owners and operators need to be familiar with the issues as well as familiar with the resources they can utilize to their benefit when needed.

There are of course many other regulations that impact the records management business and/or our customers. Besides NFPA, it is important for our industry to understand applicable legislation including HIPAA, FACTA, Securities and Exchange Act Rules (17 CFR 240.17a-3.4), Gramm-Leach-Bliley, Sarbanes-Oxley (SOX), the Patriot Act and others. A consideration of the laws, regulations or compliance issues facing records and information managers might also include actual retention laws that regulate how long certain types of records must be kept.

Having a clear understanding of the regulations facing our industry is not only important based on the potential impact to your bottom line and overall operations but also to your ability to effectively market your business to the various verticals impacted by such rules or legislation.

What Drives Customers to Consider Offsite Storage?

There is a core principle of records management that I always stress to the people that go out into the field representing our services to potential customers: every business (regardless of vertical market, size or other demographic) needs a safe, secure and cost-effective place to retain their inactive documents and data. As most records center operators know, we offer an economic model that can be very attractive to our customers: rates for storage at one of the lowest incremental units available (per cubic foot) in conjunction with the convenience of services that act as an extension of our clients' businesses.

There are of course many factors and issues that records and information managers consider when deciding whether or not to take advantage of our services. Required retention periods, escalating costs of maintaining escalating volumes of data, confidentiality, security,



safety; all of these considerations come into play...and many of these revolve around various regulatory issues. Several business segments have traditionally stored large volumes of information offsite; with healthcare being one of the biggest verticals of all. And with an increasing focus on patient confidentiality and speed of retrieval, commercial records centers need to understand both their role as Business Associates under HIPAA (the Health Insurance Portability and Accountability Act) and how to properly serve hospitals and healthcare professionals as recordkeeping systems and technologies continue to change. With the Bush Administration strongly encouraging a migration to electronic medical records, records centers need to be prepared for this migration and consider investments in technologies that compliment and integrate with healthcare management systems. It is critical to be aware of how these technologies protect confidentiality and how to cost-effectively extend access to information without compromising security. Remember that your ability to

earn and maintain customer relationships on something more than just price will be based on understanding the customer's perspective, on how well you can operate in their world rather than teaching the customer your way of doing business and how effectively you can comply with the legal issues required when you enter into HIPAA agreements; without creating undue risk or exposure in the relationships you form with healthcare providers. And lastly, there is still a lot of paper-based information out there. Records centers need to consider their operational methods when it comes to handling/delivery of these records and how to minimize the burden of maintaining confidentiality of sensitive and protected patient information. The obvious focus for all of us that serve records managers is to prove our value to the customer every day and do so as efficiently as possible in an environment where the risk managers for ten different hospitals may have ten different interpretations of what HIPAA requires of us.

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Obviously a key component of our services to customers involves the actual retention schedules implemented by records and information managers. The basic objective of a retention schedule is to: 1) outline the legal and business requirements for retaining and protecting vital, competitive, proprietary, confidential, historical and beneficial information; and 2) outline destruction programs for unnecessary, duplicate, obsolete or outdated information. On a very foundational level, a Master Retention Schedule (MRS) includes a category code or category description of records to assist in classifying records into groups for organizational purposes defining how long records must be kept. It also typically includes the responsible department or author of the information, the actual retention period for the records and the legal citation or authority under which the determination for the retention period was made. For commercial records centers, providing systems integration as it relates to retention schedule implementation and compliance can offer a number of benefits including increased confidence in interaction with customers and prospective customers as well as increased accuracy and productivity in actually handling and ultimately destroying records as requested or as required by your clients. You may or may not actually have people on staff with the necessary expertise and/or legal foundation to make recommendations on retention scheduling requirements; nor am I necessarily even suggesting that you offer such advice (since there are thousands of laws impacting retention requirements and providing incorrect information in this area could expose records centers to potential liability). The primary focus is to understand the fundamentals of retention schedules and to either offer tools that provide notification when records are eligible for destruction (certain commercial records center software packages offer such functionality) or for records centers to move lists of records eligible for destruction as requested by customers electronically (to avoid keypunching errors and/or to maximize productivity).

When it comes to other vertical markets and other regulations, there are many other opportunities to prove your value to prospects and customers. For example, FACTA (the Fair and Accurate Credit Transaction Act) requires shredding or burning of certain types of financial information. PRISM has done a good job of providing our industry with a contract template that can be used in conjunction with requests for data destruction. The key questions are whether your organization is effectively using this tool (or a modified version of it), whether your customers understand why you've implemented this new document and whether you have responded to this new regulation in such a way as to appropriately address the bottom line issues associated with compliance.

Consider a Fundamental Principal of Good Marketing

One of the basic components of your overall "marketing plan" has got to be self-improvement. While things like telemarketing, direct mail, print media, internet marketing and advertising, tradeshows, seminars and other methodologies are all pillars of marketing

designed to make the phones ring, most marketing professionals and successful business people might agree that the most valuable and lowest cost lead comes via referrals. Having customers that can and will honestly, sincerely and passionately testify (both proactively and reactively) to the value and quality of your services is of unparalleled value to your business. The more you know about your customers' environment and the more you interact with customers on critical issues like regulatory compliance, the more they may appreciate that you are truly in the records management business and are not simply a storage provider. We proactively contact customers and request brief meetings where we can not only ask for (and capture) feedback on the quality of our existing services but where we can introduce new technologies, suggest complimentary/additional service offerings to assist in protecting confidentiality (like providing security consoles and shredding for example) and actually ask if the customer knows of other professionals that we might be able to help.

I recently wrote an article for Security Shredding and Storage News on the value of measurement programs within the records management profession (July/August 2006). No doubt measuring the quantity and more importantly the quality of your operation helps gain an understanding of performance and to an extent helps you show proof (in advance) about the commitments you make to prospective customers. So on top of measuring service quality, you might consider how well your team understands all the various regulations that impact records and information managers. In a day where larger customers may be increasingly looking at offsite storage as simply a commodity, being able to "talk the customer's talk" and clearly understand the regulatory and compliance issues records and information managers face in handling constantly expanding volumes of documents and data provides another way to demonstrate value and differentiate from other storage providers in earning business relationships.

Several months ago we moved about 1,000 boxes for a fairly large communications firm out of self storage and into our facilities. During the transition, we asked the customer about their retention program. They basically said they didn't have one; leading us to introduce them to consider using our software to better manage the descriptive information within each container including retention information. We suggested the customer get their legal folks involved to determine the retention requirements for various categories of records. We then helped them understand the importance of making date range information a required field for each container (which can be enforced through software). If a container can be placed into offsite storage without dates, then the retention schedule becomes moot (since a retention period cannot be calculated if the dates of records are nonexistent).

When it comes to HIPAA and as noted earlier, health-care professionals and risk managers may have different interpretations of compliance. When a records manager at a new hospital client asked if our software was HIPAA compliant, we responded openly that such a

definition is open to interpretation. However we were able to demonstrate very high levels of security such as restricting access to users within a specific domain, within a given department or even to a specific computer or IP address. We offered up various levels of function-based security. We were able to show how language could be personalized to the medical directors needs (like tracking records by patient names, numbers, assigned physicians, capturing release dates or other fields customized to the needs of a healthcare provider).

We showed the customer how they could manage either paper based records or electronic records through the system. And lastly we offered references within the healthcare field to give them additional confidence that other hospitals had already provided their blessing about the compliance level of our software.

Conclusion

To a very large extent, the challenges that face our customers and the need to make changes in the way we do business helps us, as Stephen Covey would say, "sharpen our saw." Confidentiality, business continuity, security, new technology, business systems integration and other controls gain renewed or increased focus when the government creates a mandate that impacts one or more of these issues. In a historical environment where at least some significant portion of mid-sized and small businesses have looked at managing records as something their receptionist could do part time, there is hopefully some appreciation that businesses are being forced to address, understand and focus on proper recordkeep-

ing practices and where information management comes into the limelight and becomes more of a priority.

Consider adding industry education to your overall training programs. It is obviously quite common for outside sales representatives or other records center professionals to attend monthly or annual ARMA, AIRM or PRISM meetings, seminars or conferences. However it is less common to have information gained during such events distributed to other members of your team and seemingly rare for this information to become a component of formal education where team members become familiar with (and are tested on) the issues facing records and information managers.

Maybe most importantly, consider leadership from the top down and assure that you as a business owner understand the nuances of how NFPA, HIPAA, FACTA and other regulations impact your business. The answer to the question posed by the title of this article isn't easy. However to some extent and like anything else, you are certainly far better off being educated, being prepared, having people that can help when challenges arise and by creating an environment where communication between team members and with customers maximizes the opportunities for successful outcomes.

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