"Should have been preserved in the anticipation or conduct of litigation" is an elastic term from the standpoint of one who may be sued in a civil case.
There should be a time limit as to how long information must be preserved and "should have" should involve actual notice.
There will also be issues of cost because electronic storage, and personnel to maintain it, costs money.

The Rule should read more like below.

Respectfully,

Shawn M. Winterich

If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable
steps to preserve it, and it cannot be restored or replaced through additional discovery:
A. the court, upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or
B. the court, only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:
1. presume that the lost information was unfavorable to the party;
2. instruct the jury that it may or must presume the information was unfavorable to the party; or
3. dismiss the action or enter a default judgment;
C. "Should have been preserved in anticipation or conduct of litigation," in the case of any party other than the party initiating the action, shall mean that that party has (1) received actual written or electronic notice that it may anticipate being a party in litigation in the future, the date(s) or approximate date range of loss, and also including a particularized description of the information sought and also including all of the anticipated parties to litigation as best as they could be determined, or (2) actual knowledge of the

pendency of the action and in which court it is pending, in which he or she is or will become a party, notwithstanding the effectuating or not of process service. No party who has received the notice provided in (C)(1), shall be required to preserve such information for more than a year if action is not filed as described within that notice within a year, or for more than six months following the first dismissal without prejudice. Actual written or electronic notice received as described in this Paragraph (C) is shall be effective as against any party. The party ultimately initiating the action has or may have actual notice of anticipated litigation, notwithstanding receiving notice, or not, of anticipated litigation from another party. Only a party who has availed him or herself itself of the notice provision of Paragraph (C) may avail itself of the provisions of Paragraphs (A), (B), or (D) of this Rule.

D. a party may request or the court may order a hearing. Upon the request of a party, the court shall make findings of fact and conclusions of law. A party incurring cost to preserve information may be heard on recovering any cost of preservation from the party or parties who requested preservation, that the court finds he or she would not otherwise incur in the ordinary course of its business, or would not otherwise have been regularly maintained.