



**WEST VIRGINIA  
SECRETARY OF STATE**

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**ADMINISTRATIVE LAW DIVISION**

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OFFICE OF  
WEST VIRGINIA SECRETARY OF STATE

**FORM 6 -- NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE  
AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE**

AGENCY

Secretary Of State

TITLE NUMBER

153

RULE TYPE

AMENDMENT TO EXISTING RULE

CITE AUTHORITY

Legislative

No

§5-2-3

SERIES NUMBER OF RULE BEING PROPOSED 42

HOUSE OR SENATE BILL NUMBER

hb4139

SECTION

§64-9-10(b)

PASSED ON

03/10/2012

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE

Thursday, April 19, 2012

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

Sheryl Webb -- By my signature, I certify that I am the person authorized to file legislative rules, in  
accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 153-42



Rule Id: 7538



Document 23573

TITLE 153  
LEGISLATIVE RULE  
SECRETARY OF STATE

SERIES 42  
GENERAL MANAGEMENT AND  
PRESERVATION OF STATE RECORDS

**§153-42-1. General.**

1.1. Scope. -- This Legislative Rule sets forth general Standards and Procedures for the effective and uniform management and preservation of essential public records created or filed with the West Virginia Secretary of State.

1.2. Authority. -- W. Va. Code §5-2-3.

1.3. Filing Date. -- April 19, 2012.

1.4. Effective Date. -- April 19, 2012.

1.5. Purpose. -- The purpose of this rule is to establish general standards and procedures for a uniform records management and preservation program, retention schedule and electronic record-keeping systems for essential public records created or filed with the West Virginia Secretary of State.

**§153-42-2. Terms.**

2.1 “Active Record” is a record that is currently used to fill the need for which it was originally created or acquired.

2.2. “Archival quality” means a quality of reproduction providing permanent, durable, and nondestructive storage or copying medium for records consistent with established standards specified by state and national agencies and organizations responsible for establishing the standards, such as the Association for Information and Image Management, the American National Standards Institute, the National Bureau of Standards, the National Archives and Records Administration, and others, as applicable.

2.3. “Archival record” means a non-current record of continuing and enduring administrative, fiscal, historical or legal value, useful to the citizens of the state, and necessary to the administrative functions of state agencies in the conduct of services and activities mandated by law.

2.4. In the appraisal of a public record determined “archival,” the terms “administrative,” “fiscal,” “historical,” and “legal” shall have the following meanings:

2.4.a. “Administrative value” means the records have continuing utility in the operation of the office of the Secretary of State.

2.4.b. “Fiscal value” means the records are needed to document and verify financial authorizations, obligations and transactions.

2.4.c. “Historical value” means the records contain information, regardless of age, which provides significant understanding of some aspect of the government and promotes the development of an informed

and enlightened citizenry.

2.4.d. "Legal value" means the records document the actions taken in the protection and proving of legal or civil rights and obligations of individuals and agencies.

2.5. "Archives" means a repository specifically designed for the preservation, storage, access, retrieval, and display of archival records or the organization operating an archives.

2.6. "Converting Electronic Records" means transferring electronic records by export or import from one software environment to another without loss of the content or structure of the records.

2.7. "Copying Electronic Records" means transferring records from an existing storage medium to an alternate storage medium while maintaining the format specifications without any loss of the content or structure.

2.8. "Disposition" means records changing custody, location, or ceasing to exist. Records at the end of their retention period may be transferred to the State Archives or be shredded, recycled or fully destroyed by another method, depending on the disposition given for those records.

2.9. "Electronic Imaging System" is a computer-based system which stores digitally encoded records or documents, originally created in this form or a conversion of electronic data, original paper or microform records, to provide retrieval and access to imaged records on demand. Electronic Imaging Systems serve as an alternate format to paper or microform systems, which may provide for multiple and faster access to information.

2.10. "Electronic Record" means any record maintained in a database by the Secretary of State which becomes available for access electronically, and which may include those portions of the complete record as are public and are considered appropriate to be include in the viewable database, as determined by the Secretary of State.

2.11. "Essential Record" means a record containing information necessary to the operation of government in the emergency created by a disaster or containing information necessary to protect the rights and interest of persons or to establish and affirm the powers and duties of governments in the resumption of operations after a disaster.

2.12. "Inactive Record" means a record not in current use, having fulfilled its original purpose, but retained for other administrative, fiscal, legal or historical value.

2.13. "Non-record" is a convenience, courtesy, information, or display copy - a duplicate copy which is disposed of after this use.

2.14. "Preservation" means maintaining archival records in their original form by stabilizing them chemically or strengthening them physically to ensure their survival as long as possible in their original form. It also means the reformatting of written, printed, electronic or visual archival originals to extend the existence or life of the information and to provide access to secondary users.

2.14.a. Recorded information subject to preservation may be on mediums including, but not limited

to, paper, film, magnetic, optical or solid state devices which can store electronic signals, tapes, Mylar, linen, silk or vellum. The general types of records may be, but are not limited to, books, papers, letters, documents, printouts, photographs, films, tapes, microfiche, microfilm, photostats, sound recordings, maps, drawings, and any representations held in electronic form.

2.15. "Public record" means recorded information or documents of a transaction or activity maintained by the office of the Secretary of State. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received, retrieved, or retained in pursuance of law or in connection with the transaction of public business and is not otherwise removed from the public record, in whole or in part, by applicable state or federal law.

2.16. "Records Management" means the efficient and effective management and control of the creation, maintenance, use, storage, and disposal of records, files and forms.

2.17. "Retention Schedule" is the schedule of instructions for records maintained for when the document is no longer active and provides retention periods for all record series of an office and authority for final disposition. The schedule describes the contents of each record series and defines: 1) the length of time each series is to be maintained in a prescribed format, such as paper or electronic; 2) the location where the records are to be stored and; 3) the final disposition of the records.

2.17.a. "Division Schedule" means the documents created by each operational division of the Secretary of State's Office to determine the period of retention, as approved by each division manager.

2.18. "Transitory Records" means records that have little or no documentary or evidential value and that need not to be set aside for future use; have short term administrative, legal or fiscal value and should be disposed of once that administrative, legal or fiscal use has expired; or are only useful for a short period of time, perhaps to ensure that a task is completed or to help prepare a final product.

### **§153-42- 3. Retention Schedule ,**

3.1. As authorized by the code, the Secretary of State shall create a retention schedule for essential public records and make it available for public inspection in the Secretary of State's Office. The Secretary of State shall develop the schedule in coordination with the Department of Administration and the Division of Culture and History, Archives and History section.

3.2. Disposition of documents is subject to:

3.2.a. Deference to the Division of Culture and History, Archives and History section of documents before disposal;

3.2.b. The resolution of all known investigations or court cases involving the listed records before the records can be destroyed. Knowledge of subpoenas, investigations, or litigation that reasonably may

involve the listed records suspends any disposal or reformatting processes until all issues are resolved;

3.2.c. The settlement of all known audits and audit discrepancies regarding the listed records before the records can be destroyed; and

3.2.d. The interest of other agencies or state institutions. Documents may be transferred with consent of the Secretary of the Department of Administration and the Director of Archives and History.

3.3. The Secretary of State shall maintain updated division schedules.

3.3.a. Each schedule shall be produced in accordance with proper records management principles and statutes as defined by relevant organizations and legislative bodies.

3.3.b. Each schedule shall identify records as an Active Record, Inactive Record, Archival Record, Transitory Records or Non-record;

3.3.c. Each schedule shall require archived records to be of archival quality. When creating electronic records, divisions shall use an electronic imaging system capable of producing archival records that allow for the copying or converting of the electronic records to maintain a permanent archival quality record.

3.3.d. Each schedule shall be reviewed and re-authorized 10 years from its initial adoption or any subsequent re-authorizations.