



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

7/26/2019 7:55:32 AM

Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Administration TITLE-SERIES: 148-12
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 148-12 General Administration of Records Management and Preservation

PRIMARY CONTACT

NAME: Misty Peal
ADDRESS: Building 1 Room E 119
1900 Kanawha Blvd East
Charleston, WV 25305
EMAIL: misty.peal@wv.gov
PHONE NUMBER: 304-558-4331

CITE STATUTORY AUTHORITY: W. Va. Code Section 5A-8-1 through 5A-8-20

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code Chapter 5A, Article 8 pertains to the Public Record Management and Preservation Act. W. Va. Code Section 5A-8-8 states the Department of Administration's "administrator shall promulgate such rules and regulations concerning the management and selection and preservation of essential state records as are necessary or proper to effectuate the purpose of this article."

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/24/2019

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/24/2019

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Notice was posted on the state's "Records Management Share Point Site."

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The amendments modernize the rule, adding a definition of "record" that includes modern methods of storing material made or received in connection with transaction of state business, and adding a section on electronic records.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The rule was last amended in 2003. Since that time, records management and storage technology changed. The amendments update definitions and clarify duties of state Records Administrator to better support state agency efforts to appropriately maintain state records. The rule adds a section on electronic records to encourage agencies to store in electronic format where appropriate (excepting records with historical value) and to reflect this storage method in agency record retention schedules.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

None

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

Improved records management could result in savings, however it is unclear at this time what the impact could be until better practices are widely implemented and maintained by state agencies.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes
Misty Peal -- 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 148
LEGISLATIVE RULE
WEST VIRGINIA DEPARTMENT OF ADMINISTRATION

SERIES 12
RULES FOR THE GENERAL ADMINISTRATION OF RECORDS MANAGEMENT AND
PRESERVATION

§148-12-1. General.

1.1. Scope. -- This Legislative Rule sets forth the Standards, Procedures and Techniques for effective management of records.

1.2. Authority. -- W. Va. Code §5A-8-1 through §5A-8-20.

1.3. Filing Date. -- April 17, 2003.

1.4. Effective Date. -- July 17, 2003.

~~1.5. Purpose. -- The purpose of the rules is to establish the Records Management Program policies, definitions and procedures to be followed and used by each executive agency and its subordinate offices.~~

1.5. Sunset Provision. - This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

~~§148-12-2. Applicability.~~

~~— 2.1. This legislative rule applies to all agencies, except those statutorily exempted from its application.~~

~~§148-12-3~~ 148-12-2. Definitions.

~~3.1. Definitions.~~

~~(a) “Accession Number” means a number assigned by the Administrator to identify each shipment of records to the State Records Center.~~

~~(b) “Active Record” means records maintained by the agency.~~

~~(c) 2.1. “Administrator” means Secretary of the Department of Administration, as designated by the Code statute as State Records Administrator.~~

~~(d) “Agency” means any department, office, commission, board or other unit, however designated, of the executive branch of state government and all subordinate offices statewide.~~

2. 2. “Agency head” means the chief executive officer of the agency.

~~(e) “Code” means the West Virginia Code of 1931, as amended.~~

~~(f) “Essential Records” means those records which would permit the continuity of government and/or protect the residual rights of the citizens in case of a disaster.~~

~~(g) “Filing Equipment” means equipment, regardless of size, used for the storing of records; e.g., filing cabinets, mechanical shelving, open shelving, rotary card files, map files, cardex files, blueprint files, computers, computer disks, etc.~~

~~(h) “Record” means any information bearing media generated or received by an organization. This includes documents, spreadsheets, images, web pages and e-mail.~~

~~(i) “Inactive Record” means records which are infrequently required in the conduct of current administrative work and are retired to the State Records Center.~~

~~(j) “Local Record” means a record of a county, city, town, authority or any public corporation or political entity whether organized and existing under charter or under general law unless the record is designated or treated as a state record under state law.~~

~~(k) “Non-Record” means library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference and stocks of processed documents.~~

~~(l) “Preservation Duplicate” a copy of an essential state record used for reference purposes thereby preserving the records and/or to provide for continuity of government, as may be needed.~~

~~(m) 2.3. “Agency Records Manager” means an employee appointed by the agency’s chief executive officer, agency head to manage the agency’s records inventory and to act as liaison with the Administrator and delegated the authority and responsibility for the agency’s Records Management Program.~~

2.4. “Record” means any document, paper, spreadsheet, correspondence, electronic file, photograph, sound recording or other material, regardless of format, made or received pursuant to law or in connection with the transaction of official state business.

2.5. “Records Center” means the facility for storage of records that are required to be retained long-term.

~~(n) 2.6. “Records Retention Authorization” means the Administrator’s approval request by the agency for approval of the agency’s recommended retention of a record series proposed Retention and Disposal Schedule.~~

~~(o) 2.7. “Record Series” means a group of identical or related records which are normally used and filed as a unit, and which permit evaluation as a unit for retention scheduling purposes.~~

~~(p) 2.8. “Retention and Disposal Schedule” means a schedule of established approved retention periods for the records of an executive agency in the format prescribed by the Administrator.~~

~~(q) 2.9. “Retention Period” means a period of time during which records must be held before they may be legally disposed. The retention period is usually stated in terms of months or years, but sometimes is contingent upon the occurrence of an event; e.g., employee termination and contract expiration. The retention period includes the life span of each record from creation to final disposition.~~

~~(r) “State Records Center” means the low cost storage facility for the housing and servicing of inactive records whose reference does not warrant their retention in expensive office space and~~

~~equipment.~~

~~§148-12-4~~ 148-12-3. Duties.

~~4.1.~~ 3.1. Duties, State Records Administrator.

~~Secure the benefits available through efficient and economical management practices and techniques by the establishment of standards, procedures, studies, surveys, and retention and disposal schedules.~~

~~Obtain required reports from each agency for analysis, collation and submission to the Governor.~~

~~Provide forms management assistance to the agencies regarding forms design, forms implementation, procedural analysis, and forms procurement.~~

The Administrator shall:

3.1.1. Provide guidance to agencies in developing retention and disposal schedules, on records management best practices, and opportunities for efficiencies.

3.1.2. Seek the assistance of the State Archivist, as required, in determining whether ~~or not~~ a record has archival value.

3.1.3. Secure a facility for a statewide records center for use by agencies to store physical records.

3.1.4. Approve or reject Records Retention Authorizations and requests to destroy records in conjunction with the State Archivist submitted by agencies.

3.1.5. Prepare an annual report on the administration of the statewide records management program established pursuant to the statute.

~~Coordinate the transfer of all records of archival value from the agency to the Department of Archives and History.~~

~~4.2.~~ 3.2. Duties, of ~~Executive Agency Chief Officer~~ Head

Each agency head shall:

3.2.1. Establish and maintain an active, continuing program for the economical and efficient management of the records of the agency ~~and their subordinate offices.~~

3.2.2. ~~Make and~~ Maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state, and of persons directly affected by the agency's activities.

3.2.3. Submit to the Administrator a Records Retention Authorization proposing the length of time each state record series warrants retention for the administrative, legal, fiscal or historical purposes after it has been received or created by the agency.

3.2.4. Use the Records Center to store inactive physical records.

3.2.5. Furnish Administrator a listing of people within the agency authorized to retrieve records, or information contained in records, from the Records Center.

3.2.5.a. This list shall be reviewed and updated semi-annually. Interim additions and deletions to this list shall be furnished as appropriate.

3.2.6. Comply with the rules, regulations, standards and procedures issued by the Administrator.

3.2.7. Cooperate with the Administrator in the conduct of surveys made by him/her.

3.2.8. Appoint an Agency Records Manager from his/her staff who is conversant with the agency's ~~total~~ mission. The Agency Records Manager should be delegated the authority to reconcile major records management problems in the name of the agency head.

3.2.9. Request Administrator's approval before employing anyone other than a state employee to consult or assist in ~~any phase or facet of~~ records management.

~~4.3.~~ 3.3. Duties, of Agency Records Manager

Each agency records manager shall:

3.3.1. Be conversant with the requirements of the Records Management Manual of Procedures in its entirety to assure compliance with the statewide Records Management Program and the types of records created and retained by the agency.

3.3.2. Act as liaison between the agency and the Administrator.

3.3.3. Coordinate the biennial inventory of the agency's total records ~~holdings~~ inventory, both physical and electronic, and submit to the Administrator as required.

3.3.4. Review biennially the agency's Retention and Disposal Schedule to determine if revisions are necessary and certify by letter to the Administrator this review has been completed.

3.3.5. Coordinate the transfer between agency and Records Center regarding packing, transferring and retrieval of records stored in the Records Center.

3.3.6. Prepare and submit to the Administrator all completed forms as required.

3.3.7. At least annually, review the Records Retention and Disposal Schedule and request approval to destroy records that have reached the required retention period.

~~4.4.~~ Duties, ~~Agency Division Chiefs~~

~~Channel all requests for Administrator's assistance on records management problems through agency Records Manager.~~

~~Report through its respective Records Manager, all divisional records disposition made in compliance with the agency's Retention and Disposal Schedule.~~

~~Cooperate with the agency Records Manager in any surveys, inventories, or special projects being~~

~~made to assure a more comprehensive Records Management Program within the agency.~~

~~§148-12-5. Executive Agency Records Management Program.~~ §148-12-4. Electronic Records.

4.1. Agencies should utilize electronic records in place of physical records when appropriate.

4.2. Electronic records are subject to the same requirements as physical records under statute and pursuant to this rule, including retention policies and destruction approval.

4.3. Agencies may create a physical record to be replaced by or converted to an electronic record for retention purposes. Agencies should note such practices in the Records Retention Authorization.

4.4. Any records deemed to have historical value must be maintained in original format. No records of historical value shall be converted to electronic format as an original without written approval of the State Archivist and the Administrator.

~~Each agency shall develop their Records Management Program within the guidelines. The agency developed program shall be submitted to the Administrator for approval as to form and compliance with the overall state program.~~

~~§148-12-6~~ 148-12-5. Special Programs.

~~6-1.~~ 5.1. Agencies may, with their own personnel, initiate studies, surveys and programs for improving the efficiency and effectiveness of their records management functions. Agencies are encouraged to develop Records Management improvement projects.

~~6-2.~~ 5.2. The Administrator will, upon request, recommend improvements in current records management practices including the use of space, equipment and supplies employed in creating, maintaining, storing and servicing records. If assistance is desired by an agency, a written request shall be forwarded to the Administrator specifying the type of assistance required.

~~6-3.~~ 5.3. The Administrator's written approval must be obtained prior to any agency retaining or employing any ~~firm, partnership, person or persons, other than state employees~~ vendor to consult and/or assist in ~~any phase or facet of~~ records management.

~~6-4.~~ 5.4. Upon completion of any agency-initiated records management survey, study or program, a copy of the findings and recommendations shall be furnished to the Administrator.

~~6-5.~~ 5.5. A copy of the findings and recommendations of any consulting service employed by any agency concerning ~~any phase or facet of~~ records management shall be furnished to the Administrator.

~~§148-12-7. Electronic Media.~~

~~7.1. The business environment is migrating from reliance upon hard copy for the distribution, storage and retrieval of information to a single, read only "electronic file cabinets" that can be accessed by an authorized user.~~

~~—With e-mail, imaging, and web pages growing in volume and taking on the status of vital record in many business processes, the practice of archiving this electronic information has become an increasingly important issue.~~

~~— E-mail is an important record of business transactions; sometimes it is the only record of a transaction. Decisions of what should be kept, and how long, should be consistent with the policies on paper documents. The way electronic information is stored will depend in large part on the length of time it will be stored and the way the information will be used.~~

~~— State agencies should implement and enforce comprehensive policies governing the appropriate handling of electronic communications. Agencies should also consider archiving the essential information to meet the retention requirements.~~

~~— An agency's document retention policy must evaluate paper and electronic documents consistently, based not on media type but on information value to the agency, legal requirements, potential liability issues and storage costs (in terms of space and money).~~