



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

7/26/2019 7:57:40 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: 148-13  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 148-13 Retention and Disposal Scheduling

**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 rule establishes processes for state agencies to manage the maintenance and destruction of state records. The rule requires agencies to submit to the state Records Administrator an inventory of total records every two years, to request authorization to destroy records pursuant to a record retention schedule, and sets forth processes to be followed by agencies to destroy records when they have reached the end of the required retention period. The rule establishes processes for storage and destruction of records in electronic format.

**STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:**

The amendments add definitions to reflect the current method of submitting and approving the record retention schedules of agencies and obtaining authorization to destroy state records. Amendments are made that will lead to more appropriate management of physical records at the state records storage facility. The amendments modernize the rule to reflect current record storage technology.

**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)
<b>1. Estimated Total Cost</b>	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
<b>2. Estimated Total Revenues</b>	0	0	0

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

Improved records management by state agencies may lead to reduced storage costs, however the amount of savings cannot be determined until such time as the improved management processes are more widely implemented and maintained.

**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 13  
RULES FOR RETENTION AND DISPOSAL SCHEDULING

**§148-13-1. 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 1, 2003.~~

1.5. Sunset provision. – This rule shall have no further force and effect upon the expiration of five years from its effective date.

~~1.5. Purpose. – The purpose of the rule is to establish standards for the preparation of schedules providing for the retention of state records of continuing value and for the prompt and orderly disposal of state records no longer possessing sufficient administrative, legal, or fiscal value to warrant their further keeping.~~

**§148-13-2. ~~Applicability~~ Definitions.**

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

2.1. “Administrator” means Secretary of the Department of Administration, as designated by statute as State Records Administrator.

2.2. “Agency Records Manager” means an employee appointed by the agency head to manage the agency’s records inventory and to act as liaison with the Administrator.

2.3. “Non-record” means duplicates of official records created for convenience, drafts, personal notes related to drafts, or any material not originally created in the transaction of state business.

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.

2.6. “Records Retention Authorization” means request by the agency to the Administrator for approval of the agency’s proposed Retention and Disposal Schedule.

2.7. “Retention and Disposal Schedule” means a schedule of approved retention periods for the records of an agency in the format prescribed by the Administrator.

**§148-13-3. Destruction of ~~Record and Non-Record Material~~ records and non-records.**

3.1 No record shall be disposed of by an agency ~~of the state~~, unless it is determined by the State Archivist and Administrator that the record has no further administrative, legal, fiscal, research or historical value.

3.2 ~~Non-record materials~~ Non-records may, if not otherwise prohibited by law, be destroyed at any time by the agency in possession of such materials without the prior approval of the Administrator.

3.3. Any questions as to whether ~~or not~~ material is a record or non-record will be resolved by the Administrator.

**§148-13-4. Inventory of agency records ~~Holdings.~~**

4.1. Each ~~executive~~ agency will ~~make a biennial inventory of~~ submit to the Administrator biennially their total records ~~holdings~~ inventory, both physical and electronic, as of June 30 ~~to be submitted to the Administrator with a duplicate retained by the agency.~~

4.2. The Administrator will furnish each agency the required forms and instructions for taking the biennial inventory.

4.3. The inventory shall reflect any departmental changes, addition of new record series, deletion of obsolete record series, changes in record series titles and location, and revised retention recommendations.

**§148-13-5. Records retention authorization and approval.**

5.1. All agencies shall prepare a Records Retention Authorization ~~and submit it to the Administrator~~ for each record series held by the agency with proposed retention periods in the format prescribed by the Administrator. The authorization must contain the chronological period of the record series; if it is a continuing record, the word “present” shall be used in order to eliminate preparing a new authorization each time the retention period expires. When the record becomes obsolete, the word “present” is annotated to read the final date of the record.

5.2. The agency shall submit the Records Retention Authorization to the Administrator for approval.

5.2.1. The agency shall request amendment of approved retention periods on the Records Retention Authorization in the same manner as requesting an original authorization. The reasons for such change shall be clearly explained.

5.3 Upon receipt of the retention authorization the Administrator shall analyze the information contained thereon. If the Administrator concurs in the proposed retention periods recommendations ~~he/she will affix his/her signature in a space provided~~ he or she shall approve the Records Retention Authorization and notify the agency. The approved authorization becomes the agency's Records Retention and Disposal Schedule effective on the date approved by the Administrator.

5.4 The Administrator may seek approvals of recommended retention ~~appraisals~~ authorizations from any other agency or person ~~he or she~~ may deem necessary. If the Administrator does not concur with the ~~recommendations~~ proposal of the ~~originating~~ agency, conferences shall be arranged to reconcile the differences.

**~~§148-13-6. Record Retention and Disposal Schedules.~~**

~~6.1 After Records Retention Authorization has been approved by the Administrator, Retention Disposal Schedule shall be compiled and submitted to the State Archivist and the Agency Head for approval. After approved schedule has been returned, the Administrator will approve, print and supply the agency with five copies to be distributed by them upon written request.~~

~~6.2 The agency's Retention and Disposal Schedule shall be reviewed biennially of each even year to determine if revisions are necessary. The agency will certify by letter to the Administrator this review has been completed.~~

~~§148-13-7~~ 148-13-6. Retirement of records to records center.

~~7.1~~ 6.1. Records eligible for storage shall Physical records that must be retained for an extended period of time may be transferred to the State Records Center annually or as needed by the agency.

6.2. Agency records managers shall ensure that each carton of records retired to the Records Center has an adequate description of the records contained in the carton and a destruction date.

6.3. Agency records managers shall review at least annually the inventory of records stored at the Records Center and request destruction of those records that have reached the end of required retention periods.

~~§148-13-8~~ 148-13-7. Destruction of records by the agency.

~~8.1 The agency may destroy any record held by them whenever such record becomes eligible for disposal as indicated by the agency's current Records Retention and Disposal Schedule.~~

~~8.2 Upon completion of the destruction, agency personnel shall promptly list all records destroyed and all records microfilmed on a Records Disposal Report worksheet. The worksheet should then be sent to the agency Records Manager. Do not include records destroyed at the Records Center but do list any records which have been transferred to Archives and History.~~

~~8.3 The agency Records Manager shall submit to the Administrator a quarterly summary of records disposals/transfers.~~

~~8.4 The Records Manager shall then post disposal/transfer information as required.~~

~~8.5 A list of records destroyed shall be retained permanently showing the history of records series.~~

7.1. When records have reached the end of the required retention period pursuant to the agency's Records Retention and Disposal Schedule, regardless of paper or electronic format, the Agency Records Manager shall request approval to destroy the records from both the State Archivist and the Administrator.

7.1.1. The State Archivist may identify records on the request to destroy records that should be preserved permanently, and the agency shall transfer those records to the Department of Arts, Culture and History to become part of the State Archives.

7.1.2. The request to destroy records shall be submitted on forms prescribed by the Administrator.

7.2. Once destruction of records is approved by both the State Archivist and the Administrator, the agency may destroy or dispose of the records in an appropriate manner.

7.2.1. If records contain personally identifiable information subject to privacy laws, special

considerations should be taken to destroy the records in a secure manner.

7.3. A list of records destroyed and the approved request to destroy shall be retained by the agency permanently showing the history of the records series.

~~§148-13-9. Microfilming.~~ §148-13-8. Conversion to electronic format.

~~9.1 When a record series or portion thereof is microfilmed and the original document is destroyed, this disposal shall be shown on the quarterly Records Disposal Report submitted to the Administrator.~~

8.1. When appropriate, electronic records should be retained by an agency rather than physical records.

8.2. If an agency creates a physical record, then later converts the record to electronic format for retention purposes, the agency should indicate that practice on the Records Retention Authorization.

8.2.1. Once approved by the Administrator as part of the Records Retention and Disposal Schedule, the agency is not required to request destruction of physical records that are copies of an electronic record created for retention purposes.

8.3. Agency records managers shall review at least annually the inventory of records stored electronically by the agency and submit a request to destroy records when those records have reached the end of required retention periods.

~~§148-13-10. Filing Plans.~~

~~10.1 Directors and Supervisors should have a written plan of the filing system within their division for quick reference.~~

~~10.2 The agency head should have an over-all file plan of the information sources within his/her agency.~~

~~10.3 The Records Manager of each agency should know where each record originates and why, where they are stored temporarily and how, and the final action of the records.~~

~~10.4 Each executive agency shall furnish the Administrator with a copy of the agency's filing plan and any revisions of the plan.~~

~~§148-13-11. Forms.~~

~~11.1 It is mandatory that all reports be submitted to the Administrator on forms provided by or approved by the Administrator.~~