



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Administration TITLE-SERIES: 148-13
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Retention and Disposal Scheduling
CITE STATUTORY AUTHORITY: §5A-8-1 through 20

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB 323

Section §64-2-1(b) Passed On 1/30/2020 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

February 13, 2020

This rule shall terminate and have no further force or effect from the following date:

February 13, 2025

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

Yes

Jennelle H Jones -- 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. -- February 13, 2020.

1.4. Effective Date. -- February 13, 2020.

1.5. Sunset provision. -- This rule shall terminate and have no further force or effect after February 13, 2025.

§148-13-2. Definitions.

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 records and non-records.

3.1 No record shall be disposed of by an agency, 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-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 material is a record or non-record will be resolved by the Administrator.

§148-13-4. Inventory of agency records.

4.1. Each agency will submit to the Administrator biennially their total records inventory, both physical and electronic, as of June 30.

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 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 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 authorizations from any other agency or person he or she may deem necessary. If the Administrator does not concur with the proposal of the agency, conferences shall be arranged to reconcile the differences.

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

6.1. 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.

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

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.

§148-13-8. Conversion to electronic format.

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.