



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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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: General Administration of Records Management and Preservation

PRIMARY CONTACT

NAME: Jennelle Jones
ADDRESS: 1900 Kanawha Blvd E
West Virginia Office Of Technology
Charleston, WV 25305
EMAIL: jennelle.h.jones@wv.gov
PHONE NUMBER: 304-352-4941

CITE STATUTORY AUTHORITY: W. Va. Code §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."

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? Yes

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? Yes

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD:

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED:

COMMENTS RECEIVED:

(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:

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

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 provides guidance to agencies in relation to the state record management program. The only proposed change extends the sunset date from 2025 to 2035.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The only proposed change extends the sunset date from 2025 to 2035.

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 ON SPECIAL REVENUE ACCOUNTS:

None

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

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2024 Increase/Decrease (use "-")	2025 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

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

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. -- ~~Technical amendment filed March 21, 2024.~~

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

1.5. Sunset Provision. - This rule shall terminate and have no further force or effect on August 1, ~~2025~~ 2035.

§148-12-2. Definitions.

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

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

2.3. “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.

2.4. “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 the request by the agency for approval of the agency’s proposed Retention and Disposal Schedule.

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.

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

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.

§148-12-3. Duties.

3.1. Duties, State Records Administrator.

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 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.

3.2. Duties of Agency 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.

3.2.2. 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 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 records management.

3.3. Duties of Agency Records Manager

Each agency records manager shall:

3.3.1. Be conversant with the requirements of the 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 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.

§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.

§148-12-5. Special Programs.

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.

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.

5.3. The Administrator's written approval must be obtained prior to any agency retaining or employing any vendor to consult and/or assist in records management.

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.

5.5. A copy of the findings and recommendations of any consulting service employed by any agency concerning records management shall be furnished to the Administrator.