



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: 148-13
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 148-13 Retention and Disposal Scheduling

PRIMARY CONTACT

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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 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.

The only change to the rule extends the sunset date.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

To extend the sunset date from 2025 to 2035, allowing the rule to remain in effect.

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 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. -- ~~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 after August 1, ~~2025~~ 2035.

§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.