

Notice of Proposed Rule

DEPARTMENT OF STATE

Division of Library and Information Services

RULE NO.: RULE TITLE:

1B-24.003 Records Retention Scheduling and Disposition

PURPOSE AND EFFECT: Revision to General Records Schedules GS1-SL for State and Local Government Agencies, GS2 for Law Enforcement, Correctional Facilities and District Medical Examiners, GS3 For Election Records, GS4 for Public Hospitals, Health Care Facilities and Medical Providers, GS5 for Public Universities and Colleges, GS7 for Public Schools Pre-K-12 and Adult and Career Education, General Records Schedule for Fire Departments (Schedule GS8), General Records Schedule GS9 for State Attorneys, General Records Schedule GS11 for Clerks of Court, General Records Schedule GS12 for Property Appraisers, General Records Schedule GS13 for Tax Collectors, General Records Schedule GS14 for Public Utilities, and General Records Schedule GS15 for Public Libraries.

SUMMARY: The proposed amendment incorporates revised records retention schedules. The revisions update the records series to provide clarity and guidance in recordkeeping requirements.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The Department used a checklist to conduct an economic analysis and determine if there is an adverse impact or regulatory costs associated with this rule that exceeds the criteria in section 120.541(2)(a), F.S. Based upon this analysis, the Department has determined that the proposed rule is not expected to require legislative ratification because it is not anticipated to have an adverse impact.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 119.021(2)(a), 257.35(7), 257.36, FS.

LAW IMPLEMENTED: 119.021(2)(b)-(d), 257.35, 257.36, FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jon Morris, Deputy General Counsel, Florida Department of State, 500 S. Bronough St., Tallahassee, FL 32399. Email: jon.morris@dos.myflorida.com.

THE FULL TEXT OF THE PROPOSED RULE IS:

1B-24.003 Records Retention Scheduling and Disposition.

(1) The Division issues General Records Schedules which establish minimum retention requirements for record series common to all agencies or specified types of agencies based on the legal, fiscal, administrative, and historical value of those record series to the agencies and to the State of Florida. The General Records Schedules established by the Division, which can be obtained at <https://dos.myflorida.com/library-archives/records-management/general-records-schedules/>, are incorporated by reference:

(a) General Records Schedule GS1-SL for State and Local Government Agencies (<https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>, eff. ~~08/20~~ ____).

(b) General Records Schedule GS2 for ~~Law Enforcement, Correctional Facilities, Criminal Justice~~ Agencies and District Medical Examiners (<https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>, eff. ~~02/21~~ ____).

(c) General Records Schedule GS3 for Election Records (<https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>, eff. ~~06/22~~ ____).

(d) General Records Schedule GS4 for Public Hospitals, Health Care Facilities and Medical Providers (<https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>, eff. ~~08/20~~ ____).

(e) General Records Schedule GS5 for Public Universities and Colleges (<https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>, eff. ~~2/19/15~~ ____).

(f) General Records Schedule GS7 for Public Schools Pre-K-12 and Adult and Career Education (<https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>, eff. ~~2/21/19~~ ____).

(g) General Records Schedule ~~GS8~~ for Fire Departments (~~Schedule GS8~~) (<https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>, eff. ~~08/20~~ ____).

~~(h) General Records Schedule GS9 for State Attorneys~~ (<https://www.flrules.org/Gateway/reference.asp?No=Ref-05005>, eff. ~~2/19/15~~).

~~(h)(i)~~ General Records Schedule GS11 for Clerks of Court (<https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>, eff. ~~2/19/15~~ ____).

~~(i)(j)~~ General Records Schedule GS12 for Property Appraisers (<https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>, eff. ~~2/19/15~~ ____).

~~(j)(k)~~ General Records Schedule GS13 for Tax Collectors (<https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>, eff. ~~2/21/19~~ ____).

~~(k)(l)~~ General Records Schedule GS14 for Public Utilities (<https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>, eff. ~~08/20~~ ____).

~~(l)(m)~~ General Records Schedule GS15 for Public Libraries (<https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>, eff. ~~2/19/15~~ ____).

(2) For each record series not covered by General Records Schedules established by the Division, each agency shall submit to the Division a request for a records retention schedule on Department of State Form LS5E-105REff.2-09, "Request for Records Retention Schedule" which is hereby incorporated by reference and made part of this rule. A copy of Form LS5E-105REff.2-09, effective February 2009, may be obtained from the Division of Library and Information Services, Department of State, Mail Station 9A, Tallahassee, Florida 32399-0250, or from the Division's Records Management website at <http://dilis.dos.state.fl.us/RecordsManagers>.

(3) In completing Form LS5E-105REff.2-09, "Request for Records Retention Schedule," the agency shall consider the legal, fiscal, administrative, and historical value of each record series to the agency and to the State of Florida. The custodian of the records or his or her designee shall sign the Form LS5E-105REff.2-09 and submit it to the Division for determination of official retention requirements.

(4) Retention and scheduling of intermediate files are not feasible due to their transitory nature; therefore, submission of Form LS5E-105REff.2-09, "Request for Records Retention Schedule" is not required for intermediate files.

(5) Each Request for Records Retention Schedule shall be analyzed by the Division in the context of the submitting agency's statutory functions and authorities. Florida Statutes, administrative rules, operating procedures, applicable federal regulations and other such sources shall be researched to assist in the Division's determination of the value and retention requirements of each record series.

(6) The Division shall review Request for Records Retention Schedule forms to determine whether the records may merit transfer to the Florida State Archives or to a local records office, archives, or historical records repository, based upon the records' enduring legal, fiscal, administrative, and historical values (archival value). If the Division determines that the records may have archival value, an indication of such potential archival value shall be made on the Request for Records Retention Schedule form. The main objectives of this determination are to identify and ensure the preservation of records of archival value pertaining to the operation of government and to protect the rights and interests of the citizens of the state.

(7) The Division, with information submitted on Form LS5E-105REff.2-09, "Request for Records Retention Schedule" and its own research into the legal, fiscal, administrative, and historical value of the record series, shall create an official "Records Retention Schedule." Once the Division has approved an official Records Retention Schedule, the submitting agency shall adhere to the terms of that schedule for the record series described therein.

(8) An approved Records Retention Schedule may later need to be revised based on new statutory, regulatory, or other requirements or agency needs. When changes are necessary, the agency shall submit a new Form LS5E-105REff.2-09, "Request for Records Retention Schedule" for the record series indicating the nature of the changes and the reason they are necessary. Revised Records Retention Schedules shall be processed in the manner specified in subsections 1B-24.003(2)-(8), F.A.C., above.

(9)(a) Public records may be destroyed or otherwise disposed of only in accordance with retention schedules established by the Division. Photographic reproductions or reproductions through electronic recordkeeping systems may substitute for the original or paper copy, per Section 92.29, F.S., Photographic or electronic copies. Minimum standards for image reproduction shall be in accordance with Rules 1B-26.0021 and 1B-26.003, F.A.C. An electronic or microfilmed copy serving as the record (master) copy must be retained for the length indicated for the record (master) copy in the applicable retention schedule. An agency that designates an electronic or microfilmed copy as the record (master) copy may then designate the paper original as a duplicate and dispose of it in accordance with the retention requirement for duplicates in the applicable retention schedule unless another law, rule, or ordinance specifically requires its

retention.

(b) Any state agency record series identified by either a General Records Schedule or approved Records Retention Schedule as having possible archival value shall not be destroyed without the approval of the Florida State Archives.

(c) Where a local government has formally established a records office, archives, or historical records repository, local government agencies within that jurisdiction may transfer records of archival value to that repository. An agency may also loan records to another governmental jurisdiction or to a non-government historical records repository or historical society provided an agreement is signed by both parties specifying the required conditions of the loan, including the responsibilities of both parties for the management of public records in accordance with Chapter 119, F.S. The loaning agency shall remain the legal custodian and retain ultimate responsibility for the maintenance and preservation of the records, including ensuring accessibility to the records and non-disclosure of statutorily exempt or confidential information.

(d) Prior to records disposition, agencies must ensure that all retention requirements have been satisfied. For each record series being disposed of, agencies shall identify and document the following:

1. Records retention schedule number,
2. Item number,
3. Record series title,
4. Inclusive dates of the records,
5. Volume in cubic feet for paper records; for electronic records, record the number of bytes and/or records and/or files if known, or indicate that the disposed records were in electronic form; and,
6. Disposition action (manner of disposition) and date.

Agencies are not required to document the disposition of records with a retention of “Retain until obsolete, superseded or administrative value is lost” (OSA) except for records that have been microfilmed or scanned as part of a retrospective conversion project in accordance with Rule 1B-26.0021 or 1B-26.003, F.A.C., where the microfilm or electronic version will serve as the record (master) copy.

(10) Agencies shall ensure that all destruction of records is conducted in a manner that safeguards the interests of the state and the safety, security, and privacy of individuals. In destroying records containing information that is confidential or exempt from disclosure, agencies shall employ destruction methods that prevent unauthorized access to or use of the information and ensure that the information cannot practicably be read, reconstructed, or recovered. The agency shall specify the manner of destruction of such records when documenting disposition. Where possible, recycling following destruction is encouraged.

(a) For paper records containing information that is confidential or exempt from disclosure, appropriate destruction methods include burning in an industrial incineration facility, pulping, pulverizing, shredding, or macerating. High wet strength paper, paper mylar, durable-medium paper substitute, or similar water repellent papers are not sufficiently destroyed by pulping and require other methods such as shredding or burning.

(b) For electronic records containing information that is confidential or exempt from disclosure, appropriate destruction methods include physical destruction of storage media such as by shredding, crushing, or incineration; high-level overwriting that renders the data unrecoverable; or degaussing/demagnetizing.

(c) For other non-paper media containing information that is confidential or exempt from disclosure, such as audio tape, video tape, microforms, photographic films, etc., appropriate destruction methods include pulverizing, shredding, and chemical decomposition/recycling.

(d) Agencies shall not bury confidential or exempt records since burying does not ensure complete destruction or unauthorized access.

(11) Each agency shall submit to the Division, once a year, a signed statement attesting to the agency's compliance with records management laws, rules, and procedures.

(12) The Division shall compile an annual summary of agency records scheduling and disposition activities to inform the Governor and the Legislature regarding statewide records management practices and program compliance.

Rulemaking Authority 119.021(2)(a), 257.35(7), 257.36 FS. Law Implemented 119.021(2)(b)-(d), 257.35, 257.36 FS. History—New 2-20-01, Amended 1-18-09, 2-19-15, 7-27-17, 4-21-19, 8-6-20, 2-14-21, 6-16-22, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Amy Johnson, Director Division of Library and Information Services.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Cord Byrd, Secretary of State.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 28, 2023

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: December 27, 2022