

PART 188**STATE GOVERNMENT ARCHIVES AND RECORDS MANAGEMENT**

(Statutory authority: Education Law, § 207; Arts and Cultural Affairs Law, § 57.05)

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Historical Note

Part (§§ 188.1-188.2) filed: June 25, 1987 as emergency measure; July 27, 1987 as emergency measure; Sept. 22, 1987; repealed, new (§§ 188.1-188.29) filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.1 Purpose.

This Part establishes a framework of policies and procedures for the creation, maintenance, disposition, and selective preservation of State government records. Based on this framework, the State Archives and Records Administration will work in partnership with state agencies, and where applicable with the judicial, to carry out records management programs that support effective program management and public services delivery, promote economical and efficient management of information resources, and ensure that records of archival value are identified, protected, and, when appropriate, transferred to the State Archives for preservation.

Historical Note

Sec. filed: June 25, 1987 as emergency measure; July 27, 1987 as emergency measure; Sept. 22, 1987; repealed, new filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.2 Definitions.

As used in this Part:

- (a) *Agency* means any department, division, board, bureau, office, council, commission, authority, public benefit corporation having statewide responsibility, or a separate unit of the executive branch of state government created or established by law or executive order, but shall not include the Executive Chamber.
- (b) *Automated information system* means the organized collection, processing, transmission, and storage of records in accordance with defined procedures and in a system that involves use of a computer.
- (c) *Archiver facility* means a facility administered by the commissioner for the preservation and controlled use of archival records transferred from agencies and the judiciary, or a facility that is approved by the commissioner as having an equivalent capacity to ensure the physical security and control of archival records. *State Archiver* means an archiver facility administered by the commissioner.
- (d) *Commissioner* means the commissioner of education.
- (e) *Director* means the Assistant Commissioner of Education who is director of the State Archives and Records Administration.
- (f) *Disposition* means the authorized action to dispose of the records of an agency or the judiciary by destruction, transfer to another agency or branch of government, or transfer to an archives facility.
- (g) *Record series* means a group of related records that result from the same activity and can be evaluated together for disposition and other management purposes. Usually, the records in a record series are arranged under a single filing system or are otherwise kept together as a unit.
- (h) *Records* means all books, papers, microforms, computer-readable tapes, discs or other media, maps, photographs, film, video and sound recordings, or other documentary materials, regardless of physical form or characteristics, made or received by any agency or by the judiciary in pursuance of law or in connection with the transaction of public business and retained by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities, or because of the information contained therein, but shall not include the records of the Executive Chamber. Library or museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of blank forms shall not be deemed to constitute records.
- (1) *Active records* means records that are frequently referenced or otherwise frequently used for conducting current business.
- (2) *Archival records* means records that are designated by the commissioner for continuous preservation because they have enduring administrative, legal, fiscal, educational, historical, or other research value to State government and/or its citizens. Such term is not used as a synonym for computer-generated records that are stored off-line.
- (3) *Electronic records* means those records which are stored in a form that can be read or processed only by means of a computer.
- (4) *Inactive records* means records that are infrequently referenced or otherwise infrequently used for conducting current business.
- (5) *Vital records* means selected records which, in the event of a disaster, are essential to the resumption or continuation of government operations, to the re-creation of the legal and financial status of State government, or to the protection of and fulfillment of obligations to the citizens of the State. Such term is not used as a synonym for official birth, death, and marriage records.
- (i) *Records center facility* means a facility maintained by the commissioner for the secure storage, servicing and protection of inactive records prior to their disposition by destruction, transfer to another agency or branch of government, or transfer to an archives facility.

(i) *Records management* means the planning, organizing, directing, controlling and other activities needed for effective records creation, records maintenance and use, and records disposition.

(k) *Records retention and disposition schedule* means a document that prescribes the legally required minimum retention periods for records and the final disposition of records and may also describe where and in what form records must be kept.

(l) *Retention period* means a period of time, expressed in terms of an event which must occur and/or the time which must elapse, before records may be disposed.

(m) *State Archiver and Records Administration, or SARA*, means the organizational unit within the State Education Department which has responsibility to administer the State and Local Government Archives and Records Management programs.

Historical Note

Sec. filed June 25, 1987 as emergency measure; July 27, 1987 as emergency measure; Sept. 22, 1987; amended, new filed Sept. 18, 1992; amended, filed June 16, 1997 c.f. Aug. 1, 1997. Amended (n).

§ 188.3 Responsibility of the State Archives and Records Administration.

(a) The director shall administer the State Archives and State records center programs and facilities, shall provide records management training and technical assistance services to agencies, and shall approve the preservation and disposition of records, on behalf of the commissioner, according to procedures set forth in this Part.

(b) The director shall institute a system for the review of agency records management plans and programs to determine agency compliance with the applicable provisions of this Part, to identify opportunities for improving agency records management programs and practices, to propose plans for SARA records management assistance and advice, and to ensure the identification and preservation of archival records. Based on these reviews, the director shall prepare written findings for the commissioner, who shall thereupon report and make recommendations to the head of each respective agency and to the Director of Division of the Budget.

(c) As part of this review, and with the understanding that SARA staff shall not disclose confidential information contained in any agency records, the director may inspect the condition and assess the value of agency records which, in his or her opinion, are likely to be archival records. In lieu of physical inspection of records, the director shall obtain from an agency sufficient information about the general contents and uses of records to permit an evaluation of the research value of the records.

Historical Note

Sec. filed Sept. 18, 1992 c.f. Nov. 6, 1992.

§ 188.4 Establishment of agency records management programs.

(a) The head or governing body of each agency shall appoint or designate an agency records management officer, who is authorized to administer the agency's records management program, including liaison with SARA. The purpose of the agency records management program shall include but need not be limited to the following:

- (1) promulgating records retention and disposition policies and ensuring compliance by all agency staff;
- (2) ensuring that agency records are maintained and disposed in compliance with applicable sections of this Part;
- (3) ensuring that the agency cooperates with SARA to identify, protect, and preserve archival records including those of the agency head and associated staff;
- (4) establishing a process to prepare and annually review and update an agency records management plan, which contains objectives and target dates to achieve compliance with the applicable provision of this Part, including plans to complete or maintain inventories and

records retention and disposition schedules and, as needed, to guide agency program offices in the application of sound records management practices;

(5) furnishing to SARA such reports as the director may request regarding agency records and records management programs and practices.

(b) On or before January 1, 1993, and thereafter when a change occurs, the head or governing body of each agency shall notify the commissioner in writing of the name and title of the persons designated as the agency's records management officer.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.5 Duties and responsibilities of agency records management officers.

(a) The agency records management officer shall plan, promote and monitor the agency records management program in consultation with agency program managers and SARA. The duties of the records management officer shall include but need not be limited to the following:

- (1) participate in the comprehensive records management training program offered by SARA to the extent necessary to fulfill the applicable requirements of this Part;
- (2) compile and maintain a current inventory of agency records;
- (3) prepare and submit to SARA proposed records retention and disposition schedules, or other plans which delineate proposed records retention and disposition practices;
- (4) oversee the continuing disposition of records in accordance with approved records retention and disposition schedules or other plans which delineate records retention and disposition practices;
- (5) contribute to the development of and review of plans and programs to improve the management of agency records.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.6 General provisions for the identification and disposition of agency records.

(a) No agency shall destroy, transfer custody of, destroy the means to access, or otherwise dispose of any records without first having secured authorization to do so in accordance with the applicable provisions of this Part.

(b) Records disposition authorizations that were issued pursuant to the provisions of former section 186 of the State Finance Law, and that remained in effect when such law was repealed, continue in full force and effect unless modified or abrogated under applicable provisions of this Part.

(c) SARA shall issue written guidelines to assist agency staff to distinguish between records and documentary materials that are not records.

(d) Each agency shall develop and carry out plans to compile and maintain an up-to-date inventory of all records in its custody. An inventory shall contain information sufficient to prepare and implement records retention and disposition schedules. At minimum, an inventory shall include the title, purpose, responsible program area, contents, arrangement, volume, dates and locations of all records series, and the hardware and software requirements for all electronic records.

(e) Each agency shall develop and carry out plans to obtain authorization from SARA for records retention and disposition schedules or plans governing all records in the agency. Agencies shall submit proposals to establish such schedules in a manner and form prescribed by the director. A proposal may be used to obtain ongoing disposal authorization for records which continue to accumulate or to obtain one-time disposal authorization for records which are discontinued.

(f) Each records disposition proposal must be reviewed by the agency records management officer for completeness and accuracy and be signed by the agency records management officer, whose signature shall constitute the agency's certification that the records listed in the proposal

do not have sufficient administrative, legal, fiscal or other value to the agency to warrant their continued retention beyond the expiration of the proposed retention periods.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.7 Review of agency proposals for records disposition authorization.

(a) In reviewing agency records disposition proposals, SARA shall consider the submitting agency's statutory functions and responsibility. To be approved, the proposal shall demonstrate:

- (1) that records are kept for a length of time sufficient to meet administrative, legal and fiscal requirements; and
- (2) that records of temporary administrative, legal and fiscal value are disposed of in accordance with sound records management practices. When warranted, SARA shall review selected record disposition proposals to determine whether the records are archival records and warrant preservation in an archives facility.

(b) SARA, with the consent of the agency records management officer, may revise a records disposition proposal prior to taking final action to authorize disposition.

(c) At least 40 days prior to authorizing an agency records disposition proposal, SARA shall forward a copy to the offices of the Attorney General and State Comptroller for their review. The attorney general or a designee shall determine if the proposed records retention period meets legal requirements. The State Comptroller or a designee shall determine if the proposed records retention period meets fiscal and audit requirements. No authorization to destroy records will be issued by the commissioner if either the Attorney General or the State Comptroller, within 30 days after receiving a request, shall advise SARA that such records should not be destroyed according to the proposed schedule or plan.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.8 SARA response to agency proposals for records disposition authorization.

(a) SARA, upon applying its criteria and after appropriate review by the offices of the Attorney General and State Comptroller as described in section 188.7(c) of this Part, shall return the records disposition proposal to the agency records management officer indicating approval or disapproval of the proposed records retention and disposition schedule or plan.

(b) The agency records management officer shall be informed in writing and shall be entitled to meet with SARA staff to review and discuss the reasons for disapproval of any proposed records retention and disposition schedule or plan. An agency records management officer shall be entitled to a formal meeting with the director to discuss a disapproved proposal.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.9 Revising records disposition authorizations.

(a) An agency may request a revision to a records disposition authorization by preparing and submitting a proposal to SARA following the procedures of section 188.6 of this Part. Proposals will be processed by SARA as indicated by sections 188.7 and 188.8 of this Part.

(b) A records disposition authorization, once issued, may be cancelled, suspended, and reinstated by the director and may be amended by the director to lengthen a minimum retention period which must elapse before the records may be destroyed.

(c) The Attorney General, the Comptroller, or the agency to which a records disposition authorization pertains may cancel or may suspend and later reinstate any authorization upon notification to the director.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.10 Records schedules issued by SARA.

(a) General records retention and disposition schedules may be issued by SARA to authorize the retention and disposition of records common to some or all agencies.

(b) At least 40 days prior to issuance, SARA will forward a copy of a proposed general records schedule to the offices of the Attorney General and State Comptroller for their review. The Attorney General or a designee shall review the schedule to determine if proposed dispositions meet legal requirements. The State Comptroller or a designee shall review the schedule to determine if proposed dispositions meet fiscal and audit requirements. If either the Attorney General or State Comptroller, within 30 days after receiving a proposed schedule, shall advise SARA that any records should not be destroyed according to the proposed schedule, no authorization to destroy such records will be included on a general records retention and disposition schedule issued by SARA.

(c) Each agency records management officer shall inform the director in writing of the agency's intent to adopt and use a general records schedule. Adoption of a general records schedule eliminates the need for an agency to comply with the provisions of section 188.6 of this Part for those records included on the general records schedule. In the event of duplication of any record series between a general records retention and disposition schedule and an approved agency retention and disposition schedule, the provisions of the agency schedule shall prevail for that agency.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.11 Disposition of records by an agency.

(a) No records shall be destroyed prior to the expiration of the retention period specified in the applicable records retention and disposition schedules or other plans authorized by the director.

(b) Bulk quantities of disposable paper and microform records shall be recycled or otherwise disposed in an environmentally conscious manner pursuant to a wastepaper recycling program administered by SARA or an equivalent disposal program administered by the agency. The SARA program will include provisions for the contractor to shred confidential records prior to recycling.

(c) Archival records in accordance with authorized retention and disposition schedules or other authorized plans shall be promptly transferred to an archives facility.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.12 Emergency destruction of records.

(a) Whenever an agency has in its custody any records that are considered by the head of that agency to be in such a condition that they constitute a menace to human safety or health or to property, the head of such agency may request from the commissioner authorization to destroy or dispose of such records immediately, indicating the conditions which make such immediate destruction or disposal necessary.

(b) The commissioner, as soon as possible after receipt of an emergency request to destroy or dispose of records, shall advise the Attorney General and the State Comptroller, or their designees, of the need for the immediate destruction or disposal of the records in question.

(c) The Attorney General and the State Comptroller, or their designees, when notified by the commissioner of the request for emergency destruction of records, may immediately notify the commissioner that they have no objection to the destruction or disposal proposed. Upon receiving such notification, the commissioner may authorize the immediate destruction or disposal of such records.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.13 Records damaged or destroyed as a result of natural or manmade disaster.

(a) Whenever records are destroyed in whole or in part by fire or flood or as a result of any natural or manmade disaster, the records management officer of the agency responsible for the custody of the records so damaged or destroyed shall:

(1) notify the director, as soon as practicable, as to the nature, type, and quantity of the records damaged or destroyed and the circumstances surrounding their damage or destruction;

(2) take immediate steps to protect the damaged records from further deterioration in accordance with technical advice furnished by SARA;

(3) initiate action, when appropriate and in accordance with technical advice from SARA, to retrieve, reassemble and reconstruct the information contained in the damaged or destroyed records.

(b) The director, upon notification of damage or destruction of records by fire or flood or as the result of any natural or manmade disaster, shall advise the Attorney General and the State Comptroller of such damage or destruction.

(c) Within 60 days after the fire or flood or natural or manmade disaster causing damage or destruction to records, the agency records management officer shall furnish the director with information about the nature, type, and quantity of records no longer available for use, and the types of information contained in those records.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.14 Operation of records center facilities.

(a) The commissioner shall operate records center facilities to provide for the secure, cost-effective storage of inactive records, to provide secure storage for vital records, for master copies of microforms, for backup copies of electronic records, and for records that require special security or environmental conditions, and to provide records retrieval services at the request of the organizational unit which transferred the records. Records of agencies and the judiciary are eligible for storage at records center facilities.

(b) The commissioner, in accepting records of an agency or a unit of the judiciary for storage in a records center facility, assumes responsibility for the physical possession, storage, protection and servicing of such records and the security of the information contained in them, as an agent of the head of the agency or the official of the judiciary transferring such records.

(c) SARA, acting for an agency storing records in a records center facility, shall be responsible for destroying records that are eligible for destruction pursuant to records disposition authorizations. SARA shall notify the agency records management officer at least 40 days prior to the intended destruction of agency records stored at a records center facility. Upon request of the agency records management officer, stating justification for continued retention of the records, the director may authorize the continued storage of the records for a specified period of time.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.15 Transfer of records to records center facilities.

(a) An agency or a unit of the judiciary proposing to transfer inactive records to a records center facility shall notify SARA of the proposed transfer in the manner and form prescribed by the director.

(b) An agency or a unit of the judiciary shall not ship or cause to be delivered to a records center facility any record which SARA has not agreed in advance to accept for storage and retrieval.

(c) Records consigned to a records center facility must be identified and packaged according to procedures established by the director.

(d) The director shall provide, upon request, technical advice in the identification and packing of records to be transferred to a records center facility. Such technical advice will not include furnishing personnel to pack the records.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.16 Access to records stored in records center facilities.

(a) Access to records stored in and serviced at a records center facility will be permitted only as authorized in writing by the agency records management officer or the authorized representative of the unit of the judiciary transferring records to the facility. Such authorizations shall be in a manner and form prescribed by the director.

(b) Each agency or unit of the judiciary, when transferring records to a records center facility, shall indicate in writing such restrictions on the retrieval of records as the agency or unit of the judiciary desires or requires the director to enforce. The director shall take all necessary and proper actions to enforce such restrictions.

(c) SARA will provide retrieval and refiling services for records stored in a records center facility. Requests for a record stored in a records center facility may be made in person, by telephone, or by mail in a manner and form prescribed by the commissioner. SARA will release records only to authorized representatives of the agency or the unit of the judiciary which transferred the records.

(d) In the event that the commissioner is served with a court order or a subpoena, or a request for certification of authenticity, or a written request for access to records, or any legal process which relates to records stored in a records center facility, the commissioner shall immediately notify the agency or the unit of the judiciary which transferred such records to the records center facility. It shall then be the duty of such agency or unit of the judiciary to respond to the order, request, or other legal process.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.17 Review of agency proposals to establish or lease facilities or to contract for services to store records.

(a) The director, at the request of the Division of the Budget, shall review proposals by agencies to establish or lease facilities or to contract for services to store inactive records, vital records, master copies of microforms, or backup copies of electronic records. The director will consider the availability of space in records center facilities and will evaluate the following elements of an agency proposal:

- (1) the proposed inactive records storage location;
- (2) the security and environmental conditions of the proposed storage location;
- (3) the space to be occupied in gross square feet;
- (4) the nature and quantity of records to be stored;
- (5) total resources to operate the storage location, including personnel to be employed;
- (6) justification for the proposed storage location.

(b) The director shall recommend to the division of the budget approval of requests by agencies to establish or lease facilities or to contract for services to store inactive records when greater economy or efficiency can be achieved by such operation than by use of a records center facility and when such operation will adequately provide for the protection and servicing of records.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.18 Duplicating and/or replacing agency records by microfilming.

(a) For the purposes of this section, *microfilming* means the photographic process of creating miniaturized copies of human-readable records on film and *source records* means the records that are copied. The provisions of this section apply only to the duplication of source records by microfilming, which is commonly known as *source document microfilming*, and do not apply to computer-generated microfilm.

(b) An agency shall obtain records disposition authorization for source records that are microfilmed and for the microform copy.

(c) When source records are duplicated on microform, with the intent of destroying the source records and retaining only the microfilm copy, an agency shall establish procedures to ensure that microfilm is an authentic copy of the original records.

(d) In addition to the other provisions of this section, an agency may destroy source records and retain only the microfilm copy provided that the film images are clear and legible; the master camera negative is used only to produce a printing master from which all additional copies are made; the master camera negative is stored in a records center facility vault or a comparable secure storage facility; and the agency records management officer certifies that microfilm production and processing techniques were selected to ensure that the microfilm will remain usable for the required retention period.

(e) If archival source records are duplicated on microfilm, an agency must comply with all other provisions of this section and the following:

- (1) only a safety-base silver gelatin microform shall be used as the original camera negative film;
- (2) each batch of processed film shall be tested to ensure that processing chemicals which could cause image deterioration are washed from the film;
- (f) Prior to the destruction of any source records that are to be replaced by microfilm, the director or a designee may inspect the agency microfilm procedures and products to verify compliance with the applicable provisions of this section.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.19 Computer-generated recording of information on microfilm.

(a) The provisions of this section apply only to original records produced by computer-generated recording of information on microfilm, the resulting product of which is commonly known as *computer-output microfilm (COM)*.

(b) When COM records are identified as archival records, the following shall apply to the production and maintenance of the COM:

- (1) Only a safety-base silver gelatin microform shall be used as the original film copy, which shall be used only to produce a printing master from which all additional copies will be made. The original film copy shall be stored in a records center facility vault or a comparable storage facility.
- (2) Each batch of processed film shall be tested to ensure that processing chemicals which could cause image deterioration are washed from the film.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.20 Retention and preservation of electronic records.

(a) A State agency or local government shall ensure that records retention requirements are incorporated into any plan and process for design, redesign, or substantial enhancement of an information system that uses electronic data processing or electronic optical imaging technologies to maintain or store electronic records.

(b) A State agency or local government shall ensure that electronic records are not rendered unusable because of changing technology before their retention and preservation requirements are met. In the case of archival electronic records, a State agency or local government, in consultation with SARA, must determine that the records will remain usable and accessible through conversion of the records to new system hardware and software and through the creation of adequate documentation as defined in subdivision (c) of this section. If a State agency cannot accomplish such a conversion, it shall transfer the archival electronic records to the State Archives in a usable and accessible format.

(c) A State agency or local government shall develop and maintain up-to-date documentation about all permanent or archival electronic records sufficient to:

- (1) specify all technical characteristics necessary for reading and processing the records;
 - (2) identify all defined inputs and outputs from the system;
 - (3) define the contents of the files and records;
 - (4) determine restrictions on access and use;
 - (5) understand the purposes and functions of the system;
 - (6) describe update cycles and/or conditions and rules for adding information to the system, changing information in the system, or deleting information; and
 - (7) ensure the ongoing retention of records by the State agency or local government or, in the case of State agencies, the authorized transfer of records to an archives facility.
- (d) A State agency shall prepare and store in a records center, and local governments shall prepare and store in a secure off-site facility, backup copies of archival electronic records in order to safeguard against loss.

(e) For magnetic computer media that contain permanent or archival electronic records, a State agency or local government shall institute maintenance procedures to:

- (1) verify no more than six months prior to use that the magnetic media used to store permanent or archival electronic records are free of permanent errors;
- (2) rewind under constant tension all tapes and cartridges at least every two years;
- (3) annually test a three percent statistical sample of all volumes, or 10 volumes of each type, of magnetic media, whichever is larger, to identify any loss of data and to discover and correct the causes of data loss;
- (4) copy immediately onto new media any permanent or archival electronic records stored on media with 10 or more permanent errors per volume;
- (5) copy all permanent or archival electronic records onto new media before the media are 10 years old; and
- (6) prepare external labels which provide a unique identifier for each volume, the name of the organizational unit responsible, and the permanent or archival electronic records title.

Historical Note

See filed Sept. 18, 1992, and filed June 16, 1997 eff. Aug. 1, 1997.

§ 188.21 Fees for records management services.

(a) Each agency shall pay to the State Education Department an annual fixed fee to support education and training, disposition analysis and review, technical assistance, and other records management advisory services provided by SARA. These fees are set on the basis of the total volume of records (active and inactive) in the custody of an agency; higher fees reflect a larger volume of records. Fees are assessed in accordance with the following schedule:

- (1) Category 1: \$20,000 per agency
 - Audit and Control, Department of (Office of the State Comptroller)
 - Correctional Services, Department of
 - Education Department
 - Health, Department of
 - Labor, Department of

Mental Health, Office of
Mental Retardation and Developmental Disabilities, Office of
Motor Vehicles, Department of
Social Services, Department of
Taxation and Finance, Department of
Transportation, Department of
Workers' Compensation Board

- (2) Category 2: \$15,000 per agency
 - Alcoholic Beverage Control, Division of
 - Criminal Justice Services, Division of
 - Environmental Conservation, Department of
 - General Services, Office of
 - Higher Education Services Corporation
 - Insurance Department
 - Law, Department of (Office of the Attorney General)
 - Parole, Division of
 - State Insurance Fund

- (3) Category 3: \$10,000 per agency
 - Civil Service, Department of
 - Housing and Community Renewal, Division of
 - Military and Naval Affairs, Division of
 - Parks, Recreation and Historic Preservation, Office of
 - Public Service, Department of
 - State, Department of
 - State Police, Division of
 - State University of New York
 - Youth, Division for

- (4) Category 4: \$5,000 per agency
 - Agriculture and Markets, Department of
 - Alcoholism and Substance Abuse Services, Division of
 - Banking Department
 - Budget, Division of the
 - Dormitory Authority
 - Economic Development, Department of
 - Elections, State Board of
 - Empire State Development Corporation
 - Executive Chamber (Office of the Governor)
 - Human Rights, Division of
 - Lottery, Division of the
 - Power Authority of the State of New York
 - Probation and Correctional Alternatives, Division of
 - Racing and Wagering Board
 - Real Property Services, Office of

Thruway Authority

(5) Category 5: \$2,000 per agency

Adirondack Park Agency

Advocate for Persons with Disabilities, Office of

Aging, Office for the

Arts, Council on the

Capital Defender Office

Children and Families, Council on

Consumer Protection Board

Corrections, Commission of

Crime Victims Board

Developmental Disabilities Planning Council

Domestic Violence, Office for the Prevention of

Empire State Theater Institute

Employee Relations, Office of

Energy Research and Development Authority

Environmental Facilities Corporation

Governor's Traffic Safety Committee

Housing Finance Agency

Inspector General, Office of the

Investigation, Temporary State Commission of

Judicial Conduct, Commission on

Law Revision Commission

Lobbying, Temporary State Commission on

Nelson A. Rockefeller Performing Arts Center Corporation

Nonviolence, Institute for

Olympic Regional Development Authority

Public Employment Relations Board

Quality of Care for the Mentally Disabled, Commission on

Regulatory Reform, Office of

Science and Technology Foundation

State of New York Mortgage Agency

State University Construction Fund

Tax Appeals, Division of

Teachers Retirement System

Veterans' Affairs, Division of

Women, Division for

(b) Each agency or unit of the judiciary that stores records in a records center facility shall pay annual fees for storage of such records. Such storage fees shall be in addition to the annual fixed fees required by subdivision (a) of this section. Fees for records center facility storage will be calculated based on the average monthly holdings of the records center facilities according to the following schedule:

(1) \$2.20 per cubic foot for storage of paper records.

(2) \$1.50 per cartridge, tape, or disk for storage of computer or other magnetic and optical media.

(3) \$.25 per reel or equivalent microform for storage of microfilm.

(c) Annual fixed fees, unless waived by the commissioner, will be assessed annually and are payable each State fiscal year. Records center facility storage fees will be assessed annually and are payable each State fiscal year. A waiver of the annual fixed fee may be granted if an agency's total State operations budget is less than \$500,000 or if an agency no longer operates as an administratively separate unit of State government or if other extenuating circumstances exist that would make it unduly burdensome for an agency to pay such fee.

(d) SARA may also establish fees for central micrographics services. Such fees shall reflect the actual cost of carrying out such services.

(e) Revenue generated as the result of contracts administered by SARA for the recycling or other authorized disposal by sale of bulk quantities of State government records authorized for destruction shall be payable to the State Education Department to support records management services provided by SARA.

Historical Note

Sec. filed Sept. 18, 1992, and filed June 16, 1997 eff. July 1, 1997. Amended (a)(2), (4), (5) and (c).

§ 188.22 Operation of archives facilities.

(a) The commissioner shall operate the State Archives for the secure storage, preservation and research use of records deemed by the commissioner to have sufficient administrative, legal, fiscal, educational, historical or other research value to warrant archival retention and administration.

(b) The commissioner, in accepting records of an agency or a unit of the judiciary for preservation in an archives facility, assumes official legal custody of the records, including responsibility for access to them, unless the commissioner agrees in advance to preserve and administer records which may remain in the custody of an agency or a unit of the judiciary.

(c) After records are transferred to an archival facility, the commissioner may destroy from among the archival records duplicate copies, unrecorded material, and any nonvaluable records that are so identified as the records are processed and preserved.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.23 Transfer of agency records to an archives facility.

(a) Agency records that have been determined to have sufficient value to warrant preservation shall be transferred to an archives facility when the originating agency no longer needs to use the records for the purpose for which they were created or when the records are infrequently, if ever, used in the conduct of regular agency business, and when the commissioner determines that protection and research use of the records is most effectively and efficiently accomplished by professional archival administration in an archives facility.

(b) Prior to any scheduled transfer of records from an agency to the State Archives, the transferring agency shall notify SARA using forms and procedures prescribed by the director. These forms and procedures shall constitute a formal request from the agency for the director to accept custody of a shipment of records consigned to the State Archives.

(c) For archival records stored temporarily in a records center facility, SARA will notify the agency records management officer 40 days prior to the scheduled date of transfer to an archives facility and the agency records management officer shall approve or disapprove such transfer within 30 days of receipt of the notice. Approval of the notice by an agency shall constitute a formal request from the agency for the director to accept custody of a shipment of records consigned to the State Archives.

(d) Archival records transferred to the State Archives must be identified and packaged according to procedures established by the director.

(e) Records storage equipment received with transfers of records to the State Archives will be retained or disposed of by SARA unless the transferring agency requests their return.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.24 Identification, preservation, and public access to archival records of the judiciary.

(a) At the request of the Chief Judge of the Court of Appeals or a presiding justice of the Appellate Division of the Supreme Court or the Chief Administrator of the Courts, the commissioner shall review and recommend plans and procedures for the disposition of judicial records in order to identify and insure the preservation of those judicial records which warrant archival retention and administration. In carrying out this function for court records administered by local governments, the commissioner also may consult with the New York State Local Government Records Advisory Council.

(b) Archival records of the Unified Court System may be transferred to the State Archives. Notwithstanding any other provision of these rules, such archival judicial records shall be administered and made available for public use according to conditions mutually agreed upon by the commissioner and the Chief Judge for records of the Court of Appeals, a presiding justice for records of the Appellate Division of the Supreme Court, and the Chief Administrator of the Courts for all other records of the Unified Court System.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.25 Identification, preservation, and public access to archival records of the Executive Chamber.

(a) For the purposes of this section, *executive chamber record* defined as all books, papers, microform, computer-readable tapes, discs or other media, maps, photographs, film, video and sound recordings, or other documentary materials, regardless of physical form or characteristics, made or received by the Governor and his or her Executive Chamber staff, or made by the Governor and Executive Chamber staff and transmitted by them to the office of the head of governing body of any agency, in connection with the transaction of public business, and retained by the Governor and his or her staff or an agency head or governing body or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities, or because of the information contained therein. Library or museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications of blank forms shall not be deemed to constitute records.

(b) Consistent with any policies established by the Governor or his or her designee, the commissioner shall review proposed records retention and disposition schedules or other plans and procedures for the disposition of Executive Chamber records in order to identify and ensure the continued preservation of those Executive Chamber records which warrant archival retention and administration. In addition, the commissioner shall advise and assist the Governor or his or her designee in the operation of records management programs so that archival records may be readily identified and protected.

(c) Executive Chamber records may be transferred to the State records center facility, where access to such Executive Chamber records shall remain under the control of the Governor or former Governor who transferred the records, or a designee. There shall be no charge for storage in a records center facility of Executive Chamber records that are identified as archival and are scheduled for later transfer to the State Archives.

(d) Executive Chamber records which are identified as archival should ultimately be transferred to the State Archives to be preserved and made available for research.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.26 Public access to archival records from State agencies.

(a) The director, or a designee, whose office is located in Room 10D45, Cultural Education Center, Albany, NY, shall serve as the records access officer for all archival records which are in the State Archives and in the official custody of the commissioner. Access to these archival

records shall be subject to the provisions of this section and Part 187 of this Title. In the event of a conflict, the provisions of this section shall apply.

(b) Archival records shall be available for inspection at the State Archives research room located on the 11th floor of the Cultural Education Center, Albany, NY 12230. Archival records shall be available during normal business hours for use by any individual subject to procedures needed to ensure the security and preservation of the records. Catalogs, inventories, lists, and other finding aids describing records in the State Archives are available to assist researchers.

(c) Requests to inspect or to obtain copies of archival records may be made orally or in writing. The records access officer shall have the right to require that any request shall be in writing in a form prescribed by the records access officer.

(d) SARA reserves the right of the records access officer to review requested records and to withhold access to records or portions of records that may be exempted from public disclosure by subdivision 2 of section 87 of the Public Officer's Law (Freedom of Information Law).

(e) The records access officer shall not restrict or deny access to any records more than 75 years old, except pursuant to provisions of law which explicitly prohibit access to the records.

(f) The commissioner may establish conditions to permit controlled access to certain records in the State Archives which may be exempt from disclosure under law, provided that there are no provisions of law which explicitly prohibit access to the records. In establishing such access conditions, the commissioner may enter into a memorandum of understanding with the agency that transferred the records to the State Archives to require the prior review and approval of the agency before the records access officer makes a decision to permit access to the records.

(g) With respect to records which are determined not to be available, the records access officer shall inform the person requesting the records in writing of such denial.

(h) Appeals shall be directed to the commissioner on forms prescribed by him or her, copies of which are available at the State Archives facility. All such appeals shall be delivered to the records access officer or a SARA staff person in the State Archives research room within 30 days after denial from which such appeal is taken. Appeals shall be determined by the commissioner or an authorized representative.

(i) Copies of records will be provided at a cost not to exceed that permitted in the Freedom of Information Law.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.27 Protection and loan of archival records.

(a) Archival records shall not be removed from an archives facility unless removal is required for preservation treatment purposes or is otherwise authorized by the director pursuant to the provisions of this section.

(b) In instances of demonstrated need and subject to terms and conditions set forth in an agreement between SARA, acting through the director, and an agency or other unit of State government, archival records in the custody of the commissioner may be loaned for official use outside the archives facility.

(c) In instances of demonstrated need and subject to terms and conditions set forth in an agreement between SARA, acting through the director, and a museum, historical records repository, library, school, or other organization or institution, archival records may be loaned for educational and exhibit purposes.

(d) The commissioner may establish satellite research room facilities, operated in cooperation with other archival, library or educational establishments, and permit the temporary transfer of archival records from the State Archives to such satellite facilities.

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(c) The commissioner may temporarily deny or restrict use of records in the State Archives, or require use of copies in lieu of original archival records, when the physical condition of archival records might be endangered by use.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.28 Archival records of State University of New York.

(a) The archival records of the State University of New York (SUNY) central administration shall be preserved and administered in a location mutually agreed upon by the SUNY Board of Trustees and the director, and may be transferred to the State Archives. The archival records of the colleges and universities of the State University of New York shall ordinarily be preserved and administered on-site at the respective campuses.

(b) The SUNY central administration, in consultation with the colleges and universities, shall prepare and implement standards for the administration of archival records of the colleges and universities, subject to the commissioner's approval of such standards.

(c) The Chancellor of the State University of New York, or a designee, shall report biannually to the commissioner on activities to administer archival records of the SUNY colleges and universities.

(d) Funds made available to the State University of New York for records administration activities pursuant to the documentary heritage program administered by SARA may be used, among other purposes, to assist the State University of New York to develop the standards cited in subdivision (b) of this section, to guide campuses in addressing the standards, and to prepare biannual reports.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

§ 188.29 Board of Elections records.

(a) Each board of elections established under the provisions of the Election Law may destroy or dispose of any records in its custody providing authorization to do so has been obtained from the commissioner pursuant to the provisions of section 57.05 of the Arts and Cultural Affairs Law. To obtain such authorization, a board of elections may, by formal resolution, adopt the retention and disposition schedule issued by SARA in consultation with the State Board of Elections for use by county boards of elections. A board of elections that does not adopt the general schedule must submit an application, in a manner and form prescribed by the commissioner, requesting authorization to destroy or dispose of records. Such application shall be signed by two members of the board who shall not be members of the same political party.

(b) When a board of elections plans to preserve a microfilm copy of records in lieu of preserving the original records, such board shall ensure that microfilm procedures and products meet the provisions specified in section 188.18 of this Part.

Historical Note

Sec. filed Sept. 18, 1992 eff. Nov. 6, 1992.

Legislative Histories

L.1983, c. 35, For memorandum of the State Executive Department, see McKinney's 1983 Session Laws of New York, p. 2392.

ARTICLE 4—APPELLATE DIVISION

§ 70. Judicial departments

Cross References

Division of state into judicial, districts, see Judiciary Law § 140.

§ 85. Power of appellate division as to calendars and administration of justice

Notes of Decisions

Mandatory precalendar conference § 5

5. Mandatory precalendar conference

1. Force and effect of rules
Supreme Court properly denied petitioner's motion to compel compliance with subpoenas for attendance of several witnesses, including Justices of Appellate Term and Acting Supreme Court Justice, at hearing before subcommittee of Grayscale Committee for Second and Eleventh Judicial Districts, where subpoenas were not issued by clerk of Appellate Division in name of presiding justice. Matter of Hart (2 Dept. 1992) 190 A.D.2d 634, 580 N.Y.S.2d 83.

5. Mandatory precalendar conference
Mandatory precalendar conference rule for personal injury and wrongful death actions filed in New York County was not unconstitutional as applied because of procedures pursued in implementation of rule and any errors that may have or might occur in rule's implementation would most appropriately be responded to on case-by-case basis through appellate review. Bower & Gardner v. Evans (1 Dept. 1983) 91 A.D.2d 885, 457 N.Y.S.2d 290, affirmed as modified on other grounds 60 N.Y.2d 781, 469 N.Y.S.2d 678, 457 N.E.2d 782.

§ 89. Disposition of records, books and papers; rules

1. Notwithstanding any other provisions of law except as hereinafter provided, the chief administrator of the courts, with the advice and consent of the administrative board of the courts, shall adopt rules providing for the retention and disposition of records in all courts and agencies of the unified court system, including records of commissioners of jurors. Such rules shall provide, among other things, that, unless a permanent record by microphotography or other method of microimaging first is made and permanently retained, judgment rolls and other records, books and papers that affect the mental illness or the sanity or competency of any person shall be retained for at least fifty years; and that the judgment rolls and other records, books and papers that affect the marital rights or status or the custody or lineage of any person and judgment rolls regardless of their age that affect title to real property shall be retained permanently.

2. Notwithstanding any other provisions of law, the justices of the appellate division of the supreme court in each judicial department may on application of the district attorney of any county within its judicial department direct, by order, that [] the district attorney destroy, sell or otherwise dispose of or cause to be destroyed, sold or otherwise disposed of any records, books or papers in [] the care [], custody or [] control of the district attorney which are more than twenty-five years old and are no longer in current use, the retention of which in the opinion of the justices of the appellate division would serve no legal, practical or useful purpose, except permanent records of criminal cases, printed and bound volumes of cases on appeal and original

indictments. The justices of the appellate division as a condition of such disposition may require the written consent of any state or local department or agency having an interest in such records, books or papers.
(As amended L.1990, c. 623, § 1.)

Historical and Statutory Notes

1990 Amendment. Heading. L.1990, c. 623, § 1, eff. July 18, 1990, in catchline, added reference to rules.

Subd. 1. L.1990, c. 623, § 1, eff. July 18, 1990, substituted provisions authorizing chief administrator of courts to adopt rules providing for retention and disposition of records in all courts and agencies of unified court system, directing that, unless permanent microimage is first made, records concerning mental competency be retained 50 years and marital and lineage records be retained permanently. L.1990, c. 623, § 1, eff. July 18, 1990, made text gender neutral.

§ 90. Admission to and removal from practice by appellate division; character committees

1. a. Upon the state board of law examiners certifying that a person has passed the required examination, or that the examination has been dispensed with, the appellate division of the supreme court in the department to which such person shall have been certified by the state board of law examiners, if it shall be satisfied that such person possesses the character and general fitness requisite for an attorney and counselor-at-law and has satisfied the requirements of section 3-603 of the general obligations law, shall admit him to practice as such attorney and counselor-at-law in all the courts of this state, provided that he has in all respects complied with the rules of the court of appeals and the rules of the appellate divisions relating to the admission of attorneys.

b. Upon the application, pursuant to the rules of the court of appeals, of any person who has been admitted to practice law in another state or territory or the District of Columbia of the United States or in a foreign country, to be admitted to practice as an attorney and counselor-at-law in the courts of this state without taking the regular bar examination, the appellate division of the supreme court, if it shall be satisfied that such person is currently admitted to the bar in such other jurisdiction or jurisdictions, that at least one such jurisdiction in which he is so admitted would similarly admit an attorney or counselor-at-law admitted to practice in New York state to its bar without examination and that such person possesses the character and general fitness requisite for an attorney and counselor-at-law and has satisfied the requirements of section 3-603 of the general obligations law, shall admit him to practice as such attorney and counselor-at-law in all the courts of this state, provided, that he has in all respects complied with the rules of the court of appeals and the rules of the appellate divisions relating to the admission of attorneys. Such application, which shall conform to the requirements of section 3-603 of the general obligations law, shall be submitted to the appellate division of the supreme court in the department specified in the rules of the court of appeals.

[See main volume for c to g, 2.]

2-a. a. The provisions of this subdivision shall apply in all cases of an attorney licensed, registered or admitted to practice in this state who has

