

Chapter 1: STATE AND LOCAL GOVERNMENT AGENCY RECORDS PROGRAMS

SUMMARY: This chapter prescribes policies, standards, and procedures for the economical and efficient management of State records.

1. APPLICABILITY

These rules apply to any unit of State Government or local government, including any state board or commission, and the Legislature and its committees and subcommittees, but not including the judicial branch, the University of Maine System, the Maine Community College System and the Maine Maritime Academy.

2. RESPONSIBILITY FOR ENFORCEMENT

The head of each state agency or designated municipal official shall be responsible for the application and enforcement of these rules.

3. DEFINITIONS

The following definitions are established for terms used in these rules:

- A. "Agency" means any unit of State Government or local government, including any state board or commission, and the Legislature and its committees and subcommittees, but not including the judicial branch, the University of Maine System, the Maine Community College System and the Maine Maritime Academy. For local governments, this term includes a municipality, a quasi-municipal organization (such as a school administrative district, water or sewer district, etc.), an office of county government (such Register of Deeds, County Sheriff, etc.), and offices of District Attorney.
- B. "Archives" means government records that have been determined by the State Archivist to have sufficient value to warrant their continued preservation and that are in the physical and legal custody of the Maine State Archives.
- C. "Inspection" means the review of agency records, records management practices, and records management programs for the purpose of evaluating records management effectiveness and recommending means for the improvement of records management.
- D. "Electronic Record" means a record whose content is not readable unless retrieved by means of an electronic device such as a computer or an audio or video player. An electronic record can be in a structured database or an individual file.

E. "Record" means all documentary material, regardless of media or characteristics, made or received and maintained by an agency in accordance with law or rule or in the transaction of its official business. This term shall not include extra copies of printed or processed material of which official or record copies have been retained, stocks of publications and processed documents intended for distribution or use, or records relating to personal matters that may have been kept in an office for convenience.

Record includes records of historic and archival value to the State, regardless of the date of their generation, including all documents determined to have such value to the State by statute and, when appropriate, by the State Archivist.

F. "Records creation" means any process that produces any recorded information necessary to conduct the business of an agency.

G. "Records disposition" means the (1) removal by an agency, (in accordance with approved records schedules) of records no longer necessary for the conduct of business by such agency, through removal methods which may include disposal of temporary records by destruction; transfer of records to an approved storage area or records center; and the transfer to the archives of records determined to have sufficient value to warrant continued preservation. (2) Transfer of records from one State agency to another State agency other than the Maine State Archives.

H. "Records maintenance and use" means any activity involved with respect to the (1) planning and establishment of methods for the location of records of an agency; (2) development and implementation of systems and procedures to facilitate the safeguarding, retrieval, and use of recorded information kept at file locations; and (3) the control of selection and use of equipment and supplies associated with records.

I. "Records management" means the application of management techniques: planning, creating policy, directing, organizing, training, and other managerial activities undertaken with respect to records creation, maintenance and use, retention, transfer, preservation and records disposition for the purpose of improving efficiency and productivity, and to make information accessible and cost effective.

Records Management includes:

1. Inventory of agency records;
2. Development of records retention schedules;
3. Management of filing and information retrieval systems in any media;
4. Protection of vital records;
5. Removal/efficient storage of inactive records;
6. Control over the creation and distribution of forms, reports, and correspondence;
7. Maintenance of public information to facilitate access

4. AUTHORITY OF STATE CONTROLLER

The provisions of these rules do not limit the authority of the State Controller with respect to prescribing accounting systems, forms and procedures authorized under 5 M.R.S.A., c. 143.

5. RESPONSIBILITY OF AGENCY HEAD

The head of each agency shall establish and maintain an efficient and continuous records management program which shall focus upon the complete cycle of records creation, maintenance and use, and disposition. The program shall provide for:

- A. Effective internal controls over records creation, maintenance and use and disposition, with respect to the conduct of current business.
 - 1. Adequate controls over the creation of agency records shall be instituted to ensure that important policies and decisions are sufficiently recorded; routine operational records in any format are kept to a minimum; and the accumulation of unnecessary files is prevented. Effective techniques to be applied in this area include implementing a biennial agency records inventory for the purpose of: compiling a descriptive list of any and all records within the agency; identifying duplicate files or other non-record materials and historical records requiring preservation; and locating records due for destruction.
 - 2. To ensure that records are maintained economically and efficiently and in such a manner that their maximum usefulness is attained, provision shall be made for the continued analysis and improvement of record retention by reviewing laws and statutes and using the 4-part criteria; administrative, fiscal, legal, historical/archival, to assign record value. Record retention schedules will be reviewed annually and updated as necessary with regards to changes in statute, media format, program closure or other influences that could affect the schedule or retention time.
 - 3. Provision shall be made to ensure that records of continuing value are preserved, that confidential records are protected and records no longer of current use to an agency are promptly disposed of or transferred until final disposition. Effective techniques for accomplishing these ends are the development of records retention schedules; the transfer of records to the records center and to the archives, the microfilming or digitization of appropriate records; and the disposal of records which have already met their retention time or which are non-retention records (non-records).
- B. Cooperation with the Maine State Archives in applying standards, procedures, and techniques designed to improve records management; promote the maintenance and security of records deemed appropriate for preservation; and facilitate the segregation and disposal of all records of temporary value.
- C. Review and evaluation of agency records management program policies, operations and procedures.

- D. Compliance with the Archives and Records Management Law and with the standards, procedures and rules issued thereunder.

6. RECORDS OFFICER

- A. The head of each agency shall appoint a Records Officer at the managerial level who shall be responsible under their direct supervision for the economical and efficient management of the records of the agency in compliance with the standards, procedures and rules issued by the State Archivist.

The person chosen as Records Officer shall have a thorough knowledge of the organization including statutes and policies, the specialized functions of the agency, and the general records requirements of the State including:

- 1. Creating internal guidelines for maintaining and using agency records
- 2. Creating and updating record retention schedules
- 3. Directing and informing other agency employees concerning the management of records in their custody.
- B. The head of each agency shall appoint an Assistant Records Officer for each organizational unit of the agency who shall be immediately responsible for the exercise of such records management functions as are authorized to be performed within the unit for which they are assigned responsibility and which shall operate within the framework of the overall agency program. State agencies shall report the names of the Records Officer and Assistant Records Officers to the Maine State Archives immediately following their appointment. All official correspondence between the agency and the Maine State Archives concerning the retention and disposal of agency records shall be signed by the head of the agency or by the Records Officer.

7. SUMMARY OF RECORDS HOLDINGS

Each agency head shall submit to the Maine State Archives upon request every two years a summary of its records holdings on appropriate Maine State Archives forms. Instructions for the preparation of the report are set forth on the forms. The summary may be consolidated for the entire agency, or, if more practical, individual reports may be submitted for each organizational unit of the agency.

8. AGENCY PROGRAM EVALUATION

Agency programs will be inspected periodically by the Maine State Archives to:

- A. Determine agency compliance with the Archives and Records Management Law.
- B. Determine agency observance of Maine State Archives rules.
- C. Evaluate and report on the effectiveness of agency records programs.

9. AGENCY PROGRAM RESPONSIBILITIES

The head of each agency shall comply with the program requirements set forth in this section.

A. Agency Records Management Policy/Procedure

Effective recordkeeping requirements include clear guidance for all employees on how to determine what constitutes records, non-record materials, and personal files. Agencies should ensure adequate and proper documentation of their programs; establish recordkeeping requirements for their programs; issue policies and procedures for the following: organizing, maintaining, and storing records; retention of drafts; public access requests; confidential records, protection of vital records and historical records and disaster recovery measures.

B. Records Maintenance and Use

Specific management of agency records including correspondence, reports, drafts, forms, directives, files and electronic records.

1. The objectives of **correspondence management** are to limit correspondence to essential requirements, to improve the quality of necessary correspondence, and to provide for its creation in an economical and efficient manner.

Correspondence is a generic term including letters, form letters, memorandums, endorsements, summary sheets, post cards, and other communications in any media format.

2. The primary objective of **reports management** is to provide agency officials with needed information, effectively, efficiently, economically and in the most useable format.

A report is data or information, generally summarized, transmitted for use in determining policy; planning, controlling, and evaluating operations and performance; and preparing other reports. The data or information may be in narrative, statistical, graphic, or other form. Most reports are generally the product of an information system serving a specific administrative or operational area, such as personnel, budget or purchasing.

3. The primary objective of **drafts management** is to ensure documents such as drafts and working files for reports, special studies, memorandums, and correspondence that support major program policy development are incorporated into office files as applicable and routine program operations or items containing only corrections or editorial or stylistic changes are disposed of as nonrecord materials.

Draft documents and working papers are records but may only need to be retained for a brief period of time if they do not have significant administrative, legal, fiscal or historical value.

Agencies should evaluate the documentation practices of senior administrators and staff, especially those who manage unique agency programs and develop policy, to ensure adequate documentation is preserved. Special attention should be given to drafts, working files or other background materials that may contain information needed to supplement finalized records. Drafts and working papers proposing options or alternatives and their implications in the development of high-level policies and decisions or that document findings or support recommendations should be evaluated for retention and potentially retained with finalized record. Drafts that may be immediately discarded following the creation of a new draft are those containing only minor non-substantive changes such as correction of grammar and/or spelling or minor “word-smithing.”

4. The objectives of **forms management** are to increase the usefulness of forms through proper design and procedures; to reduce costs; and to achieve savings in designing, storing, and distribution.

A form is any document, including letters, or other memorandums, in any media format with space for filling in information, descriptive material, or addresses. Certain items without fill-in space, such as contract provisions, and instruction sheets may be considered as forms when it is advantageous to identify and control them as forms for purposes of reference, stocking, distribution, and use with other forms.

The following actions will assist in implementing a forms management program:

- a. Establish and maintain an inventory of all agency forms;
- b. Assign a form number and edition date to each approved form;
- c. Require that each form be supported by a directive setting forth instructions for preparing, submitting, and using;
- d. Eliminate or update obsolete forms.

5. The objectives of **directives management** are to facilitate agency administration and operations by providing the right employee with the right instructions; by producing instructions that are complete, easily understood, readily accessible, and revisable; and by developing and distributing instructions promptly and economically. Both internal and external directives are included in a directives management program.

A directive is a written communication which initiates or governs action, conduct, or procedure. Directives include circulars, notices, regulations, orders, and handbooks, and include material for insertion in policy, administrative, and operations manuals. (Certain materials are usually exempted such as professional publications, news releases and announcements of programs, catalogs, and price lists.)

6. The objectives of **files management** are to organize agency files so that needed records can be found rapidly, complete records are ensured, the selection and retention of records of permanent value are facilitated, and the disposition of

noncurrent records is accomplished promptly. All services shall be performed with maximum economy in personnel, equipment, and supplies.

A file is a series of recorded information regardless of physical form or characteristics, accumulated or maintained in filing equipment such as boxes or shelving or within digital holdings such as documents, spreadsheets or databases. Stocks of publications and blank forms are excluded.

The head of each agency shall establish an appropriate program for the management of agency files. The program shall:

- a. Establish and implement standards and procedures for classifying, indexing, and filing records; providing reference services to filed records; and locating active files to facilitate agency use of records;
- b. Design standards, guides, and instructions for the files management program for the purpose of easy reference and revision and to make readily available to all employees.
- c. Periodically audit a representative sample of the files for duplication or misfiles.

7. The objectives of **electronic records management** are to insure that a program is established for the management of records created, received, retained, used, transmitted, or disposed on electronic media; that procedures are established for addressing records management requirements, including retention requirements and disposition; that electronic records management objectives, responsibilities, and authorities are incorporated in pertinent agency directives.

The head of each agency shall establish an appropriate program for the management of electronic records. The program shall:

- a. Have the capability for preserving any electronic record for its full retention period; or, there must not be any system impediments that prevent migrating the record to another electronic records system, in as complete a form as possible;
- b. Sufficiently identify records created in electronic format to enable agency staff to retrieve, protect, and carry out the disposition;
- c. Ensure that any electronic records can be identified that are part of a records series maintained in multiple records media such as paper, microform, etc.;
- d. Establish policies and procedures to ensure that an electronic state record and any software, hardware, and/or documentation, including maintenance documentation, required to retrieve and read the electronic records are retained as long as the approved retention periods;
- e. Establish policies and procedures to ensure electronic mail is kept appropriately to maintain the integrity of the record.

- f. Establish policies and procedures to ensure social media and website information are kept appropriately to maintain the integrity of the record.

C. Approval required in certain circumstances

State agencies must get approval from the State Archives before purchasing or initiating new document management systems and databases to ensure proper compliance and sustainability.

The agency head, or their designee, must submit a proposal in writing to the State Archives outlining, at a minimum, the reason for the new system or database, what records will be impacted, and the desired vendor.

The State Archives shall provide a written response and explanation to the proposal within a reasonable time.

10. RECORDS RETENTION SCHEDULES

Title 5 §95-C requires that all state and local government records be covered by retention schedules. This includes records that never leave the creating agency's custody.

A. Records scheduling programs for State government agencies

A records scheduling program is essential to promote a prompt and orderly reduction in the quantity of records in each State agency.

1. Four basic elements are present in a records scheduling program:
 - a. The taking of a complete inventory of the records in the custody of the agency;
 - b. The formulation of a retention plan to govern disposition of each type or series of records and its statement in the form of a records retention schedule;
 - c. The application of the records retention schedule to effect the elimination or removal of records;
 - d. The identification and selection of permanent records in accordance with this records retention plan.
2. The following steps shall be taken in the development of records retention schedules:
 - a. Each State agency shall formulate a records retention schedule for all records in its custody.
 - b. Schedules shall clearly identify and describe the series of records covered, and shall contain instructions that, when approved, can be

readily applied. Schedules must be readily adaptable to use along organizational lines, so that each office will have standing instructions for the disposition of records in its custody.

- c. All schedules shall take into account the actual filing arrangements in existence, so that disposition of records can be physically accomplished in the largest blocks possible.
- d. Nonrecord materials, such as extra copies of documents preserved for reference that need not be made a matter of record, shall not be incorporated in the official files of the agency. To the maximum extent possible, material not required for record purposes shall be disposed of immediately or as soon as no longer necessary.
- e. Schedules shall be reviewed at least once annually to effect changes necessary to maintain their current status.

3. Records retention schedules shall provide for:

- a. The disposal after minimum retention periods of those records not having sufficient value to justify their further retention;
- b. The removal to a Records Center of those records which need not be maintained in office space and equipment;
- c. The retention as current records in office space and equipment of the minimum volume of records consistent with efficient operation;
- d. The identification of permanent records in accordance with the record retention plan.

4. The head of each State agency shall take necessary action to implement records retention schedules to provide for the maximum economy of space, equipment, and personnel and efficiency of access.

5. Applicable Federal retention and disposition schedules shall govern the disposition of records created or maintained by State agencies pursuant to Federal law or regulation. The head of each agency shall advise the Maine State Archives of pertinent Federal disposition schedules governing the disposition of such records.

B. Approved State general records schedules

General records schedules shall be issued by the Records Management Division and the State Archivist to govern the retention and disposition of certain types of records common to all State agencies.

C. Records scheduling programs for local government agencies

A records scheduling program is essential to promote a prompt and orderly reduction in the quantity of records in each local government agency.

1. Three basic elements are present in a records scheduling program:
 - a. The taking of a complete inventory of the records in the custody of the agency.
 - b. The application of the Local Government Record Retention Schedules to effect the elimination or removal of records.
 - c. The identification and selection of permanent records in accordance with this records retention plan.
2. The Local Government Record Retention Schedules shall provide for:
 - a. The establishment of retention requirements for temporary records and ensure records are retained as long as needed for administrative, legal and fiscal purposes.
 - b. The facilitation of the systematic disposal of unneeded records.
 - c. The assurance records with enduring historical and other research value are identified and retained permanently.
3. Designated municipal officials shall take necessary action to implement the Local Government Record Retention Schedules to provide for the maximum economy of space, equipment, and personnel and efficiency of access.
4. Local Government Record Retention Schedules shall be used by all local governments and their agencies and offices. The schedules list those records which any local agency may create or receive in the course of daily business. For a local agency to be compliant and have an effective records management program, these retention schedules shall be used on a regular basis.
5. Local Government Record Retention Schedules indicate the minimum length of time records must be retained before they may be disposed of legally. The Local Government Record Retention Schedules indicates either 1) a limited period after which the records will be destroyed, or 2) the word "Permanent," indicating the records **may not be destroyed** and must be retained permanently.

11. AGENCY RECORDS STORAGE

A. Agency records storage areas (temporary repositories)

Agencies may maintain storage areas for the temporary storage of agency records pending their transfer to a Records Center or other disposition authorized by law. No agency records storage area shall be established or relocated by an agency without the prior approval of the Maine State Archives.

Each temporary storage area shall:

1. Provide security to prevent the loss of records both in storage and in reference areas. This shall at a minimum include locks on all doors and windows, plus an intruder alarm system, a fire alarm system and fire suppression system.
2. Provide storage facilities situated in a physically safe location (i.e., not located in a flood plain; not located next to a hazardous chemical storage area; etc.). These facilities should have heating/ventilation/air conditioning capable of maintaining temperatures between 60 and 70 degrees Fahrenheit, and of holding relative humidity to less than 50 percent.
3. Show evidence of a capacity to care for the records by providing evidence 1) of a mission statement; and 2) that a person who cares for the records has had basic archival training, such as a workshop approved by the Maine State Archives, formal education, or related experience.
4. To store confidential records, the institution also must show evidence that it has staff capable of maintaining confidentiality in accordance with policies of state government agencies.

B. Local government vault for permanent records

State law requires each local government to have a fireproof safe or vault to protect permanently valuable records. Fires in several towns provide a reminder about the perils of not protecting critical records. 5 M.R.S.A. §95-B. (provisions for local government records) states the following: "Safe or vault for preservation. Each local government shall provide a fireproof safe or vault for the preservation of all records that must be retained permanently but are not required for business purposes. The official having responsibility for those records shall deposit them in the safe or vault where those records must be kept except when required for use."

12. TRANSFER OF RECORDS

A. Transfer of State records to the State Records Center

1. The following procedures govern the transfer of State records to the State Records Center. Such procedures are detailed in Chapter 2: *State Records Center Facilities and Services*.
 - a. The Records Center will accept for transfer any records offered by State agencies, subject to the following conditions: (1) The records are not authorized for immediate disposal and transportation costs are not in excess of the resulting savings; (2) Facilities for storing and providing reference service on the records are available; and a request for a records retention schedule is submitted prior to the proposed transfer.

- b. Priority will be given to the removal of records from office space, from space convertible to office use, from leased space, and from filing equipment which can be reused.
 - c. Transfers may be initiated by written request to the Maine State Archives/Records Management Division. Requests shall specify the nature and quantity of the records proposed for transfer.
 - d. Transfers shall be accompanied by appropriate records transmittal forms. Records shall be transferred in archival boxes approved by the Maine State Archives/Records Center.
 - e. The Records Center will furnish agencies with a receipt acknowledging the transfer of records by returning to the transferring agency a signed copy of the transmittal form (required by subparagraph d above). The returned copy will serve as a future aid in requesting reference services.
2. Restrictions lawfully imposed on the use of records will be observed and enforced by the State Records Center. Requests for access to state records in the physical custody of the Records Center shall be denied unless the state agency having legal custody of the records provides written authorization.
3. Records of State agencies stored by the State Records Center will be disposed of in accordance with the agency disposition schedule.

B. Transfer of State records to the Maine State Archives

1. Records which are considered of permanent value and which are on an approved records retention schedule, may be directly transferred to the Maine State Archives.

2. Use of records transferred to Archives

Restrictions lawfully imposed on the use of transferred records will be observed and enforced by the Maine State Archives. The rules, insofar as they concern the use of records in the search room of the Maine State Archives, apply to official use of the records by State agencies as well as to the public. Archives may not be borrowed for use outside the Maine State Archives facility, except in accordance with Maine State Archives rules.

3. Ownership of archival records

All archival state records transferred to the custody of the Maine State Archives in accordance with Title 5 M.R.S.A. Chapter 6 become the property of the Maine State Archives.

4. Public inspection of archival records

In accordance with Title 5 M.R.S.A. Chapter 6 §95, any restrictions or limitations imposed by law on the examination and use of records transferred to the archives (being under the authority of the Maine State Archives, not the

creating agency), remain in effect until the records have been in existence for 75 years, at which time these records become available for public inspection.

C. Interagency transfer of State records

No records shall be transferred from one agency to the custody of another without the prior written approval of the Maine State Archives except as provided in paragraph 4 of this subsection.

1. The head of an agency may request the transfer of records to or from his agency. Approval shall be requested by letter addressed to the Maine State Archives, in which are included:
 - a. A concise description of the records to be transferred, including the volume in cubic feet.
 - b. A statement of the restrictions imposed on the use of records.
 - c. A statement of the number of reference requests per month made on the records, with information as to the agencies and persons using the records and the purpose of such use.
 - d. A statement of the number of persons, if any, assigned to the administration of the records.
 - e. A statement of the current and proposed physical and organizational locations of the records.
 - f. information as to why the proposed transfer is in the best interests of the Government.
2. Copies of the concurrence or nonconcurrence in the transfer by the heads of any agencies concerned shall be attached to the agency request.
3. Records of agencies whose functions are terminated or are in process of liquidation shall be transferred to the Maine State Archives in accordance with law.
4. Prior written approval of the Maine State Archives is not required:
 - a. When records are transferred to the Records Centers or the Archives.
 - b. When records are loaned for official use.
 - c. When the transfer of records or functions or both is required by statute, or Legislative or Judicial order, or by specific determinations made thereunder.

D. Alternative institutional placement for local government records

1. Records may be deposited and retained with an alternative institution upon approval from the Maine State Archives. The local government agency shall retain legal custody of these records and ensure they are not alienated from the institution except for placement, with approval of the local government agency, in another approved institution or for authorized destruction. The local government agency may regain possession of records deposited in an authorized institution at any time.

Local government agencies shall enter into a written agreement with the institution ensuring that:

- a. Issues of custody, regaining possession, security, preservation, and access are clarified;
- b. The institution will, if applicable, comply with policies and directives of the local government agency governing confidentiality and preservation of records in accordance with state and federal law;
- c. The institution will provide storage facilities capable of preserving records at least as well as those available to the local government agency.

A copy of this agreement shall be sent to the State Archivist for formal approval before any records are deposited at the alternative institution.

2. To become approved, the institution must meet the following criteria:
 - a. Provide security to prevent the loss of records both in storage and in reference areas. This shall at a minimum include locks on all doors and windows, plus an intruder alarm system, a fire alarm system and fire suppression system. Minimum security shall also include direct supervision of researchers at all times when records are available for access.
 - b. Provide storage facilities situated in a physically safe location (i.e., not located in a flood plain; not located next to a hazardous chemical storage area; etc.). These facilities should have heating/ventilation/air conditioning capable of maintaining temperatures between 60 and 70 degrees Fahrenheit, and of holding relative humidity to less than 50 percent.
 - c. Provide reasonable access to the records as required by the Public Records and Proceedings statute (Title 1, Chapter 13). “Reasonable” should at a minimum mean that the facility is open to the public, by regularly scheduled hours or by appointment, at least two days each week throughout the year. There shall be no charge for retrieving or viewing the records, and any charge for obtaining copies shall be limited to the organization’s actual cost to produce such copies. However, if the organization’s staff is requested to research the records for the requestor the organization may charge any fee that it would normally require for research services.
 - d. Show evidence of a capacity to care for the records by providing evidence 1) of a mission statement; and 2) that a person who cares for the

records has had basic archival training, such as a workshop approved by the Maine State Archives, formal education, or related experience.

- e. Maintain a non-profit corporate status.
- f. Notify the State Archivist of any changes in its facilities or policies that relate to the standards described in this section.
- h. To accept confidential records, the institution also must show evidence that it has staff capable of maintaining confidentiality in accordance with policies of federal, state and local government agencies.

Maine State Archives staff reserves the right to inspect facilities and/or records before approval is granted, with re-inspection possible at any time after approval. Approval may be revoked by the State Archivist at any time, after notice and opportunity to correct, if standards do not continue to be met.

- 3. An institution must be approved by the State Archivist as a depository for local government records and/or to accept confidential records before a local government agency may deposit its records with the institution. The State Archivist shall maintain a list of approved institutions.

E. Use of commercial records centers for local government agencies

Local government agencies may use commercial records centers to store their closed records. Before any records are transferred, the commercial records center must be approved in writing by the State Archivist. The following criteria must be met:

- 1. Security must be provided to prevent the loss of records, both in storage areas and during transfer;
- 2. Fire suppression must be provided;
- 3. Stored records may be released only to employees of the local government agency (which shall be responsible for making records available to the public);
- 4. Only bonded employees of the records center may handle boxes or provide retrieval of records;
- 5. Access to records must be available within one business day;
- 6. Emergency reference service must be available within 2 hours or less during normal business hours;
- 7. Records must be stored in a physically safe facility (i.e., not located in a flood plain; not located next to a hazardous chemical storage area).

Commercial records centers used by local government agencies may be subject to inspection by the Maine State Archives. Local government agencies which use commercial records centers must maintain accurate listings of all records stored.

Commercial records centers used by local government agencies shall be liable for damage, destruction or loss of records, whether in storage at the facility or in transit between the facility and the local government agency's offices.

F. Records of deorganized municipalities

Per MRS Title 30-A, §7302. RECORDS SURRENDERED: Whenever any municipality is deorganized, the municipality shall surrender all its records to the State Archivist.

13. DESTRUCTION OF RECORDS

A. State agency disposal authority

The following guidelines apply for the destruction of State government records:

1. Records must be on approved record retention schedules and be authorized for destruction in accordance with retention and disposition guidelines established by the Maine State Archives.
2. State records may not be destroyed if any active or pending litigation, audit, open records request, or appeal of an open records decision, that involves the records is in question. This applies until the completion of the action and the resolution of all issues that arise from the action, or until the expiration of the retention period, whichever is later.
3. Records must no longer be required under any other legislation, and all statutory and regulatory requirements are fulfilled.
4. Disposal authorizations contained in records retention schedules approved by the Maine State Archives are automatically superseded by approval of a later schedule applicable to the same records.
5. Agency records stored at the State Records Center shall only be destroyed when retention requirements have been fulfilled and a disposition notification has been signed by a Records Officer providing authority to destroy the records. Records stored at the Maine State Archives shall not be destroyed, unless, upon further inspection and agreement by all parties, they are de-accessioned because it is determined they are not of archival value.

B. Local agency disposal authority

The following guidelines apply for the destruction of local government records:

1. A local record may be destroyed by an agency if the record appears on the Local Government Record Retention Schedules approved by the Maine State Archives. Requests for disposition of records not specified in the schedules shall be made in writing to the State Archivist, accompanied by sample copies of the records involved.

2. Local records may not be destroyed if any active or pending litigation, audit, open records request, or appeal of an open records decision, that involves the records is in question. This applies until the completion of the action and the resolution of all issues that arise from the action, or until the expiration of the retention period, whichever is later.
3. Records must no longer be required under any other legislation, and all statutory and regulatory requirements are fulfilled.
4. Local agencies shall keep permanent documentation of final disposition of records, describing records disposed of and manner and date of disposition; providing evidence that records have been disposed of per approved retention schedules.

C. Emergency authorization for the disposal of records

Whenever the head of an agency has determined that records have been contaminated by inflammable or poisonous substances which render them hazardous to health or property, they shall notify the Maine State Archives specifying the nature of the records, their location and quantity, and the nature of the contamination. If the Maine State Archives concurs in the determination, the removal of the contaminated records by the destruction of the records or by other appropriate means will be authorized.

D. Methods of destruction

Agencies shall comply with the following rules governing the methods to be used in disposing of records. Only the methods set forth in this subsection shall be used.

1. Records shall be disposed of with the same level of security that was maintained during the life of the records. Wherever possible, destruction of records shall be supervised by an officer of the agency or by another authorized agent if destruction has been contracted out. Extra care will be given to records containing confidential information. Acceptable methods include shredding, incineration pulping and pulverization.
2. Agencies will receive a certificate of destruction from the contractor as proof of accountability in cases where records that were supposed to be destroyed are subsequently found. This certificate will show the agency is not at fault.
3. Records containing identifiable data must be destroyed in a manner that makes it impossible to reconstruct and read the information. Records and protected information cannot be disposed of without some type of shredding or obliteration. Documents awaiting destruction should be housed in secure collection containers.
4. **On-Site:** Destruction companies do offer on-site services where trucks with industrial shredders come to the facility to perform the service. A business associate agreement with the destruction company should detail the location of the destruction, method of destruction and require proof of destruction.

5. **Off-Site:** If the records are destroyed off-site through a destruction company, a business associate agreement should detail the safeguarding practices while the records are in transit, time that will elapse between acquisition and destruction, method of destruction. Proof of destruction must be required.

6. **Electronic Records and Information**

- a. Wherever possible, destruction of electronic records (according to disposition specified on retention schedule) should be supervised by a Records Officer of the agency or by another authorized agent (IT staff).
- b. Electronic records must be destroyed in a consistent and systematic manner to comply with approved retention schedules, remove PII, and ensure consistency in case of FOAA, audit or other legal action.
- c. Agencies must receive documentation for those electronic records stored through outside vendors (such as cloud storage) to confirm that proper deletion has occurred.

E. Unlawful removal or destruction of records

1. The head of each agency shall establish safeguards against the unlawful removal or loss of records, including making it known to officials and employees of the agency that records in the custody of the agency are not to be alienated or destroyed except in accordance with law; and the penalties provided by law for the unlawful removal or destruction of records.
2. Whoever knowingly and willfully removes any book, record, document, or instrument, belonging to, or kept in any state office, except books and documents kept and deposited in the State Library, or knowingly and willfully secretes, alters, mutilates, defaces or destroys any such book, record, document or instrument, or knowingly and willfully aids or assists in so doing, or, having any such book, record, document or instrument in his possession, or under his control, willfully neglects or refuses to return the same to said state office or to deliver the same to the person in lawful charge of the office where the same were kept or deposited, shall be punished by a fine of not more than \$5,000 and by imprisonment for not less than one year nor more than 3 years. (1 M.R.S.A. §452).

14. VIOLATION OF RULES

Violation of any provision of these rules, except those violations for which specific penalties are provided, is a Class E crime.

EFFECTIVE DATE:

September 17, 1979

EFFECTIVE DATE (ELECTRONIC CONVERSION):

April 29, 1996

SPELLING CORRECTIONS:

May 29, 1996 - §3(A), 12(G)(2)

CONVERTED TO MS WORD:

July 11, 2003

REPEALED AND REPLACED:

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