

**LCB File No. R007-98**

**Notice of Hearing for the Amendment of  
Regulations of the Nevada State Library and Archives**

The administrator of the Division of State Library and Archives will hold a hearing at 1:00 PM, on Monday, March 2, 1998, at the State Library and Archives Building, 100 N. Stewart Street, Carson City, Nevada in the Board Room. The purpose of this hearing is to receive comments from interested persons regarding the amendment of regulations. If there are no persons present for public presentation, The administrator may proceed immediately to act upon any written submissions. Comments will be accepted regarding the following:

1. Proposed amendment to NAC 239.705, dealing with the interpretation of NRS 239.080 #4 "Official State Record."

A. Statement of need for and purpose of the proposed regulation.

A change is needed to clarify when "workpapers" may be considered to be official state records. This also adds "drafts" of records into the clarification, something that was not done with the original regulation. This needs to be done to state the conditions when and if "drafts" may be considered to be an official state record. These changes will aid records officers of state agencies and staff of the Records Management Program to do a better of job of retaining and disposing of records in a timely manner.

B. Estimated cost to the agency for enforcement.

There will be no added cost to the agency for enforcement.

2. Proposed amendment to NAC 239.720.

A. Statement of need for and purpose of proposed regulation.

At the request of the Audit Division of the Legislative Council Bureau, the requirement to send a copy of the approved records and disposition schedule is to be removed. The Audit Division, when they need to review such schedules, prefers to come to the offices of the Records Management Program. This amendment will save the state money in copy and storage costs.

B. Estimated cost to the agency for enforcement.

This amendment will save the agency and the Audit Division money. There will be no costs to enforce it.

3. Proposed amendment to NAC 239.7211: regulations on the Method for the Sealing of Records.

A. Statement of need for and purpose of the proposed regulation.

This regulation is being amendment is needed to clarify the concept that sealing a record concerns access and does not affect retention and disposition. When a record is sealed (as described in NRS 62.370 #4), access to the record is restricted to the public and all but authorized personnel. Retention and disposition of the record are governed by NRS 239.080. A sealed record may legally be disposed of when it is included on an approved records retention and disposition schedule. The actual legal custodian for the long-term retention of these records is the court system.

The changes to NAC 239.721, section 10, is to clarify what “authorized staff” means, and includes regular staff which may be designated by the appointing authority. It also changes the “director of the department of museums, library and arts” for the administrator of the division of state library and archives.

B. Estimated cost to the agency for enforcement.

There will be no added cost to the agency for enforcement.

4. Proposed regulations to NAC 239.740: facilities for storage of records.

A. Statement of need for and purpose of the proposed regulation.

This is a simple change which allows for these standards to be exceeded. As written, agencies must adhere to the standards without allowance for modern technology which exceeds them, but is nowhere found in them. Without this amendment, we would be forced to change this regulation with each advancement in the technology for the construction, furnishing and protection of records storage facilities.

B. Estimated cost to the agency for enforcement.

There will be no added cost to the agency for enforcement.

5. Proposed amendment to regulations on the on the retention of Local Government records.

A. Statement of need for and purpose of the proposed regulation.

These changes to sections of NAC 239 pertain to the retention of records by local governments and are the results of requests and suggestions from various departments and agencies of local governments. Some are records that were not previously included. Some are records which need to have their retention changed because the requirements no longer exist for longer periods of retention. All changes have been discussed with local government leaders, and fully researched and appraised to assure that the retention periods suggested will provide adequate administrative, legal and fiscal information for the required periods of time.

B. Estimated cost to the agency for enforcement.

There will be no added cost to the agency for enforcement.

Persons wishing to comment upon the proposed action of the administrator of the Division of State Library and Archives may appear at the scheduled hearing or may address their comments, data, views or arguments in written form to the Nevada State Library and Archives, Records Management Program, 100 N. Stewart Street, Carson City, Nevada 89701-4285. Written submissions must be received prior to the scheduled hearing.

A copy of the amendments to these regulations will be on file at the main public libraries in all counties within the state for inspection by members of the public during business hours. This notice and copies of the proposed regulations have also been posted at the following additional locations for inspection and copying and will be available during regular business hours. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged if it is deemed necessary.

North Las Vegas Library  
2300 Civic Center Drive  
North Las Vegas, NV 89030

Grant Sawyer Office Building  
Capitol Police  
555 Washington Ave. Suite 1003  
Las Vegas, NV 89101

Supreme Court Library  
200 S. Stewart St.  
Carson City, NV 89710

Nevada Historical Society  
1650 North Virginia St.  
Reno, NV 89503

## R007-98 Nevada Administrative Code

Items in **bold brackets [ ]** is to be deleted. Items in **bold *italics*** is to be added.

### **239.705** "Official state record" interpreted.

1. For the purposes of NRS 239.080 an "official state record" includes all papers, unpublished books, maps, photographs, machine readable materials including audio and audio-visual materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the state government under state law or in connection with the transaction of public business and preserved or appropriate for preservation because of the evidence or information they contain, by the agency or its legitimate successor as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the state government or because of the informational value of data in them.

2. The phrase does not include published books and pamphlets, books and pamphlets printed by a governmental printer, **[workpapers used to collect or compile data after that data has been included in a record,]** answer pads for a telephone or other informal notes, desk calendars, stenographers' notebooks after the information contained therein has been transcribed, unused forms except ballots and as indicated in a retention schedule, brochures, newsletters, magazines, newspapers except those excerpts used as evidence of publication, scrapbooks, physical property, artifacts, library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents, preserved only for convenience of reference, or stocks of publications and processed documents. *Workpapers used to compile or collect data, and drafts, are not considered to be official state records unless an appraisal in accordance with NAC 239.715 shows them to have legal, fiscal and/or research or archival values.*

### **239.720** Schedule for retention and disposition of records: Review and revision of proposed schedule; approval and dissemination of final version.

1. For each series of records listed on the schedule, the division shall produce a form which specifies:

- (a) The proposed minimum period of retention set forth on the schedule, and
- (b) The authorized disposition of the records.

2. The form must be signed by a representative of the division who shall submit the form to the state agency for its review. If the division does not receive any comments from the state agency within 30 days after the division submits the form to the state agency, the division shall present the schedule to the committee for review and approval.

3. Upon any receipt of comments from the state agency regarding the proposed schedule, the division shall, if appropriate, revise the schedule. Upon the completion of the division's final review of the schedule, the division shall submit the schedule to the committee for its review and approval.

4. Upon receipt of the schedule from the committee, the division shall, if necessary, revise the schedule, and prepare a final version. The division shall transmit copies of the final version to the state agency **[and the audit division of the legislative counsel bureau].**

**239.721 Procedure for sealing of records; disposal of sealed records.**

1. A state agency which is required by any statute or court of competent jurisdiction to seal a record which is in the legal custody of the agency shall seal the record by physically removing the record from the agency's filing system and:

(a) Placing the record in a separate file which is not accessible to the general public, including, but not limited to, a filing cabinet or drawer which can be locked; or

(b) Sending the record to the records center in accordance with NAC 239.725, 239.730 and 239.735.

2. The state agency shall make a notation in its filing system that the record has been removed. The notation must include the name of the record which has been removed, the date that it was removed and a cite of the legal authority for its removal. The agency shall place the record to be sealed and the court order or a copy of the statutory authority pursuant to which the record is being sealed into an envelope or closable file and place on the outside of the envelope or file a statement which is substantially in the following form:

Sealed by the authority of (cite the court order or statutory authority pursuant to which the record has been sealed). Access by authorized personnel or by court order only.

3. The state agency shall establish within its filing system a separate confidential file for the purpose of locating and retrieving the sealed records in the legal custody of the agency. The separate file may contain only such information as may be necessary to facilitate the location and retrieval of the sealed record. The authorized personnel of the agency may only disclose to the public whether a record is in the legal custody of the state agency, and no other details relating to the sealed record.

4. Once a record is sealed, the authorized personnel of the state agency may review the record for administrative purposes only. The actual contents of a sealed record may be disclosed only upon the order of a court of competent jurisdiction.

5. The state agency shall keep a log to monitor the access to the sealed record. The log must include:

(a) The name of each person who accesses the sealed record;

(b) The time and date on which that access was made;

(c) The purpose for accessing the sealed record; and

(d) The authority pursuant to which the person is accessing the sealed record.

6. If the record to be sealed is on microfiche, a microfilm jacket, an aperture card or a microcard, the state agency shall:

(a) Remove the microfiche, microfilm jacket, aperture card or microcard and place it into an envelope or a closable file in accordance with this section; and

(b) Replace the microfiche, microfilm jacket, aperture card or microcard removed pursuant to paragraph (a) with an index or other similar card which includes the name of the record which has been removed and the date that it was removed and cites the legal authority for its removal.

7. If the record to be sealed is on a roll of microfilm, including a reel, cartridge or cassette of

microfilm, the state agency shall:

(a) Remove the entire roll of microfilm and place the roll into an envelope or closable file in accordance with this section; or

(b) Cut from the roll of microfilm that portion of the record which is to be sealed and place the portion of the record which has been removed into an envelope or closable file in accordance with this section. A target, a certification and a copy of the court order or statutory citation pursuant to which the record is being removed must be spliced between the ends of the cut roll of microfilm, in accordance with the following standards of the American National Standards Institute (ANSI) and the Association for Information and Image Management (AIIM):

(1) ANSI/AIIM MS18-1992, Splices for Image Film—Dimensions and Operational Constraints;

(2) ANSI/AIIM MS19-1993, Recommended Practice for Identification of Microforms; and

(3) ANSI/AIIM MS42-1989, Recommended Practice for Expungement, Deletion, Correction or Amendment of Records on Microforms.

8. A state agency shall not dispose of a sealed record unless *that record appears on a records retention and disposition schedule approved in accordance with NRS 239.080*

**[a court of competent jurisdiction orders the disposal of the record. A state agency which has a sealed record in its legal custody that has been sealed for 50 years or more may petition a court of competent jurisdiction for purposes of the disposition of the record.]**

**9. Before a state agency petitions a court pursuant to subsection 8 for the purpose of disposing of a sealed record, the agency shall have the sealed record appraised by the division to determine the research or archival value of the sealed record. Upon the order of a court of competent jurisdiction to dispose of a sealed record, the state agency shall:**

**(a) If the division determines that the sealed record is of research or archival value, transfer the sealed record to the division for preservation in the state archives; or**

**(b) If the division determines that the sealed record is not of research or archival value, destroy the sealed record in accordance with NAC 239.722.**

**10] 9.** As used in this section, "authorized personnel" includes:

(a) The records officer, the legal counsel and the appointing authority of the state agency, *and such staff or representatives as designated by the appointing authority*; and

(b) For the purposes of *creating a records retention and disposition schedule for [appraising the research or archival value of]* a sealed record pursuant to *NRS 239.080 and NAC 239.710 to 239.720 [subsection 9]*, the **[director of the department of museums, library and arts]** *administrator of the state library and archives*, or his designated agent.

**239.740 Facilities for storage of records: Use of private facility; general standards.**

1. To the extent allowed by legislative appropriation, inactive and semi-active official state records must be stored in a facility which meets *or exceeds* the standards set forth in this section. An agency shall not store such records in a facility not owned by the state without the written permission of the person designated by the state librarian to manage official state records. He shall determine whether the private facility meets with the standards set forth in this section. Confidential or restricted official state records must not be stored in a private facility unless 24-hour security is provided.

2. In all new construction of state buildings which contain one or more areas designed for the storage of records, the storage area must comply with the standards set forth in this section. In existing state buildings which contain one or more areas designed for the storage of records which are remodeled or renovated, the new storage area must comply with the standards set forth in this section for storage areas.

3. A facility in which records are stored must be constructed of noncombustible, permanent materials. The area for the storage of records must have a minimum live floor load of 300 pounds per square foot. If possible the facility should not be below ground level. All electrical wiring must be encased by conduit and any electric control box or light switch must be located at the main entrance to the area used for storage. Any light fixture in the area for storage must be of fluorescent metal construction equipped with thermally protected class "P" ballast. The lowest point of any light fixture must be no lower than 12 inches above the highest box or material stored in the facility. An oil-type transformer must not be used in an area for the storage of records.

4. The temperature in an area where records with archival value, security copies of microfilm or microfiche, optical disks or computer disks and tapes are stored must be maintained at or above 60 degrees Fahrenheit, but not more than 70 degrees Fahrenheit. The temperature in all other areas of the facility where records are stored must be maintained at or above 50 degrees Fahrenheit, but not more than 80 degrees Fahrenheit.

5. Each facility used for the storage of records must be equipped with smoke detectors and fire sprinklers. The sprinkler system must be rated at a minimum flowing pressure of 7 pounds per square inch and deliver a minimum of 0.30 gallons per minute per square foot at the most remote sprinkler head. Each sprinkler head must be rated at a minimum of 286 degrees Fahrenheit, spaced no farther apart than 10 feet on center from the next sprinkler head and positioned to provide unobstructed coverage. There must be at least 18 inches of clearance between the top of the stored material and the sprinkler head at the deflection level.

6. If the facility contains a furnace or boiler, the area in which records are stored must be separated from the furnace or boiler by a wall with no openings directly from the storage area to the area containing the furnace or boiler. The wall must be a fire wall rated to withstand the fire for 4 hours. In addition, the area used for the storage of records must be separated from all other areas of the facility and all other occupants by a fire wall rated at 4 hours if the wall is unpierced, and at 2 hours if the wall is pierced. An opening in a fire wall, including a duct penetration, must be protected by a class "A" 1-1/2-hour rated fire door.

7. The main entrance of the facility must be located within 250 feet of a fire hydrant. One 2-1/2 gallon stored pressure-type fire extinguisher must be provided for each 3,000 square feet of floor space in the facility. Regardless of the geographic location of the facility, protection from lightning must be installed in accordance with nationally accepted standards.

8. The operator of the facility shall not allow open flames or smoking in the areas used for storage of records. The operator shall not allow the storage of equipment propelled by gasoline or oil, containers for flammable liquid or gas or containers of chemicals or similar materials to be stored within an area used for storage of records.

