

**PROPOSED REGULATION OF THE
STATE LIBRARY AND ARCHIVES ADMINISTRATOR**

LCB File No. R007-98

February 25, 1998

EXPLANATION – Matter in *italics* is new; matter in brackets [] is material to be omitted.

AUTHORITY: §§1-3, NRS 378.255 and 378.280.

Section 1. NAC 239.705 is hereby amended to read as follows:

239.705 1. For the purposes of NRS 239.080, an “official state record” includes, *without limitation*, all papers, unpublished books, maps, photographs, machine readable materials including audio and audio-visual materials, or other documentary materials, regardless of physical form or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]** :

(a) *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.

(b) Workpapers used to collect or compile data, or drafts of those workpapers, unless an appraisal conducted by the division pursuant to NAC 239.715 indicates that the workpapers or drafts have legal, fiscal, research or archival value.

Sec. 2. NAC 239.720 is hereby amended to read as follows:

239.720 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 receipt of any 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.]

Sec. 3. NAC 239.721 is hereby amended to read as follows:

239.721 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 *of the agency* 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] but no other details relating to the sealed record [.] *may be disclosed to the public.*

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 [:], *without limitation:*

- (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 , *without limitation*, 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, *Micrographics - Splices for [Image] Imaged Film - Dimensions and Operational Constraints*;

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

(3) ANSI/AIIM MS42-1989, *Information and Image Management - Recommended Practice for the Expungement, Deletion, Correction or Amendment of Records on Microforms*.

8. A state agency shall not dispose of a sealed record unless [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.] *the record appears on a schedule for retention and disposition approved pursuant to NRS 239.080.*

9. As used in this section, [authorized personnel includes:] “*authorized personnel*” includes, without limitation:

(a) The records officer, the legal counsel and the appointing authority of the state agency; [and

(b) For the purposes of appraising the research or archival value of a sealed record pursuant to subsection 9, the director of the department of museums, library and arts,]

(b) *Any person who is so designated by the appointing authority of the state agency; and*

(c) *For the purpose of creating a schedule for retention and distribution pursuant to NRS 239.080 or NAC 239.710, 239.715 or 239.720, the state library and archives administrator or his designated agent.*