

State of New Jersey
DEPARTMENT OF THE TREASURY
DIVISION OF REVENUE AND ENTERPRISE SERVICES
RECORDS MANAGEMENT SERVICES

**Abridged Title 15 Department of State Chapter 3 Records Retention:
Disposal of Damaged Records and Vital Records Preservation**

NJAC 15:3-2.2 Disposal of Public Records

(b) Authorization to destroy records that have been damaged due to a disaster. Any public agency desiring authorization to destroy records that have been damaged due to a disaster shall submit to the Division an emergency request for such authorization in a manner and form prescribed by the Division. State and local government agencies, districts and authorities are required by law to protect their records against untimely destruction due to disasters. A vital records program can minimize the effects of a calamity by identifying those records that should be given highest priority for salvage in a disaster.

1. Obtain a master list of all damaged documents;
2. Apply appropriate state records retention schedules;
3. Determine whether the damaged records can be duplicated from other sources (microfilm, duplicate filings at other agencies, etc.);
4. Examine damaged documents to determine:
 - i. What should be saved?
 - (1) Salvage of vital and permanent records must be done immediately.
 - (2) Depending on the amount and severity of damage, damp records may be saved by air-drying, and water saturated records may be saved by freeze-drying.
 - (3) Contact the Division immediately for disaster assistance;
 - ii. What can be destroyed?
 - (1) Damaged records that are not vital or permanent records of the agency and whose retention period has expired, is within one year of expiration;
 - (2) Records that are deemed unsalvageable; and
 - (3) Damaged records that can be duplicated from other sources;
5. Damaged records should be reported immediately to the Division to prevent further loss of records, including onset of mold and mildew; and
6. Agencies requesting emergency destruction of such records shall follow destruction authorization procedures.

NJAC 15:3-2.5 Vital Records Program

(a) Purpose. This section prescribes policies and procedures for establishing a program for the identification and protection of vital records, those records needed by State agencies and authorities or its political subdivisions for continuity of operations before, during, and after emergencies, and those records needed to protect the legal and financial rights of State or local government and persons affected by State or local government activities. The records may be maintained on a variety of media including paper, magnetic tape or disk, photographic film, and microfilm. The management of vital records is part of an agency's continuity of operations plan designed to meet emergency management responsibilities.

(b) Responsibilities for establishment and maintenance of a vital records program. Heads of State and local government agencies and authorities and/or their governing bodies are responsible for establishment and maintenance of a vital records program for the records of their agency, as defined in P.L. 1953, c.410 § 2 as amended by P.L. 1994, c.140, § 3 (N.J.S.A. 47:3-16), pursuant to provisions of the following State statute and rules:

1. P.L. 1953, c.410, "Destruction of Public Records Law (1953)," as amended by P.L. 1994, c.140 (N.J.S.A. 47:3-15 et seq.);
2. N.J.A.C. 15:3-2.2(a), concerning procedures for requesting routine and special authorization for disposal of records; and
3. N.J.A.C. 15:3-4.4(d) and 5.5, concerning disaster planning and recovery.

(c) Terminology. The words and phrases used in this section shall have the standard meaning in records management terminology as defined in N.J.A.C. 15:3-1.2, except the following words and phrases which apply to this section and shall have the designated meanings, unless the context clearly indicates otherwise:

"Contingency planning" means instituting policies and procedures to mitigate the effects of potential emergencies or disasters on an agency's operations and records. Contingency planning is part of the continuity of operations planning.

"Cycle" means the periodic removal of obsolete copies of vital records and their replacement with copies of current vital records, which may occur daily, weekly, quarterly, annually or at other designated intervals.

"Disaster" means:

1. Any natural or man-made catastrophe, including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, fire, explosion, or other catastrophe, caused by adverse or unusual weather conditions or human activity, that results in destruction of life or property; or
2. Pursuant to 44 CFR 9206.2(17), any fire, flood, explosion, or other catastrophe which in the

determination of the President of the United States causes damage of sufficient severity and magnitude to warrant major disaster assistance in order to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

"Emergency" means a situation or an occurrence of a serious nature, developing suddenly and unexpectedly, and demanding immediate action. This is generally of short duration, for example, an interruption of normal agency operations for a week or less. It may involve electrical failure or minor flooding caused by broken pipes.

"Emergency destruction" means eliminating records under abnormal circumstances, as provided by law or regulations. These circumstances involve a state of emergency or disaster and also a continuing menace to life, health, or property.

"Emergency operating records" means that type of vital records essential to the continued functioning or reconstitution of an organization during and after an emergency. Included are emergency plans and directive(s), orders of succession, delegations of authority, staffing assignments, selected program records needed to continue the most critical agency operations, as well as related policy or procedural records that assist agency staff in conducting operations under emergency conditions and for resuming normal operations after an emergency.

"Legal financial rights records" means that type of vital records essential to the resumption or continuation of operations: the re-creation of the legal or financial status of an agency and the fulfillment of obligations to the public. Although only three to five percent of an agency's records are vital, there could be a liability situation if these records are lost, stolen, or destroyed. Examples include the current, regular updated information needed for daily activities such as: accounts receivable, master personnel listings, irreplaceable research or development data, original signed copies of major contracts or agreements, insurance policy information, municipal standing executive orders, and municipal ordinances and resolutions. These records were formerly defined as "rights-and-interests" records.

"National security emergency" means any occurrence, including national disaster, military attack, technological emergency, or other emergency, that seriously degrades or threatens the national security of the United States, as defined in Executive Order No. 12656, "Assignment of Emergency Preparedness Responsibilities."

"Off-site storage" means a facility other than an agency's normal place of business where vital records are stored for protection to ensure that the vital records are not subject to damage or destruction from an emergency or disaster affecting an agency's normal place of business. Any facility considered for off-site storage of vital records by State or local governments must meet standards established for storage of public records per N.J.A.C. 15:3-6.

"Records disaster prevention and recovery program" means a written and approved plan detailing how records will be handled in a disaster prior, during, and after in the recovery stage. Also includes interim operating procedures.

"Vital records" means records essential to the continued functioning or reconstitution of the State or local government during and after an emergency or disaster and also those records essential to protecting the rights and interests of the State or local government and of the individuals directly affected by its activities. Sometimes called essential records, they include both emergency operating and legal and financial rights records. Vital records considerations are part of an agency's records disaster prevention and recovery program.

"Vital records program" means the policies, plans, and procedures developed and implemented and the resources needed to identify, use, and protect the essential records needed to meet operational responsibilities under State or local government emergencies or other emergency or disaster conditions or to protect its rights to those of its citizens. This is a program element of an agency's emergency management function.

"Vital records schedule" means a detailed list identifying the vital records, their location, protection instructions, and method of protection in case the records were lost during an emergency or disaster.

(d) Vital records program. The vital records program is conducted to identify and protect those records that specify how an agency will operate in case of emergency or disaster, those records vital to the continued operations of the agency during and after an emergency or disaster, and records needed to protect the legal and financial rights of the State or local government and of the persons affected by its actions. An agency identifies vital records in the course of contingency planning activities carried out in the context of the emergency management function. In carrying out the vital records program agencies shall:

1. Specify agency staff responsibilities;
2. Ensure that all concerned staff are appropriately informed about vital records;
3. Ensure that the designation of vital records is current and complete; and
4. Ensure that vital records and copies of vital records are adequately protected, accessible, and immediately usable.

(e) Emergency plans. Vital records include emergency plans and related records that specify how an agency is to respond to an emergency as well as those records that would be needed to continue operations and protect legal and financial rights. Agencies should consider the informational content of records series and electronic records systems when identifying vital records. Only the most recent and complete source of the vital information needs to be treated as vital records.

(f) Ensuring that retrieval procedures for vital records require only routine effort. Agencies shall ensure that retrieval procedures for vital records require only routine effort to locate needed information, especially since individuals unfamiliar with the records may need to use them during an emergency or disaster. Agencies also shall ensure that all equipment needed to read vital records or copies of vital records will be available in case of emergency or disaster. For

electronic records systems, agencies also shall ensure that system documentation adequate to operate the system and access the records will be available in case of emergency or disaster.

(g) Measures to ensure the survival of the vital records. Agencies shall take appropriate measures to ensure the survival of the vital records or copies of vital records in case of emergency or disaster. In the case of electronic records, this requirement is met if the information needed in the event of emergency or disaster is available in a copy made for general security purposes, even when the copy contains other information.

(h) Duplication of vital records. The following pertain to duplication of vital records:

1. Computer backup tapes created in the normal course of system maintenance or other electronic copies that may be routinely created in the normal course of business may be used as the vital record copy.

2. For original paper records, agencies may choose to make digital images or microform copies. Standards for the creation, preservation and use of microforms are found in N.J.A.C. 15:3-3 as established pursuant to the provisions of N.J.S.A. 47:3-26 et al. as amended. Standards for the creation, use and preservation of digital images for public records are found in N.J.A.C. 15:3-4, Image Processing of Public Records, and in N.J.A.C. 15:3-5, Certification of Image Processing, as established pursuant to the provisions of P.L. 1994, c.140 (N.J.S.A. 47:3-26 et al. as amended).

(i) Storage of vital records. The following pertain to storage of vital records:

1. When agencies choose duplication as a protection method, the copy of the vital record stored off-site is normally a duplicate of the original record. Designating and using duplicate copies of original records as vital records facilitates destruction or deletion of obsolete duplicates when replaced by updated copies, whereas original vital records must be retained for the period specified in agency records disposition schedule.

2. The agency may store the original records off-site if protection of original signatures is necessary, or if it does not need to keep the original record at its normal place of business.

3. Any facility used for off-site storage of vital records by State or local governments shall meet standards established for storage of public records per N.J.A.C. 15:3-6, Storage of Public Records.

(j) Storage of copies of vital records. Agencies need to consider several factors when deciding where to store copies of vital records, including:

1. Copies of emergency operating vital records need to be accessible in a very short period of time for use in the event of an emergency or disaster. Copies of legal and financial rights records may not be needed as quickly. In deciding where to store vital records copies, agencies shall treat records that have the properties of both categories, that is, emergency operating and legal and financial rights records, as emergency operating records.

2. Under certain circumstances, the State Records Storage Center and local government records storage centers may store copies of emergency operating and legal and financial rights records.

i. The State Records Storage Center and local government records storage centers can store small volumes of such records, but may not be able to provide storage for large collections or ones requiring constant recycling of the vital records, except under reimbursable agreement.

ii. Whenever State agency vital records are semicurrent, they are eligible for storage at the State Records Storage Center, provided that they meet all other storage criteria. However, many State agency vital records are active records, and therefore may not be stored at the State Records Storage Center. Other storage facilities, such as a commercial records center, should be sought for such records. (See definition of "semicurrent" in N.J.A.C. 15:3-1.2)

iii. County and municipal agencies should contact their local records storage center or commercial records center for their storage criteria for vital records.

iv. Any commercial records storage facility contracting with State or local agency or agencies for the storage and maintenance of vital records, regardless of their established retention schedules, must be in compliance with and operate according to the standards established for long-term or permanent records in N.J.A.C. 15:3-6, Storage of Public Records.

3. When using the State Records Storage Center for storing semicurrent vital records that are duplicate copies of original records, the agency must specify on the "Records Transfer Request" form that they are vital records (duplicate copies) and the medium on which they are maintained. The agency shall also periodically cycle (update) them by removing obsolete items and replacing them with the most recent version, when necessary. County and municipal agencies should contact their local records storage center for specific information about their policies and procedures.

4. State agencies that transfer permanent, original vital records into the physical and legal custody of the State Archives become the permanent legal responsibility of the Archives. This transfer of legal custody is a major distinction between the services provided by the State Archives and the State Records Storage Center:

i. In the State Records Storage Center, only physical custody passes from the agency of origin; legal ownership is not affected. The agency may request the return of its records at any time, and it alone controls access to those records.

ii. In the State Archives, legal as well as physical custody passes from the agency of origin to the State Archives. Legal ownership is transferred to the State Archives to ensure permanent preservation of the record.

5. The transfer of records from any public agency and accessioning them into the custody of the State Archives shall be documented in an Accession Record, including signed forms and other documentation transferring physical and legal custody and ownership of all rights to the State

Archives. County and municipal agencies should contact their local archives or historical society for specific information about their policies and procedures.

(k) Disposition of original vital records. The following pertain to disposition of original vital records:

1. The disposition of original vital records is governed by State records retention schedules approved by the State Records Committee.

2. Retention schedules summarize information about individual record series and designate minimum lengths of time records must be held in active, semiactive or inactive storage. Retention schedules also designate when and how a record may be disposed.

3. A timely and consistent records disposition result in increases in safety and efficiency and decreases in recordkeeping expenses. Use of the Statewide disposal authorization process helps to eliminate inconsistent records destruction, thereby minimizing the likelihood of adverse legal, administrative, fiscal, and historical impact.

4. Retention schedules for copies of records, other than original records, created and maintained for the sole purpose of providing duplicate copies of records for a vital records program may, in some cases, have a separate retention period established by the State Records Committee, if applicable.

5. Emergency destruction of records, when determined to be necessary by the State Records Committee, shall be authorized by the same pursuant to P.L. 1953, c.410, § 2, "Destruction of Public Records Law (1953)" as amended by P.L. 1994, c.140, § 3 (N.J.S.A. 47:3-15 et al.), and N.J.A.C. 15:3-2.2(a).