

DAA-GRS-2017-00xx

Rulemaking Records (GRS 6.6)

This file contains three documents. The draft schedule describes the records proposed for inclusion in this new GRS. The appraisal memorandum provides additional background explanation and includes the appraiser's justification for the retention decisions proposed in the schedule. The crosswalk matches authorities in the draft schedule with current GRS authorities.

This schedule has not yet been entered into the Electronic Records Archives, pending finalization through agency and stakeholder review.

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National Archives and Records Administration
Office of the Chief Records Officer
GRS Team
April 17, 2017

GENERAL RECORDS SCHEDULE 6.6: Rulemaking Records (Draft, April 11, 2017)

This schedule covers certain records created in the process of proposing and establishing rules and regulations intended for incorporation into the Code of Federal Regulations per the Administrative Procedure Act, 5 U.S.C. 500 *et seq.* It also covers records documenting public notices that do not relate to rules and regulations but are disseminated via publication in the Federal Register.

With the exception noted below in this paragraph, this schedule does not cover records created after Federal Register publication of a proposed rule. Such records are often contained in a “docket.” Records of the process by which proposed rules become final (or not), detailed in dockets, may be of permanent value depending on an agency’s mission. Therefore each agency must schedule its rulemaking dockets independently. The exception referenced above is that in certain cases, public comments received in response to a published proposed rule are covered under items 030 and 031.

Item	Records Description	Disposition Instruction	Disposition Authority	
010	<p>Records of proposed rule development. Records of internal agency rule development in preparation for publication as a proposed rule in the Federal Register. Generally held in the program office. Includes:</p> <ul style="list-style-type: none"> • briefing papers • rule/regulation drafts • comments in response to drafts • analyses • clearances • summary sheets • background and supporting materials • records documenting a notice of inquiry (NOI) in the Federal Register inviting comments on a not-yet-proposed rule, and comments received in response • [other records?] 	Case files that result in final rules.	<p>Temporary. Destroy 7 years after publication of final rule, but longer retention is authorized if required for business use.</p>	DAA-GRS-2017-00XX-0001
011		Case files that do not result in final rules.	<p>Temporary. Destroy 5 years after decision to abandon final rule publication, but longer retention is authorized if required for business use.</p>	DAA-GRS-2017-00XX-0002
020	<p>Proposed and final rule notices published in the Federal Register. Agency copy of rule draft forwarded to the Federal Register for publication, copy of published notice, and correspondence with the Office of the Federal Register generated at these rulemaking process milestones:</p>	<p>Temporary. Destroy 1 year after publication, but longer retention is authorized if required for business use.</p>		

Item	Records Description	Disposition Instruction	Disposition Authority	
	<ul style="list-style-type: none"> • advance notice of proposed rulemaking (ANPRM) inviting participation to help shape a rule still in development • notice of proposed rulemaking (NPRM) to add to, remove from, or change existing rules • further notice of proposed rulemaking (FNPRM), soliciting comment on a proposed rule significantly altered in response to comments received in response to the NPRM • notice of final rule 		DAA-GRS-2017-00XX-0003	
030	<p>Public comments. Public comments received in response to a proposed rule, provided that a summary of those comments is retained with the final rule docket.</p> <p>Exclusion: If no summary of comments is created, individual comments must be scheduled by the agency as part of the final rule docket.</p>	Comments on proposed rules that result in final rules.	Temporary. Destroy 3 years after publication of final rule, but longer retention is authorized if required for business use.	DAA-GRS-2017-00XX-0004
031		Comments on proposed rules that do not result in final rules.	Temporary. Destroy 1 years after decision to abandon final rule publication, but longer retention is authorized if required for business use.	DAA-GRS-2017-00XX-0005
040	<p>Notices of priorities published in the Federal Register. Records documenting notices of proposed priorities and final priorities, including:</p> <ul style="list-style-type: none"> • background material and drafts • drafts forwarded to the Federal Register • correspondence with the Office of the Federal Register • copy of published notice • public comments received 		Temporary. Destroy 5 years after Federal Register publication, but longer retention is authorized if required for business use.	DAA-GRS-2017-00XX-0006
050	<p>Federal Register notices not related to proposed and final rules. Records of notices announcing committee meetings, hearings, investigations, petition filing, application filing; license issuance, license revocation, grant application deadlines, environmental impact statement availability, delegations of authority, hours of public opening, use of an agency's seal, and other matters not codified in the Code of Federal Regulations.</p>		Temporary. Destroy when no longer needed for business use.	DAA-GRS-2017-00XX-0007

Item	Records Description	Disposition Instruction	Disposition Authority
	<p>Supersedes: GRS 16, item 13a (N1-GRS-87-17 item 1a) <i>1 year</i></p>		
060	<p>Agency input into the unified agenda. Records that process agency input into Federal Register publication of</p> <ul style="list-style-type: none"> • The Unified Agenda of Federal Regulatory and Deregulatory Actions (also known as the “unified agenda” or “semiannual regulatory agenda”) published by General Services Administration (GSA) with input from the Office of Management and Budget (OMB) • agency regulatory flexibility agendas • The Regulatory Plan <p>Exclusion: Compiled records received by GSA, OMB, and the Office of the Federal Register must be scheduled by those entities.</p> <p>Supersedes: GRS 16, item 13b (N1-GRS-87-17 item 1b) <i>2 years</i></p>	<p>Temporary. Destroy when 2 years old, but longer retention is authorized if required for business use.</p>	DAA-GRS-2017-00XX-0008



NATIONAL ARCHIVES

Date: April 11, 2017
Appraiser: Galen R. Wilson, ACNR
Agency: General Records Schedules (GRS)
Subject: GRS 6.6 (DAA-GRS-2017-00XX)

DRAFT

INTRODUCTION

Schedule Overview

GRS 6.6 Rulemaking Records

Additional Background Information

Laws of the United States government are codified in the United States Code (U.S.C.). Implementation of those laws is accomplished by regulations—also known as rules—published in the Code of Federal Regulations (CFR). Rulemaking is the administrative process by which Federal agencies draft regulations and carry them through to a final product ready to be incorporated into the CFR.

Records described in this schedule, with two exceptions, are new to the GRS. The decision to introduce them to the GRS was based on the fact that while rules and regulations promulgated by agencies concern an agency's mission, the process whereby promulgation is accomplished is an administrative task common across the entire Federal government. This schedule was developed through site visits meeting with rulemaking components of the Federal Aviation Administration (FAA), the Department of Health and Human Services (DHHS), the U.S. Forest Service (USFS), the Department of Education (DoEd), the Securities and Exchange Commission (SEC), the Environmental Protection Agency (EPA), and the National Archives and Records Administration (NARA). I wish to acknowledge the gracious generosity of staff in these agencies who gave their time and expertise explaining their processes and outlining the records they create.

Of overarching importance to this schedule is what it does *not* cover. As noted in the schedule introduction, records created after the proposed rule is published in the Federal Register—frequently contained in a file called a “docket”—are not covered. Depending on financial, cultural, and precedent-setting impact, a proposed rule may be considered “significant” and its docket worth permanent retention. Other proposed rules may lack this significance and their records ultimately relegated to history's slag heap. It is not possible to write parameters for determining significant vs. non-significant equally applicable across the entire Federal government. Therefore, each agency must define for itself which dockets merit permanent retention.

Overall Recommendation

I recommend approval of this schedule.

NATIONAL ARCHIVES *and*
RECORDS ADMINISTRATION

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APPRAISAL

Item 0001 (010): Records of proposed rule development: Case files that result in final rules.

Item 0002 (011): Records of proposed rule development: Case files that do not result in final rules.

These records are usually created in the program office (as opposed to a formal rulemaking office or the Office of General Counsel) between the time a rule is a twinkle in the eye of the person who recognizes that such a rule would be useful and the time it is published as a proposed rule in the Federal Register. In a previous day, these would have been called “working papers.” One bullet in the item uses the still-current term “background.”

Proposed Disposition

Temporary

Appropriateness of Proposed Disposition

Appropriate.

Appraisal Justification

*Previously approved as temporary:

N1-48-05-2, item 4112 (6 months)

N1-103-11-1, item 3.2 (7 years)

N1-129-07-1, item 1a (20 years)

N1-166-02-2, item 1b (5 years)

N1-180-00-1, items 108 (5 years) and 500 (10 years)

N1-207-10-2, items 1a2 (10 years), 1b (6 months), 1c (3 years)

N1-370-03-9, item 100-20c (3 years)

N1-399-11-1, item 4 (3 years)

N1-440-05-2, item 2 (5 years)

N1-441-09-4, item, 253b1 (5 years—relates to item 0001 [010] only)

N1-441-09-4, item 253b2 (3 years—relates to item 0002 [011] only)

N1-489-04-1, item 2a (2 years)

N1-557-05-2, item 15 (6 years)

N1-557-05-8, item 13 (6 years)

N1-588-11-1, item 4b (7 years)

*Has little or no research value. Every agency involved with drafting this schedule agreed that these are internal business records inappropriate for permanent retention. *This was true even for those agencies whose schedules (see below) pointedly or tacitly include these records as part of a docket.* “Working papers” and “background” records have long been universally recognized in both the GRS and agency schedules as temporary: eligible for disposal at some specified point after the final product is published.

Adequacy of Proposed Retention Period

Adequate from the standpoint of legal rights and accountability. Retention established by agencies is seen above. Two of the seven agencies participating in site visits have draft schedules not yet submitted to NARA for appraisal: FAA (55 years regardless of whether the proposed rule resulted in a final rule) and SEC (30 years if a final rule resulted, 15 years if not). Three others include background records with dockets: EPA (DAA-0412-2013-0010), USFS (N1-95-10-2), and NARA (N1-64-96-2). While it could be argued that the range of agency business-value assessments means that these records cannot be scheduled universally

for the entire Federal government, at root a schedule's *primary* purpose is to say whether the records are permanent or temporary; temporary records' retention length is a *secondary* purpose. The GRS Team believes these records can be universally appraised as temporary. The proposed items' flexible disposition instruction allows an agency with a business need for long retention to keep records as long as necessary without wasting its own or NARA's time scheduling these records independently. Seven years for records of rules that become final and 5 years for those that do not provides a reasonable period of time for records to be retrievable in the event that preliminary and background material is needed for future rule development or to respond to public inquiries.

Media Neutrality

Approved

Item 0003 (020): Proposed and final rule notices published in the Federal Register.

Bullets appended to the series description cover the several types of notices that may be published in the Federal Register throughout the course of a rule's "birthing."

Proposed Disposition

Temporary

Appropriateness of Proposed Disposition

Appropriate.

Appraisal Justification

*Captured elsewhere in permanent records: N1-64-87-1, item 1506-2. These are essentially a duplicate of the permanent record in the Federal Register itself. An agency may find these records useful for quick reference, but they should never be transferred to NARA.

*Previously approved as temporary:

N1-88-04-2, items 8.1 (3 years) and 8.2 (immediate)

N1-170-04-4, item 1 (30 years)

N1-207-10-2, item 1a3 (5 years)

N1-399-07-14, item 1 (5 years)

N1-412-99-21, item 1a (5 years)

N1-431-00-4, item 7a (5 years)

N1-440-05-2, item 1b (5 years)

N1-441-09-4, item 253c (5 years)

N1-570-04-19, item 1 (5 years)

*Has little or no research value. Since a fuller and more easily accessed permanent record is in the Federal Register, the records covered here are duplicative and unlikely to engender much interest from researchers.

Adequacy of Proposed Retention Period

Adequate from the standpoint of legal rights and accountability. The nine schedules listed above retain these records for significantly longer than proposed by this item. One-year retention is based on the records being duplicates of permanent records available elsewhere. The flexible instruction allows retention for as long as reference use exists.

Media Neutrality

Approved

Item 0004 (030): Public comments: Comments on proposed rules that result in final rules.

Item 0005 (031): Public comments: Comments on proposed rules that do not result in final rules.

Comments to rules published in the Federal Register can be submitted in multiple ways at the agency's choosing: submission to Regulations.gov, email to a particular address, fax, and hard copy mail. Some proposed rules garner a handful of public comments or none at all; others receive hundreds of thousands. The latter situation is often the result of mass solicitation by special-interest and public-lobbying groups. Not infrequently the majority of these responses are cut-and-pasted text where the only difference is the identity of who signed text supplied by someone else. Even individually composed comments may be repetitive. FAA cited a rule that received some 4500 responses. When sorted, they proved to contain, per issue, between a dozen and 200 responses saying basically the same thing in slightly different terms.

Of prime importance to these items is this clause in the series description: "provided that a summary of those comments is retained with the final rule docket." Public comments to a proposed rule *are* important to future researchers in understanding the full story of a rule's addition to the CFR. The question is *how much* commentary from an interested public is necessary to adequately tell this story. When comments are legion, summaries of public comments are often prepared for inclusion in the final rule publication in the Federal Register. Rules that engender few comments will not have occasion to use this item.

Proposed Disposition

Temporary

Appropriateness of Proposed Disposition

Appropriate.

Appraisal Justification

*Has little or no research value. A summary of comments is likely to produce more useful information for a narrative history and saves researchers paging through potentially thousands of nearly identical documents. This item allows agencies to dispose of large volumes of duplicative and repetitive commentary that does not significantly add to the narrative story of how the public perceived the impact of a proposed rule.

Adequacy of Proposed Retention Period

Adequate from the standpoint of legal rights and accountability. Short minimum retention accommodates agencies that receive (and wish to dispose quickly of) tens of thousands of duplicate comments. Flexible clause authorizing retention as long as business need exists accommodates agencies who require these records for a longer period.

Media Neutrality

Approved

Item 0006 (040): Notices of priorities published in the Federal Register.

Notices of Proposed Priorities and Notices of Final Priorities are technically rulemaking, but they do not ultimately produce an addition to or edit of the CFR. They often outline details necessary for potential grant applicants to know, or solicit input from the public on agency policy priorities under consideration.

Proposed Disposition

Temporary

Appropriateness of Proposed Disposition

Appropriate.

Appraisal Justification

*Has little or no research value. These records disseminate information vital in the short term but irrelevant in the long term.

Adequacy of Proposed Retention Period

Adequate from the standpoint of legal rights and accountability. Retention meshes with that for similar records elsewhere in this schedule: items 0002 (011), proposed rule development records, and 0005 (031), comments on proposed rules that do not result in final rules.

Media Neutrality

Approved

Item 0007 (050): Federal Register notices not related to proposed and final rules.

These records have been previously scheduled in the GRS. The series description duplicates current GRS 16, item 13a, adding one clause: “use of an agency’s seal.” The minimum retention is the same but added flexibility authorizes additional retention if records have further business use. Much of the information contained in these records is available nowadays in a much more useful spot—agency websites—but the requirement to publish it in the Federal Register remains as a monument to a bygone era in which paper copies of the Federal Register distributed to depository libraries was the only way to make such information accessible to an audience as massive as “every person in the United States.”

Proposed Disposition

Temporary

Appropriateness of Proposed Disposition

Appropriate.

Appraisal Justification

*Captured elsewhere in permanent records: N1-64-87-1, item 1506-2. These records duplicate the permanent record in the Federal Register itself.

*Previously approved as temporary: GRS 16, item 13a (N1-GRS-87-17, item 1a)

*Has little or no research value. Since the final documents are already available as permanent records in the Federal Register, these records are duplicates.

Adequacy of Proposed Retention Period

Adequate from the standpoint of legal rights and accountability. The previous 1-year retention was basically 30-years-ago shorthand for the concept we now express as “until no longer needed.” One-year retention meant “these records don’t amount to much once the task for which they were created is accomplished, so we’ll put a really short retention on them.” These records have little business use once the notice appears in the Federal Register.

The proposed retention adds fluidity, allowing very quick disposal if an agency so chooses.

Media Neutrality

Approved

Item 0008 (060): Agency input into the unified agenda.

These records have been previously scheduled in the GRS. GSA’s Regulatory Information Service Center compiles the semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions to alert the public about planned regulations. In addition, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires agencies to publish in the Federal Register “semiannual regulatory flexibility agendas” identifying rules that may have a significant economic impact on a substantial number of small entities.

Proposed Disposition

Temporary

Appropriateness of Proposed Disposition

Appropriate.

Appraisal Justification

*Captured elsewhere in permanent records: N1-64-87-1, item 1506-2. The final version of these records is published in the Federal Register which is a permanent record.

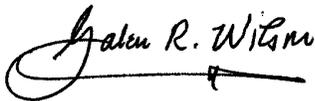
*Previously approved as temporary: N1-48-05-2, item 4111a (*6 months*)

Adequacy of Proposed Retention Period

Adequate from the standpoint of legal rights and accountability. Relatively short retention is identical to that of the superseded item. It is based on the fact that these are background records, drafts, and duplicates. The added flexible instruction allows retention for as long as reference use exists.

Media Neutrality

Approved

A handwritten signature in black ink that reads "Galen R. Wilson". The signature is written in a cursive style with a long horizontal stroke at the end.

GALEN R. WILSON
Senior Records Analyst

--- 2017

New GRS 6.6				Old GRS			
GRS No.	Item No.	Retention	ERA Number/ Disposition Authority	GRS No.	Item No.	Retention	Disposition Authority
6.6	010	7 years	DAA-GRS-2017-00xx-0001	New item			
6.6	011	5 years	DAA-GRS-2017-00xx-0002	New item			
6.6	020	1 year	DAA-GRS-2017-00xx-0003	New item			
6.6	030	3 years	DAA-GRS-2017-00xx-0004	New item			
6.6	031	1 year	DAA-GRS-2017-00xx-0005	New item			
6.6	040	5 years	DAA-GRS-2017-00xx-0006	New item			
6.6	050	When business use ceases	DAA-GRS-2017-00xx-0007	16	13a	1 year	N1-GRS-87-17 item 1a
6.6	060	2 years	DAA-GRS-2017-00xx-0008	16	13b	2 years	N1-GRS-87-17 item 1b