

Frequently Asked Questions (FAQs) about GRS 6.6, Rulemaking Records

INTRODUCTION

1. What is the purpose of GRS 6.6?

This schedule provides disposition authority for records agencies create and receive in the course of developing rules, publishing rules in the *Federal Register*, receiving public comment on proposed rules, and processing agency input into the Government's unified agenda. Disposition authority also is provided for records relating to *Federal Register* notices that are not rules.

2. Whom do I contact for further information about this schedule?

Please contact NARA's General Records Schedules Team at GRS_Team@nara.gov with questions about this schedule.

GENERAL QUESTION

3. What is rulemaking?

Congress passes laws to enact broad policy mandates. It then assigns agencies responsibility to carry out those laws. Agencies craft detailed regulations (rules) defining how the policy is to be carried out. Rulemaking is the process that Federal agencies use to create or promulgate those regulations. Laws are published in the *United States Code*. The corresponding regulations are published in the *Code of Federal Regulations*.

QUESTIONS RELATED TO RULEMAKING DOCKETS

4. What is a rulemaking docket?

A rulemaking docket is the record of a rulemaking's proceedings. A docket is generally created at the point that a rule draft enters the proposed-rule stage. Many rules begin life inside an agency program office (for example, the Benefits Review Board of the Department of Labor) where they are drafted by subject area experts. For most—but not all—agencies, the draft rule is then taken over by the agency's office responsible for rulemaking, which shepherds it through the paces of proposed rule publication, adjudication of comments, and final rule publication. A docket is generally created at the time the rule is taken under the wing of the rulemaking office. Item 010 in particular covers the background research and drafting records produced prior to creation of the docket. A docket does not have a specific form; for example, it may be contained within an electronic system, such as the Federal Docket Management System (FDMS), or may be a file the office keeps, such as on a shared drive or in filing cabinets.

5. Why does this schedule not cover records filed in rulemaking dockets?

Records in rulemaking dockets are excluded from GRS 6.6. This exclusion is noted in two places: the schedule introduction and item 010. The reason for excluding docket records is as follows. Not all rules have equal historical research value or even equal business value to the agency that writes them. Some

rules deal with minor issues and once the rule is in place, it may not be necessary to remember with great detail the whole story of how it came to be crafted in exactly the way that it was. Other rules leave huge footprints in the story of the nation, its Government, and its landscape (literally and figuratively). Some agencies have scheduled all their rulemaking dockets for permanent retention. Others have scheduled all their dockets as temporary. Still others have identified parameters for sifting permanent from temporary dockets. Because we cannot state a universal value of all dockets, and because we cannot create universally applicable criteria for identifying permanent and temporary dockets across all agencies of widely variant missions, the GRS is not able to cover dockets.

QUESTION RELATED TO ITEM 010

6. The exclusion to item 010 sounds like records might or might not be disposable under this item. Please explain.

Contents of a docket are selected at agency discretion. Some contents are typical. A push to standardize the contents of the Federal Docket Management System (FDMS) across all agencies has been made. Still, there is a great deal of latitude as to what an agency may place in its dockets, particularly if they are hard copy. Any of the records listed in item 010 might be included in a docket. Once a record becomes part of a docket, it must be covered by an agency-specific schedule for that docket. Item 010 provides authority to dispose of background material not included in a docket, probably much sooner than the docket itself.

QUESTION RELATED TO ITEM 020

7. These look like very important records. Why is the retention so short?

These are essentially extra copies of records that have been published in the *Federal Register (FR)*. The published *FR* is scheduled as permanent by N1-64-87-1, items 1506-1 and 1506-2. One-year retention for GRS 6.6, item 020, covers the need to document what an agency intended to publish, in the unlikely event that what actually appears in the *FR* is not identical or is needed temporarily by the agency for ease of reference, to track publication frequency, or other business purpose. Since an agency—and researchers—can always obtain the exact text of the documents from the *FR* itself, the historical or research value of the agency copy plummets once the *FR* is published. Flexible retention allows agencies to retain these records as long as business need exists.

QUESTION RELATED TO ITEM 030

8. Why does this item retain public comments for such a short period of time?

Public comments are the heart of the public's ability to participate in the rulemaking process. High-profile rulemakings may include public hearings but most are simply published in an *FR* notice with a deadline by which written comments must be submitted. The agency usually publishes a written response to all comments. Public comments can be important documentation of a rule's final development. Many agencies include them in the docket. But sometimes comments are voluminous: into the hundreds of thousands, and on occasion millions. They may also be duplicative. If public-interest groups encourage people to comment on a proposed rule and offer pre-packaged response text, the agency may receive hundreds of identical comments whose only difference is the person who

signed—but did not actually write—their comments in lieu of the whole body, and destroying the original comments relatively quickly.

QUESTION RELATED TO ITEM 040

9. Why does a schedule about rulemaking contain an item for *Federal Register* notices that are not rules?

Some public stakeholder meetings do gather opinion on proposed rules, but most of the records listed in item 040's description do not. This item replaces an old GRS item, which needed to be superseded somewhere in the new GRS. Even though the item includes rulemaking records and many records that do not concern rulemaking, its *FR* connection makes this, the only GRS covering agency interaction with the *FR*, the obvious and logical place for both.

QUESTION RELATED TO ITEM 050

10. Why do you exclude records received by General Services Administration, Office of Management and Budget, and the Office of the Federal Register from this item?

The records concern the mission of those three agencies. As with all mission records, these must be appraised and scheduled for their business and historical value by the agencies themselves.