



Occupational Safety and Health Review Commission

Records Retention Schedule

Prepared by the State Records Branch
Archives and Records Management Division
Approved by the State Libraries, Archives, and Records Commission



Kentucky Department for Libraries and Archives

This records retention schedule governs retention and disposal of records created, used, and maintained by this agency. **Government records in Kentucky can only be disposed of with the approval of the State Libraries, Archives, and Records Commission (the Commission). If records do not appear on a Commission-approved records retention schedule, agencies should not destroy those records.** This agency-specific schedule was drafted by agency personnel and Archives and Records Management Division staff and reviewed and approved by the Commission. This schedule provides the legal authority for this agency to destroy the records listed, after the appropriate retention periods have passed.

Agency personnel should use this agency-specific schedule in combination with the *General Schedule for State Agencies (General Schedule)*, also approved by the Commission. The *General Schedule* applies to records that are created, used, and maintained by staff at all or most state agencies. Agency-specific retention schedules are used only by specific agencies and apply to records that are created only by a particular state agency, or to records that a state agency is required to retain longer than the approved time period on the *General Schedule*. The *General Schedule* and agency-specific retention schedule should cover all records for this agency.

This retention schedule applies to state agency records and information regardless of how it is created or stored. For example, information created and sent using e-mail is as much a public record as materials created or maintained in paper. Kentucky law defines public records, in part, as "documentary materials, *regardless of physical form or characteristics*, which are prepared, owned, used, in the possession of or retained by a public agency" (KRS 171.410[1]). This means that records management standards and principles apply to all forms of recorded information, from creation to final disposition, regardless of the medium. Records retention scheduling is important in developing, using, and managing computer systems and other electronic devices. Records management practices encourage cost-effective use of electronic media through accurate retention scheduling and legal destruction of records.

All state government employees are responsible for maintaining records according to the retention schedule, whether those records are stored electronically or in paper. Information must be accessible to the appropriate parties until all legal, fiscal, and administrative retention periods are met, regardless of the records storage medium.

Audits and Legal Action

Agency records may be subject to fiscal, compliance or procedural audit. If an agency should maintain records longer than the approved retention period, as may be the case with some federal audits, then all affected records should be retained until the audit has been completed and the retention period met. In no case should records that are subject to audit be destroyed until the audit has been completed and retention periods met, or the records have been officially exempt from any audit requirements.

Records may also be involved in legal or investigative actions, such as lawsuits, administrative hearings, or open records matters. These records must be retained at least until all legal or investigative matters have concluded, regardless of retention period. This includes all appeals of lawsuits.

Vital Records

Vital records are essential to the continued functioning of an agency during and after an emergency. Vital records are also essential to the protection of the rights and interests of an

agency and of the individuals for whose rights and interests it has a responsibility. Vital records are identified in the retention schedule with a (V).

Confidential Records

While all records created, used, and maintained by government agency personnel are public records, not all of those records are open to public inspection. Whether a record is open to public inspection is determined by the state's Open Records laws and other relevant state or federal statutes and regulations. Restriction of public inspection of confidential records may apply to the whole record or only to certain information contained in the record.

Kentucky's public records are considered open for public inspection unless there is some specific law or regulation that exempts them. Agency personnel who believe certain records are confidential should submit a citation from Kentucky Revised Statutes, Administrative Regulations, Code of Federal Regulations, or similar authority. **State agency heads have the responsibility to know all the appropriate confidentiality laws, statutes and regulations that apply to the records maintained by their agency and to see that those laws are enforced.** Even though a record series may or may not be marked confidential on a retention schedule, contradictory laws or regulations that are passed after the schedule has been approved must be honored.

Copies of Records

Agency personnel often make copies of records for internal use or reference purposes. Agencies should designate one copy as the official copy and make sure it is retained according to the records retention schedule. Agencies can destroy all other copies when no longer useful.

Updating the Retention Schedule

Per 725 KAR 1:010, the head of each state government agency is required to designate a member of his or her staff to serve as a records officer. The agency records officer represents that agency in its records-related work with the Archives and Records Management Division. The agency records officer is responsible for assisting the Archives and Records Management Division in drafting a records retention schedule, and in finding any schedule updates to bring before the Commission. The retention schedule should be reviewed on a regular basis to suggest appropriate changes to the Commission.

Occupational Safety and Health Review Commission

When employers in the Commonwealth are cited by the Kentucky Labor Cabinet, Office of Occupational Safety and Health Compliance for alleged violations of Kentucky's Occupational Safety and Health Act and Standards, and the employer or an employee contests the citations, the Kentucky Occupational Safety and Health Review Commission provides an opportunity for the contesting party to come to a hearing and defend against the citations and penalties.

According to KRS 338.071, the KOSH Review Commission is an independent agency. The commission is composed of three members who are appointed by executive order of the governor. Each member is appointed based upon a specific area of expertise: one member represents the interests of employers, one represents the interests of employees and one represents the occupational safety and health profession. The members must have a minimum of five years' experience in their respective areas of expertise. This diversity assures that the interests of all litigants appearing before the commission are represented and that due process of law is provided with an even hand.

Hearings are presided over by a hearing officer who is employed by the Review Commission to consider all the evidence presented at the hearing and make written recommendations to the Review Commission concerning whether the citations and penalties should be upheld, modified or dismissed.

Any party who disagrees with the findings of the hearing officer may ask the full Review Commission to consider the case further. If a party does not request further consideration of the hearing officer's recommendations, any commission member can order review. The Review Commission has the authority to uphold, modify or vacate citations and/or penalties. Final orders of the KOSH Review Commission can be appealed to Franklin Circuit Court.

The Commission operates under KRS 338 and 803 KAR 50.

RECORDS RETENTION SCHEDULE

Signature Page

Occupational Safety and Health Review Commission
Agency

September 12, 2013
Schedule Date

Unit

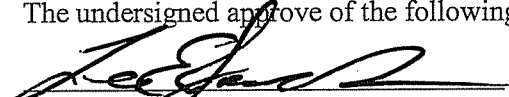
Change Date

September 12, 2013

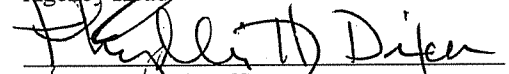
Date Approved By Commission

APPROVALS

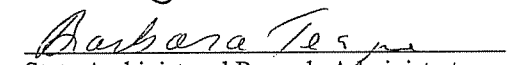
The undersigned approve of the following Records Retention Schedule or Change:


Agency Head

9-17-13
Date of Approval


Agency Records Officer

9-17-13
Date of Approval

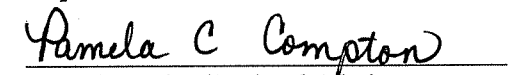

State Archivist and Records Administrator
Director, Public Records Division

9/14/13
Date of Approval


Chairman, State Archives and Records Commission

9/12/13
Date of Approval

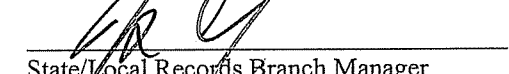
The undersigned Public Records Division staff have examined the record items and recommend the disposition as shown:


Records Analyst/Regional Administrator

09/12/2013
Date of Approval

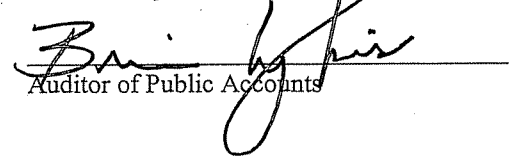

Appraisal Archivist

9/12/2013
Date of Approval


State/Local Records Branch Manager

9/12/13
Date of Approval

The determination as set forth meets with my approval.


Auditor of Public Accounts

9/12/13
Date of Approval

STATE ARCHIVES AND RECORDS COMMISSION
Archives and Records Management Division
Kentucky Department for Libraries and Archives

STATE AGENCY RECORDS
RETENTION SCHEDULE

Labor Cabinet
Occupational Safety and Health Review Commission

Record Group
Number
1950

Series	Records Title and Description	Function and Use
05546	Contested Citations Exhibit Files	This series documents exhibits submitted as evidence in cases where employers contest citations issued to them for violations of occupational safety and health standards. Cases are contested under the jurisdiction of the Occupational Safety and Health Review Commission. The parties to the cases often submit physical evidence as well as documents and electronic media. Not all citations are contested before the Commission. A party may appeal a decision by the Review Commission to Franklin County Circuit Court. Exhibits submitted to the Court are returned to the Review Commission after the case is decided.
	Access Restrictions	KRS 61.878(1)(a)
	Contents	Series may contain: Paper exhibits such as employee citations, timesheets, work site and project records, documentation of employee disciplinary actions and company operations and procedures manuals. Visual information formats can include photographs, VCR cassettes and digital media. Exhibit materials can include samples of chain link, safety gloves, and small parts of mechanical equipment.
	Retention and Disposition	Retain in Agency six (6) months after case closure, then destroy any unclaimed exhibits.
05718	Commission Case Files (V)	This series documents the process taken by the Kentucky Occupational Safety and Health Review Commission (KOSHRC) when employers are cited by the Kentucky Labor Cabinet, Division of Occupational Safety and Health Compliance for alleged violations of Kentucky's Occupational Safety and Health Act and Standards, and/or an employer or employee contests the citations. Once an employer files a notice of contest, the case comes under the jurisdiction of KOSHRC which shall "afford an opportunity for a hearing," per KRS 338.141 (3). A hearing officer is assigned; and in the event the case is not settled, the hearing officer will then conduct a hearing on the merits. The Hearing Officer's Recommended Order may be appealed to the Full Review Commission. (KRS 338.071 (4)). If the case is not resolved at the administrative level, an aggrieved party may file an appeal in Franklin Circuit Court. (KRS 338.091 (1)).
	Access Restrictions	KRS 61.878 (1) (a) re personal information
	Contents	Series may contain: Occupational safety and health citations and notification of penalty, the notice of contest, complaint, answer, pleadings and commission orders; interlocutory orders; settlement agreement or a hearing transcript, exhibits, a recommended order, commission decision. If an aggrieved party files an appeal the file may contain: briefs, decision; and all legal documentation and proceedings.
	Retention and Disposition	Retain Final Order in Agency permanently. Retain the balance of the case file in Agency five (5) years after case closure, then destroy.
05719	Recommended Orders (Not Issued)	This series documents never-issued recommended Orders of the hearing officer regarding contested citation(s) before the Kentucky Occupational Safety and Health Review Commission KOSHRC) due to the filing of a Settlement Order of the case; therefore, the Recommended Order is not an official document per 803 KAR 50:010, section 47 (2). These never-issued recommended orders do not become a part of the official record of the case as they are not issued and therefore are not enforceable. This series is not subject to release under the Open Records Act per KRS 61.878 (1) (i) (j). The official record of the case is retained by KOSHRC under the authority of series 05718.
	Access Restrictions	KRS 61.878 (1) (i) (j)
	Contents	Series contains only the never issued recommended Orders per 803 KAR 50:010, section 47 (2).
	Retention and Disposition	Retain in Agency one year (1) after KOSHRC issues Order Approving Settlement, then destroy.

STATE ARCHIVES AND RECORDS COMMISSION
Archives and Records Management Division
Kentucky Department for Libraries and Archives

STATE AGENCY RECORDS
RETENTION SCHEDULE

Labor Cabinet
Occupational Safety and Health Review Commission

Record Group
Number
1950

Series	Records Title and Description	Function and Use
06460	Case File Log	This series represents a list of all Kentucky Occupational Safety and Health Review Commission (KOSHRC) case files. The list is maintained for tracking purposes.
	Access Restrictions	
	Contents	Series may contain: Case number; county; names of parties; hearing date; final disposition and date.
	Retention and Disposition	Retain in Agency permanently.
06463	Case Files (Settlements)	This series documents the process taken by the Kentucky Occupational Safety and Health Review Commission (KOSHRC) when employers are cited by Kentucky Labor Cabinet, Division of Occupational Safety and Health Compliance for alleged violations of Kentucky's Occupational Safety and Health Act and Standards and/or an employer or employee contests the violations and the case is settled prior to having a hearing. Negotiations begin and as a result, a Settlement Order is then entered and signed by all parties.
	Access Restrictions	
	Contents	Series may contain: Copy of occupational safety and health citations, notification of penalty, complaint, answer, Settlement Agreement Order, and related correspondence
	Retention and Disposition	Retain the Settlement Order in Agency permanently. Destroy the balance of the case file six (6) months after Settlement Order has been entered.

Electronic System With Included Records Series

Labor Cabinet

Department of Workplace Standards

Occupational Safety and Health Review Commission

System Description: This spreadsheet documents KOSHRC 's incoming case load, current case load, and history. This system is used to track each case from the time it is received at the Review Commission, whether it be a new case, a recommended order, a decision, or a case that has been appealed at the administrative courts. Agency staff log the case history into this Excel spreadsheet upon receipt, and assign it a Kentucky Occupational Safety and Health Review Commission case number. There are no federal or state mandates governing this system.

System Contents: KOSHRC Case History may contain the case number, respondent name, attorney names, penalties and amounts, citation city and county, settlements, recommended orders, decisions, discrimination cases, interlocutory orders, pending case log, hearings, the inventory of Decisions and Recommended Orders, location of record in agency and the date the case is closed. The information accumulated in this file is used for budget purposes as well since it helps KOSHRC track the # cases received, closed, and decided within a fiscal year.

General Schedule Items:

System Title: Kentucky Occupational Safety and Health Review Commission Case History **Alternate Title:** Case History

Series #:	Series Title:	Disposition Instructions:
05546	Contested Citations Exhibit Files	Retain in Agency six (6) months after case closure, then destroy any unclaimed exhibits.
05718	Commission Case Files	Retain Final Order in Agency permanently. Retain the balance of the case file in Agency five (5) years after case closure, then destroy.
05719	Recommended Orders (Not Issued)	Retain in Agency one year (1) after KOSHRC issues Order Approving Settlement, then destroy.
06460	Case File Log	Retain in Agency permanently.
06463	Case Settlements	Retain the Settlement Order in Agency permanently. Destroy the balance of the case file six (6) months after Settlement Order has been entered.