
Record Retention Guide

for Radio and Television Stations

National Association of
NAB
BROADCASTERS

RECORD RETENTION GUIDE FOR RADIO AND TELEVISION STATIONS

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PREFACE

This book places in one slender volume information which heretofore was available only in literally hundreds of documents. The format and design are intended to be in the form of a workbook. Feel free to make marginal notes and adapt this material to meet the needs of your situation.

The authors are fortunately associated with law firms which have experts in all of the subject areas discussed in the book. They wish to acknowledge contributions of lawyers in their firms, Dow, Lohnes & Albertson (James A. Treanor, III, Curtis A. Ritter, Suzanne M. Perry and Linda A. Fritts) and Verner, Liipfert, Bernhard, McPherson & Hand (Thomas J. Keller and William E. Kennard).

No book written by lawyers would be complete without two disclaimers prominently displayed on the front page. This volume is no exception. We caution you, dear reader, to check with counsel if you have any questions about the laws in your state. Also, the material in this book is somewhat perishable: It is up to date as of November 1, 1987.

Record retention is a thankless but vital task. Perhaps something of that sort could be said about writing a book on record retention. We hope that this book, in one fell swoop, will organize the essential pieces of paper in your files, give you permission to throw away unnecessary papers—and in the process contribute positively to your station's bottom line.

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INTRODUCTION

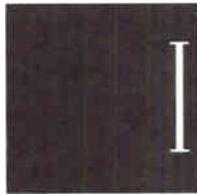
Few small businesses are as swamped by record retention requirements as the average broadcast station. Broadcasters must comply with a string of Federal Communications Commission (FCC) reporting and recordkeeping requirements, including mandates to make many of their records public. Most broadcasters are well aware of the need to keep complete and accurate records, especially about matters which might raise a question at license renewal time. Yet, ensuring that all record retention requirements have been met is often a difficult and confusing task.

This Guide provides a summary of record retention requirements for broadcasters, including the requirements of the FCC and obligations under other laws and regulations, including the Internal Revenue Code, the Occupational Health and Safety Act, the Fair Labor Standards Act, the Age Discrimination in Employment Act and the Civil Rights Act.

In addition to knowing what records to retain, broadcasters need to know what records to discard. A broadcast station easily can wind up hoarding reams of paper no longer useful for any purpose other than recycling. Unnecessary files usually result in a waste of space, employee time, energy and money. More importantly, documents necessary to meet government requirements or to preserve legal rights may become lost in the chaff.

The large number of federal, state, and local regulations governing record retention certainly does not simplify a broadcaster's decisions about what to keep and what to discard. For one thing, government policies and regulations frequently change. In addition, state and local regulations and some contracts (a group insurance contract, for example) may require additional recordkeeping. Finally, special circumstances—such as a pending legal dispute—could make the keeping of additional records prudent regardless of any specific requirement. Thus, each station ultimately must base its record retention program upon its particular needs.

The guide is designed to make easier the task of preserving important records and discarding documents that are no longer useful. The guide helps readers develop a system for records retention, and includes suggestions on storage and retrieval as well as destruction. Guidelines are set forth on making FCC files available to members of the public and dealing with outside entities. A sample Record Retention Schedule is contained in Appendix A.



DEVELOPING A SYSTEM FOR RECORDS RETENTION



Examining Your Current Recordkeeping System

Recordkeeping practices often arise more from tradition than logic. Here is a checklist to use in determining how well your present system meets your needs:

- Are important documents carefully preserved and easily located? If you or your staff have wasted time hunting for key records, it is time to re-evaluate your present system.
- Have you clogged valuable storage space with useless paper? Retaining files costs money. Obsolete documents occupy space that you could put to better use.
- Is the filing system logically organized? If you or your staff must search several different file categories to find out where an important piece of paper is located, a reorganization may be in order.
- Do employees know what documents are essential and when documents become obsolete? Your staff should understand what records to keep and what records to discard.
- Is confidential information protected? Sensitive data, such as information about employee performance and salaries, should be accessible only to those who need to use it in their jobs.

If you have determined that your filing system needs an overhaul, here are some suggestions for organizing an efficient recordkeeping system.



Developing a Record Retention Program



The Record Retention Schedule

To organize your recordkeeping system, first develop a record retention schedule adapted to your particular needs. The schedule should provide

a comprehensive list of all records and documents used and should state the retention period for the records. A sample Record Retention Schedule is contained in Appendix A.

At the outset, you will need to determine what records you must keep by law, how long you have to keep them, and what form you have to keep them in. Chapters III through VI describe the records you are required by law to maintain, including FCC, tax, personnel, payroll and corporate records.

Other records, such as lists of potential advertisers and projections of future sales performance, concern only the station itself and are not required by law to be retained. You need to decide how long these records are useful. Some of these documents, while not used in every-day business and not required by law to be retained, nevertheless could help to preserve your legal rights in the event of a dispute. If a significant amount of money is involved, these documents should be kept for as long as the possibility of a dispute exists. For documents that concern completed business transactions, this period is generally determined by the applicable statute of limitations.

To decide whether to retain or discard particular records, determine why the record initially was prepared. Government regulations require that certain records be kept and usually specify how long the station must keep them on file. Records retained in the FCC public file are good examples of this sort of record. Other records, such as contracts, invoices, and deeds, are retained because they may be needed later to preserve a station's legal rights against other parties. Therefore, in developing a plan for record retention, you should ask:

- Does a Federal, state or local law or regulation require us to keep the record, and, if so, for how long?
- Does the law require us to keep the record to preserve our legal rights and, if so, for how long?
- If the record is not necessary to comply with a law or preserve legal rights, how long will the record be useful in our operations?

To answer the first question, determine what the regulation or law requires. Chapters III, IV and V provide a list of records required to be retained by the FCC, the Internal Revenue Service, the Equal Employment Opportunity Commission and the Occupational Safety and Health Administration.

To answer the second question, consider the legal right which the record documents or protects. Unless the legal right represented is a “perpetual” one—such as a basic corporate document or a deed to real estate—find out how long the record will be useful to preserve the right.

Statutes of limitations specify the period during which a legal action can be brought to enforce a legal right or obligation. After the statute of limitations period has expired, no action can be brought to enforce a right or seek damages, regardless of the merits of the claim, unless the existence of the claim was fraudulently concealed. Thus, for most records which document completed transactions, the statute of limitations period specifies the maximum time that the record could have any use in establishing your legal rights.

Unfortunately, each state has its own statutes of limitations, and various statutes in a single state will give different limitation periods, depending on the nature of the action. In addition, statutes of limitations generally have exceptions extending the period for filing a claim if the existence of the claim was fraudulently concealed. Thus, the decision to destroy a particular set of records involves a calculated risk, and, in many instances, prudent decisions will have to be made about what records to keep and which to discard. Often, these decisions can be made on the basis of (1) the absence of any specific requirement that the document be retained, (2) the likelihood that a question would ever arise, (3) the potential for loss if a claim is made and the document is unavailable, or (4) the availability of the same information in other places.

The employees who maintain your files should be able to determine readily from the schedule what records should be kept and which should be discarded. In larger organizations, it may be efficient to have lower level clerical employees make this determination, subject to review by their supervisors.

2

The Recordkeeping and Filing System

Having determined the length of time that various categories of station documents will be retained, your next step is to develop a recordkeeping and filing system that safeguards what is useful and discards what is not. Generally, effective recordkeeping systems involve a current filing system and a long-range filing system with a systematic procedure for records destruction. In developing a recordkeeping and filing system, consideration must be given to the security of records and the method for storing and retrieving them. Finally, special consideration must be

given to legal issues of privacy and security and the need for original documents as opposed to microfilmed records. These issues are discussed below.

a Current Filing System

The current filing system contains documents in everyday use and should be located close to the departments that use it. Where practical, it may be helpful to limit actual entry into the files to designated personnel, solely to prevent the disruption of the system. While many different filing systems may well serve your station, consistency is essential. There should be written rules on the place for filing each type of document normally in use by the station.

Files usually should not be established based upon the name of the employee who sent or received the document. If the employee who sent or received the document leaves the company, it may be difficult to determine what individual handled what document. Thus, functional categories generally will prove more useful.

Use of broad general categories also is helpful. For example, a general category of "Contracts" with subcategories of "Program Contracts," "Film Contracts" and "Sports Contracts" would be preferable to intermixing contract files and related files in a purely alphabetical arrangement.

Obviously, a filing system cannot be effective if key documents wind up in the individual files of employees. Thus, desk files and departmental files should be permitted only where necessary to daily operations. Files which are not used in a department's or division's day-to-day operations should be moved promptly to a central filing system on a regular schedule.

If personal filing systems should present a difficulty, periodic inspections of department files may be appropriate. Inspection should be made promptly for each terminated employee so that an orderly transition of work is made to his or her replacement and so that important records are sent to the central filing system.

To maintain the integrity of the filing system, original documents should not leave the files unless there is a compelling reason. When it is necessary to remove an original document, a photocopy should be made, dated and marked with the name of the recipient of the original. The photocopy can then be removed and destroyed once the original is returned.

Periodically, transfers must be made from the current files to the “permanent” filing system. An additional four to six months should be allowed after the close of the current year to allow time for completion of the prior year’s current filing.

b

Long-Term Filing System

Long-term files should be secured in a locked facility. Economic considerations probably will dictate the use of cardboard file boxes for most documents. Entry into the storage area should be limited, again to insure the integrity of the filing system. Files or file boxes should be numbered, given a specific area in the storage site, labeled and listed on a file log maintained by subject.

c

Destruction of Records

A recordkeeping system also must include provisions for destruction of records which have outlived their usefulness. To avoid the premature loss of vital records, a record retention schedule should be circulated to employees responsible for the records in each department. Those employees also should be provided with written procedures for the destruction of those records which have become unnecessary. Generally, it is most efficient to establish a destruction date for records keyed to the period for which a tax return may be subject to audit, because for a large proportion of business records, the usefulness of the documents will expire once they are no longer necessary to verify the return.

A list of record categories to be destroyed should then be circulated to responsible employees, who should be required to confirm that none of the records listed for destruction has been retained. The record of destroyed documents itself should be retained, however, if destruction must be proven in future litigation or other proceedings. The retention schedule upon which the station’s periodic record destruction is based should be reviewed periodically (such as on a two-year basis) to determine whether changes are appropriate.

d

Storage and Retrieval of Records

Your filing system must take into account the frequency with which documents will be used. Many documents which are retained permanently need to be retrieved or reviewed frequently (for example, installment sales documents, leases and tax returns). Thus, storage of

documents based upon retention date alone will prove unsatisfactory; frequently used documents should be retained in a current filing system.

New technology provides more and more options for record retention. Alternatives to manual files include computer tape or diskette storage and microfilm or microfiche storage.

Generally, microfilm systems will not be cost effective for purely storage purposes. In special circumstances, however, they offer special advantages. For example, if space is at a premium, microfilm storage can reduce required storage space by 95 percent or more, and permit voluminous files to be retained on premises. Retrieval from storage becomes far simpler. The integrity of microfilm records may be preserved more easily than manual records because of the need for file users either to generate a photocopy of the record or use a centrally located reader in order to review a document. Also, microfilm records must be indexed initially and there is less risk of misfiling, so the station will maintain better control of its records.

There are some significant disadvantages to microfilm, including the expense of converting hard copy to film, the difficulty of copying colored or carboned material, and the greater potential for loss through accident or theft. However, consideration might be given to microfilming only selected records in a manual system of recordkeeping. Such a system allows you to enjoy most of the benefits of microfilming while avoiding the disadvantages.

As an adjunct to a manual filing system, microfilm may be particularly suited for large permanent documents and bulky documents already ordered in sequence that can be filmed without much initial preparation and with no indexing. Generally, a microfilmed document will serve the same purpose as the original hard copy and is admissible in court, provided it was (1) copied into microfilm in the regular course of business; (2) prepared in good faith; and (3) properly identifiable. For the most part, problems would arise only if the microfilming were done in a random or haphazard fashion.

The FCC specifically permits licensees to retain station logs on microfilm if (a) suitable devices are available to permit FCC inspection and (b) full-sized copies can be produced within two full working days if requested. Corrections to logs made after they are microfilmed must be associated with the microfilmed logs and must contain enough information to determine what corrections were made, when they were made and by whom they were made. Logs required to be submitted to the FCC must be reproduced in full-size form, according to 47 C.F.R. §

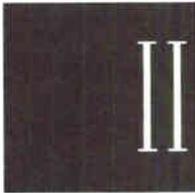
73.1840. The Internal Revenue Service has issued a ruling on the use of microfilmed records for Federal tax purposes. The ruling is summarized in Appendix B.

e

Common Recordkeeping Problems

Below are some suggestions for handling common recordkeeping problems.

- At some stations, there is a running joke that “without George (or Betty), we would never know where anything is.” This jest has a serious side, however, since the control of office files by a single individual can result in major difficulties in the event of the death, early retirement, or resignation of a key employee. Without a clear policy, the system for organizing the office files may become “personalized” over time. While a single individual may know how to locate necessary documents, others will not, and the absence of vital records may not be easily determined.
- In revising a filing system, documents should be categorized according to the purpose for which they are used and should be filed so as to permit easy removal of documents after their usefulness has expired.
- When a file is first made up, decide in advance what period will be covered by the contents of the file (e.g., “receipts for 1988 only”). You can also state the period for which the records should be retained (e.g., “retain until 1989”). Then, during an annual or semi-annual review of the files, the documents to be discarded can be located without a detailed examination of all the contents of particular files.
- If your station has several departments, it is important to insist upon a common system for all office files. Personnel from other departments should not have to learn a new filing “language” in order to obtain documents from the files of other departments. One way to avoid this problem is to centralize the responsibility for maintaining office files, even if the files are not kept in one location. In this way, the station’s departments can develop a common system for document retention and for periodic purging of the files.
- The bane of most filing systems is the indiscriminate use of “miscellaneous” files. While some documents may not fall within a specific category of even the most well thought out filing system, the extensive use of miscellaneous files generally indicates that your filing system is not meeting the needs of your station. In addition, the extensive use of miscellaneous files may result in the unnecessary retention of useless paper or the loss of important documents.



ACCESS TO RECORDS



Making the FCC Local Public File Available



Accessibility of the Public File

- The local public file must be maintained at the main studio of the station, if the main studio is located within the station's community of license, or at any accessible place within the community of license. 47 C.F.R. § 73.3526. (This rule currently is subject to a stay insofar as it would require stations whose main studios are located outside their communities of license to maintain a public file at some other location within the community.) The file must be available for public inspection at any time during regular business hours. This requirement refers only to those hours during which normal commercial transactions are conducted. For example, if your business office is open from 9:00 a.m. to 4:00 p.m., you may require that the file be inspected only during those hours.
- Reasonable regulations may be established by the station in order to facilitate orderly inspection. An area may be set aside with a table at which the inspection is to be made. Those who seek to inspect the file may be required to fill out a slip giving their name, address and date of request. The FCC has ruled that parties do not have to state whom they represent. Licensees should designate a member of the station's staff to handle requests to view the file, and should designate a backup person in the event that the primary staff member is unavailable.
- The public file should be maintained in good order. Licensees may be subject to fines if the public file is left disorganized so it is not usable by members of the public. Binder-type file folders may help to preserve the integrity of the file, especially if members of the public frequently review it.



Handling Requests for Machine Reproduction

FCC rules require that the public file must be made available for machine reproduction, subject to the following procedural requirements:

- Parties requesting in person to obtain copies of information from the public file need only identify themselves by name and address. 47 C.F.R. § 3526(f).
- Removal of materials from the public file for a reasonable period of time in order to fulfill requests for machine copies of those materials will not constitute a violation of FCC rules regarding public availability of the files. In this regard, FCC allows each licensee to decide in good faith whether a duplicate public file is necessary.
- Requests for machine copies shall be fulfilled within a reasonable period of time, which may not be longer than seven (7) days, unless reproduction facilities are not available in the community. 47 C.F.R. § 73.3526(f).
- The party requesting copies must pay the reasonable costs of reproduction. 47 C.F.R. § 73.3526(f).

If the station uses its own facilities to duplicate materials for the party requesting them, the cost of duplication charged to the party must not include any element of profit for the station. In other words, the copies must be furnished "at cost."

If the station employs an outside copy service, the service may charge its usual rates. The rule does not preclude the outside service from making a profit.

The FCC has indicated that it expects the usual rates to prevail in such cases and that it will not condone any attempts by stations to defeat the purpose of the rules by selecting an inconvenient location or a company that makes copies for more than the going rate in the area.

- The FCC's intention is to facilitate use of a station's local public inspection file by members of the public who reside within the station's service area. Therefore, a licensee need not fulfill mail or telephone requests for copies of documents in the station's public file.

B

Dealing with Outside Auditors

A well-maintained recordkeeping system has a direct financial payoff when you need to deal with outside auditors. When documents are readily available, you save time and reduce professional fees. Here are some suggestions to improve the efficiency of outside audits.

i Plan to have a conference with the auditor before he or she arrives at the station. Make a list of the documents the auditor will need to review and develop a plan for the audit.

ii Before the auditor arrives, locate the records to be reviewed and have them readily accessible. Generally, the audit will include a review of the following documents:

- Minutes of meetings of the Board of Directors for a corporation;
- Documents and contracts relating to any new transactions such as network affiliation contracts or other agreements representing a major expense or a major source of income;
- Any leases entered into by the station;
- Any debt agreements entered into by the station;
- Tax returns and any correspondence from the Internal Revenue Service;
- Correspondence from the station's attorneys about tax matters;
- Information prepared after consultation with legal counsel about matters which are in litigation or are likely to be;
- Any purchase or sale agreements or invoices having to do with the sale or purchase of major assets;
- Payroll records;
- Bills;
- Invoices to customers; and
- Cash statements.

Try to have the records organized to correspond to the auditor's plan for reviewing them.

iii Arrange to have a station employee available during the audit to assist the auditor by locating additional records or explaining the recordkeeping system. In this way, the time required to perform the audit can be reduced, along with the auditor's professional fees.

- iv** Talk with the auditor again after the audit has been completed to identify any problem areas and to evaluate the way the audit was handled from the station's end.



FCC RECORDS

A

The Public File

The FCC views maintenance of the public file as an important aspect of a broadcaster's responsibilities to the public. Because most licensees seldom receive requests to examine their public files, however, they may not regularly check the file to ensure that it is complete and up to date. The complexity of the public file rule (47 C.F.R. § 73.3526), with its many cross-references, may impede compliance. Nevertheless, the file can be kept up to date with a minimum of time and effort with a straightforward checklist for maintaining the public file.

Recent deregulatory changes have not deemphasized the importance of the public file. In its commercial radio deregulation decision, the FCC reiterated the importance of the public inspection file and stressed "that continued reliance on the public file as an index to the general programming responsibilities of licensees does not constitute a significant departure from our present system."

I

Field Operations Bureau Public File Checklist.

Under the current "postcard renewal" system, broadcasters filing FCC Form 303-S must certify that their public inspection files are complete and up to date. At the time the FCC adopted "postcard renewal" procedures, it also published a list of "particularly important" public file documents on which FCC Field Operations Bureau inspectors will focus during random inspections of broadcast operations.

The items included are not intended to replace existing public file requirements, but are those "particularly important" documents that the inspectors are sure to check. Licensees should double-check these items to make sure they are complete and in the file.

- Most recent renewal application.
- Most recent Ownership Report.

- Annual Employment Reports filed with the FCC after the date that the station's license was last renewed.
- Most recent Model Equal Employment Opportunity Program.
- "The Public and Broadcasting—A Procedure Manual".
- A file for letters received from the public.
- A file for requests for time by candidates for public office (may be empty if there were no such requests).
- Quarterly Issues/Programs Lists for the period after the date that the station's license was last renewed.

2 Contents of the Public File.

The following is an explanatory checklist for the contents of the public file of commercial radio and television stations whose licenses have been regularly renewed. Many of the items required to be placed in the public file must be retained until final FCC action on the *second* renewal application after the date that the documents were placed in the file. Thus, for example, a television station that placed such an item in its public file in 1983, submitted its renewal application in 1984 and had its license renewed in 1987 would be required to retain the item until final action on the renewal application submitted in 1989.

The lengthening of license periods for radio and television stations to seven and five years, respectively, has extended retention periods for some items. For some material, the FCC specifies a shorter or potentially longer period of retention. The FCC is now considering revisions to its retention periods in light of the longer license terms. Once the FCC completes its rulemaking, the retention periods recommended or specified in this section may be changed.

In connection with each of the applications listed below, current rules (which may soon change) require retention of the following items:

- All letters, exhibits and other documents filed as part of the particular application.
- All amendments to the application.
- All subsequent correspondence between the FCC and the applicant concerning the application.

- All documents incorporated by reference in the application.
- All service contour maps and information showing the main studio and transmitter location. Other engineering materials submitted in connection with applications are not required in the public file. 47 C.F.R. § 73.3526(a).

Needless duplication is not necessary, and information that is already contained in earlier materials or in the public file can merely be referred to in subsequent materials provided that: (1) the subsequent materials sufficiently identify the earlier information so that it can be easily located in the file; (2) there was no change in the earlier information; and (3) the subsequent materials include a statement to that effect.

Unless specifically stated otherwise, each of the items in the checklist below must be retained for the longer of seven (7) years or until final action is taken on the station's renewal application for the *second* renewal period after the renewal period when the item is first placed in the public file.

a Applications

- i** Construction Permits for New Stations (FCC Form 301). 47 C.F.R. § 73.3526(a).
- ii** Renewal of License (FCC Form 303-S and prior forms). 47 C.F.R. § 73.3526(a).
- iii** Assignment of License or Transfer of Control (FCC Forms 314, 315 and 316). 47 C.F.R. § 73.3526(a).
- iv** Construction Permits for Major Changes in Facilities (FCC Form 301). 47 C.F.R. § 73.3526(a).

A "major change" is:

For FM and TV: a change in frequency or station location.

For AM: Any increase in power or any change in frequency, hours of operation or station location.

All Licensees: The FCC may designate other changes not mentioned above as major changes by advising the applicant within 15 days after the application is filed. If this occurs, the application must be placed in the public file.

- v Application for Extension of Time to Complete Construction of a New Station (FCC Form 701). 47 C.F.R. § 73.3526(a).
- vi If Petitions to Deny have been filed against any of the above applications, a statement to that effect listing the name and address of the person or group that filed the Petition to Deny. 47 C.F.R. § 73.3526(a).

b Ownership Information

In addition to the Ownership Reports themselves (FCC Form 323), include all documents incorporated by reference in either an Ownership Report or a supplement to an Ownership Report. Again, needless duplication is not required where materials incorporated by reference are already contained in earlier materials in the file, and the incorporation is noted in the documents. Owners with multiple licenses who submit a common Ownership Report for all stations must insert a copy of that report in the public file of each station owned. Ownership information should include:

- i Ownership Reports (FCC Form 323).
- ii Television Network Affiliation Contracts filed on or after May 1, 1969.
- iii Documents Relating to Ownership or Control of the Station: Under Section 73.3613, a licensee must file with the FCC and list in its Ownership Report (FCC Form 323) certain documents and contracts relating to the ownership and control of the station. The contracts and agreements also must be included in the public file. Occasionally, it may be difficult to determine whether a particular document must be filed with the FCC and kept in the public file. While it would be impossible to provide a comprehensive list of all possible contracts and agreements in connection with the operation of a broadcast station, guidelines for particular instruments are listed below:
 - For a corporate licensee, the public file should include the Articles of Incorporation and Bylaws of the corporation, together with all amendments. 47 C.F.R. § 73.3613(b).
 - Agreements or contracts that involve any pledge of the stock of a corporate licensee or directly or indirectly affect voting or ownership rights in the stock. 47 C.F.R. § 73.3613(b)(3).
 - Contracts or other agreements relating to the sale of a station or the transfer of the corporate stock must be included in the public file,

regardless of whether an application for FCC consent to the transfer or assignment has been filed, or whether the sale is subject to contingencies. 47 C.F.R. § 73.3613(b)(3)(i) and (ii).

■ A management agreement with someone who is not an employee of the station or an officer or director of the licensee corporation must be included in the public file. A management agreement with a station employee, officer or director, however, need not be placed in the station's public file unless the agreement provides for the employee to share in both profits and losses. 47 C.F.R. § 73.3613(c)(i).

■ Proxies to vote the licensee's stock which either (a) run for longer than one year or (b) are given without full and detailed instructions to the nominee. For proxies given without full and detailed instructions, the informational statement required to be filed with the FCC also should be included. 47 C.F.R. § 73.3613(b)(4).

■ Copies of television network affiliation agreements must be included. 47 C.F.R. § 73.3613(a)(1).

■ Copies of mortgage or loan agreements containing provisions restricting the licensee's or permittee's freedom of operation must be included. 47 C.F.R. § 73.3613(b)(5).

c Agreements with Citizens' Groups

A copy of every written agreement between a broadcast applicant or licensee and one or more citizens or citizens' groups, dealing with goals or proposed practices directly or indirectly affecting station operation in the public interest (e.g., programming, employment) should be included. 47 C.F.R. § 73.3526(a)(1).

d Annual Employment Reports

FCC Form 395, including any related exhibits and correspondence. 47 C.F.R. § 73.3526(a)(5).

e "The Public and Broadcasting—A Procedure Manual"

The manual was published in the *Federal Register* on September 5, 1974, and should be retained indefinitely. 47 C.F.R. § 73.3526(a)(6).

f Political Broadcasting Records

All requests for broadcast time made by or on behalf of candidates for public office, with a notation of the disposition of each and the charges

made for any time sold, and records of any free time provided should be included. These records must be placed in a political file, which is to be part of the public file, "as soon as possible" after the request. The NAB Political Agreement Form contains all of the necessary information and, when properly completed and filed, fulfills this requirement. These records should be retained for two years. 47 C.F.R. §§ 73.3526(a)(4), 73.1940(d).

g**Letters from the Public**

All letters and written comments and suggestions, including anonymous letters, received from members of the public concerning operation of the station and the licensee's programming efforts should be included. They should be retained for three years from date of receipt. 47 C.F.R. § 73.1202(a)(1).

Television licensees must place letters received from the public in one of two files: one for "programming" and the other for "nonprogramming." If a letter relates to both categories, the licensee should place it in the category which receives the most attention in the letter. 73 C.F.R. § 73.1202(a)(2).

The following types of letters need not be placed in the public file (47 C.F.R. § 73.1202):

- i** Internal and business correspondence;
- ii** Obscene and defamatory letters; and
- iii** Written comments or suggestions made by a person who has *specifically requested* that his or her communication not be made available for public inspection.

The FCC has proposed eliminating the requirement that licensees retain letters from the public and make them available for inspection. A final decision on the proposal has not been issued.

h**Sponsors of Controversial Programming**

A list of the chief executive officers or members of the executive committee or the board of directors of a corporation, committee, association or unincorporated group paying for or furnishing to the station broadcast material which is political or involves the discussion of a controversial issue of public importance. 47 C.F.R. § 73.1212. This information should be retained for at least two years.

i Lists of Issues and Responsive Programming

A list of issues to which the station paid particular attention in programming during the preceding three months must be placed in the local public inspection file on a quarterly basis. The list should be placed in the public file on the 10th calendar day after the beginning of each quarter (i.e., January 10, April 10, July 10 and October 10). The description should include at least the time, date, duration, title and type (i.e., public service announcement, documentary, etc.) of each program in which the issue was significantly treated. This information should be retained for the term of the license (five years for television stations; seven years for radio stations). 47 C.F.R. § 73.3526(a)(8).

j Certification of Local Public Announcements for Applications Requiring Local Public Notice (generally, renewal applications and “long-form” transfer and assignment applications)

A certification of compliance (including the text of the announcement) must be placed in the public file within seven days after all required pre-filing and post-filing announcements are completed. Retain for as long as the application to which the announcement refers. 47 C.F.R. § 73.3526(e).

k Material Related to Investigation or Claim

Materials which have a substantial bearing upon a matter which is the subject of a claim against the licensee, an FCC investigation or a complaint to the FCC of which the licensee has been notified must be retained until the licensee receives notice in writing from the FCC that the station may discard the particular materials. Material which has a substantial bearing on a matter which is the subject of a private claim against the licensee must be retained until the claim is satisfied or until the applicable statute of limitations has barred the claim. 47 C.F.R. § 73.3526(e)(2)(ii).

l Items Incorporated by Reference

Items that in themselves would not have to be placed in the public file must be included if they are incorporated by reference into applications or other documents that are included.

Note: Incorporation by reference takes place whenever a licensee refers in an application or report to information contained in an earlier report or application rather than taking time to restate the earlier material in

its entirety. In this regard, licensees should be aware of the fact that if a confidential document (*i.e.*, not available for public inspection) is incorporated by reference in a subsequent report or application to the FCC, that earlier report may no longer be confidential and may have to be made available for inspection by the public.

m Examples of Records Which Need Not be Included in the Public File

- i** Minor changes in facilities of an authorized station.
- ii** Licenses to cover construction permits.
- iii** Applications for extension of time to complete construction, *except* in the case of a new station.
- iv** Authorization for remote pickup or STL (studio-transmitter link) in connection with the operation of broadcast stations.
- v** Pleadings, briefs, transcripts of testimony and depositions pertaining to hearings on applications.

3 Responsibility for Public File Material

- i** After materials have been kept in the public file for the required period, the licensee may discard them. If, however, a licensee chooses to retain any materials which were once a required part of the public file, the licensee must still permit any member of the public to inspect those materials upon request. Materials voluntarily retained may be kept in any form and place which the licensee finds convenient. Any party who wishes to examine these materials must make his or her request in good faith, in writing, and should be granted access to the materials only at a time and place convenient to both the party and the licensee. 47 C.F.R. § 73.3526(3)(2).
- ii** In the event of an assignment or transfer of either a license or construction permit, the seller of the station has the responsibility for maintaining the local file until the FCC approves the assignment and the assignment is consummated. When this occurs, the new owner has the responsibility for maintaining the local file and must see that all documents required to be maintained before as well as after the assignment are in the file. 47 C.F.R. § 73.3526(b)(1).

B**FCC Records Not Required to Be Placed in the Public File**

Several categories of records must be retained at the station or another specified location and made available for inspection or duplication by the FCC on request. These records need not be made available for inspection by the public. For some categories of contracts and agreements, FCC rules do not specify retention periods. A reasonable policy would be to retain these agreements during the time they are in effect and until final action on the station's renewal application for the renewal period after the license term during which the agreement expires. At a minimum, the contract or agreement should be retained for the entire time that the contract or agreement is in effect.

1**Equipment Performance Data**

Equipment performance measurement data and curves, with a description of the instruments and procedures employed, signed and dated by the qualified person making the measurements, should be retained at the transmitter or remote control point of the station for a period of two (2) years. 47 C.F.R. § 73.1590(d).

2**Station Licenses and Operators' Licenses**

The station license and other instruments of authorization are to be posted in a conspicuous place, in such a manner as to be visible at all times, at the place the licensee considers to be the principal control point of the transmitter. The license for each operator of the station is to be posted at the place the operator is on duty. 47 C.F.R. § 73.1230.

3**Operator Designations**

The written designation of the chief operator is to be posted with the operator's license. Agreements with chief operators serving on a contract basis must be in writing with a copy kept in the station's files. (The chief operator for an AM station using a directional antenna or operating with greater than 10 kw authorized power, or of a TV station, is to be an employee of the station on duty for the number of hours each week necessary to keep the station's technical operation in compliance with FCC rules.) The FCC does not specify the period for which these agreements must be retained. 47 C.F.R. §§ 73.1226(c), 73.1230.

4**Rebroadcast Consent**

A station that rebroadcasts the programming of another station must keep on file a copy of the written rebroadcast consent of the licensee

originating a program or any part of a program that is broadcast. FCC regulations do not specify a retention period. 47 C.F.R. § 73.1207(b).

5 Tower Agreements

A copy of any agreement among licensees using a common tower for their antennas designating one such licensee as the party responsible for painting and lighting the structure should be retained in the station file of *each* party to the agreement. FCC regulations do not specify a retention period. 47 C.F.R. § 73.1213(c).

6 Time Brokerage Contracts

These are contracts relating to the sale of time to “time brokers” for resale. FCC rules do not specify a retention period. 47 C.F.R. § 73.1226(c).

7 Time Sales Contracts

These are time sales contracts with the same sponsor for four or more hours per day, except where the length of the event (such as athletic contests, musical programs and special events) broadcast pursuant to the contract is not under control of the station. 47 C.F.R. § 73.1226(c).

8 Contracts with Chief Operators

Contracts with chief operators and other engineering personnel should be retained. FCC regulations do not specify a retention period. 47 C.F.R. § 73.1226(c)(4).

9 Subsidiary Communications

FM subchannel leasing agreements for subsidiary communications should be retained. FCC regulations do not specify a retention period. 47 C.F.R. § 73.1226(c)(2).

10 Station Logs and Related Records

Station logs and related records should be retained in the station’s files for two (2) years. Exceptions include logs involving communications incident to a disaster or which include communications incident to or involved in an investigation by the FCC and concerning which the licensee or permittee has been notified, which shall be retained until the FCC specifically authorizes in writing their destruction. Logs incident to or involved in any claim or complaint of which the licensee or permittee has notice should be retained until such claim or complaint has been fully satisfied or until the claim or complaint has been barred

by statute limiting the time for the filing of a law suit or complaint. 47 C.F.R. § 73.1840. Licensees required to keep special technical records (for example, additional recordkeeping imposed due to interference concerns) must have those records available along with the station logs. 47 C.F.R. § 73.1226(c).

11**Applications to Modify Transmission Systems and Information Documenting of Modifications Not Requiring Prior Authorization**

Applications made to modify transmission systems under Section 73.1690(c), consisting generally of applications on FCC Form 302 for modification of license, and informal statements or drawings depicting modifications not requiring prior approval should be included. 47 C.F.R. § 73.1225(c).

12**Special AM Technical Data**

AM radio stations must maintain copies of the following:

- The most recent antenna or common point impedance measurements;
- The most recent field strength measurements made to establish the performance of a directional antenna; and
- Partial directional antenna proofs of performance. 47 C.F.R. § 73.1225(d).

13**Contest Files**

FCC rules do not require licensees to maintain records on over-the-air contests and similar promotions. Yet, because contest losers (and disappointed winners) are the source of many listener and viewer complaints filed with the FCC, serious consideration nevertheless should be given to maintaining complete files on contests and promotions.

The NAB has recommended that broadcasters take the following steps:

- i** Set up a separate file for each contest or promotion;
- ii** Include in the file the rules and eligibility requirements;
- iii** Record in the file a description of each prize awarded. A “receipt-release” form should be signed by the winner when the prize is awarded and the release placed in the contest folder. If the value of a prize in a contest sponsored by the station exceeds \$600, the station should obtain the winner’s social security number in order to comply

with Internal Revenue Service regulations. For prizes of \$600 or more, or for prizes won by a single individual in one year with a total value in excess of \$600, the Internal Revenue Service will require the station to file a 1099 MISC tax form reporting the identity of the prize winner. The winner's social security number must be included in the report. The filing of the 1099 MISC form will not affect the station's tax liability; it merely notifies the Internal Revenue Service to be sure that the amount of the prize is taxed as part of the prize winner's income;

- iv** Include in the contest file a copy of any letters of complaint, along with any response by the station.
- v** Include copies of all broadcast material pertaining to the promotion.
- vi** Place in the file copies of any layouts, ads, billboards, or other media advertising used to promote the contest.
- vii** If the station desires and the winner is amenable, place in the contest file an agreement signed by the winner which permits the station to use the winner's name.

14 "Want Ad" Sponsors

Stations that carry "want ads" or classified ads sponsored by individuals under provisions of the FCC's rules that permit omission of the sponsor's name in the broadcast must maintain a list showing the name, address and (when available) the telephone number of each advertiser. The list must be made available to members of the public with a legitimate interest in the information and must be retained for two (2) years after broadcast. 47 C.F.R. § 73.1212.

IV

TAX RECORDS

A**What Type of Records Are Required?**

The Internal Revenue Service (IRS) does not prescribe any specific system of accounting records, but it does require permanent, accurate books of account or records which can be used to identify a company's income, expenses, and deductions. Additional supporting details are required where travel and entertainment deductions are taken.

B**What Records Should Be Kept?**

In most tax matters, the burden of proof lies with the taxpayer. Therefore, your records should reflect all expenses and all income. Otherwise, the IRS may disallow deductions which have been made but cannot be substantiated. As a result, you might have to make an additional tax payment. Also, an adequate record system simplifies the preparation of a tax return and reduces the possibility of an inadvertent error which could raise a suspicion of willful negligence or fraud. Typically, the records retained to show the accuracy of a tax return would include the following, along with all other books, vouchers and documents which you would use to show that the return is correct:

- Daily summary of cash receipts.
- Monthly summary of cash receipts.
- Checks disbursement journal.
- Depreciation record.
- Employee compensation record.
- Business checkbook.

C**How Long Should Income Tax Records Be Retained?****1****Limitations on Assessments**

In general, the Internal Revenue Service must assess any tax within three (3) years after the return was filed. However, where there is a “substantial omission” of items of gross income (defined as the omission of an amount which is in excess of 25 percent of the amount of gross income stated in the return), tax may be assessed at any time within six (6) years after the return was filed. Moreover, in the case of a false or fraudulent return, the IRS can assess tax at any time, and it can seek criminal prosecution for up to six (6) years. Therefore, it is advisable to save federal income tax records for a minimum of seven (7) years after the tax return is filed.

2**Records Showing Tax Basis of Property**

Keep records that verify your tax basis in property for as long as they are needed to establish the basis of original or replacement property. At a minimum, however, retain these records for seven (7) years after the disposition of the property is reported for tax purposes. Sometimes, Congress enacts laws giving relief to taxpayers in certain situations, and these records may be necessary to demonstrate your eligibility.

3**Tax Returns**

Copies of filed tax returns should be retained *indefinitely*.

D**Federal Employment Tax Records****1****Employers generally are responsible for three categories of tax records with regard to their employees:**

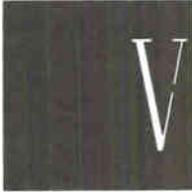
- records of income tax withheld from employees’ wages and deposits of the tax with the Government;
- records of the employer’s payments under the Federal Unemployment Tax Act (“FUTA”); and
- records of amounts paid by the employer and his or her employees under the Federal Insurance Contribution Act, or Social Security.

2**Employment tax records**

Employment tax records must be retained for a period of four (4) years after the tax becomes due or is paid, whichever is later.

E**State Income Tax Records**

The records you retain to support your federal income tax return in most cases will be adequate for purposes of state income taxes as well. Some states, however, permit additional assessments to be made after the three year limitation applicable to federal income taxes, and a few states do not have a statute limiting the period in which additional assessments can be made. The local office of your state tax commissioner can provide you with the record retention requirements for your particular state. Appendix C contains the addresses of each of the state tax commissioners.



EMPLOYER/EMPLOYEE RECORDS



Safety and Health Recordkeeping (OSHA)

Federal regulations under the Occupational Safety and Health Act (OSHA) impose a requirement on employers to maintain records of job related injuries and illnesses. 29 C.F.R. § 1904.15. Employers with ten (10) or fewer employees are not required to maintain records under the OSHA injury/illness recordkeeping system, excluding reports concerning fatalities and accidents and a log of occupational injuries and illnesses. 29 C.F.R. §§ 1904.2. Regardless of the number of employees, however, an employer may be selected by the federal Bureau of Labor Statistics or related state agency for inclusion in an annual sample survey. All OSHA records must be retained for a period of at least five (5) years. 29 C.F.R. § 1960.73.

The following are the recordkeeping obligations applicable to most broadcasters:

- Obtain and keep on file a report on every occupational injury or illness (injury requiring medical treatment other than first aid). 29 C.F.R. § 1904.2.
- Record each injury on OSHA Form 200 according to the instructions provided and retain a copy of the form. 29 C.F.R. § 1904.2.
- Prepare a supplementary record of occupational injuries and illnesses for recordable cases on either OSHA Form 101 or workers' compensation reports information. The record should be completed within six (6) working days from the date that information is received that an injury or illness has occurred. 29 C.F.R. §§ 1904.4, 1960.68.
- Every year, prepare the Annual Summary (OSHA Form 200); post it no later than February 1, and keep it posted until March 1. 29 C.F.R. §§ 1904.5, 1960.69.
- Post the OSHA required notices where all employees can see them. 29 C.F.R. § 1903.2.

Records maintained by an employer and reports submitted in accordance with the requirements of an OSHA-approved state safety and health program are regarded as compliance with OSHA Form 200.

B

Personnel Records

1

General Considerations

A successful defense against an employment discrimination charge may depend upon the consistent application of the broadcaster's employment policies. An employer who has clearly spelled out and carefully adhered to rules of conduct will be in a far better position to defend a discrimination charge, whether the allegation is one of discrimination by age, by race, or by sex, or a particular employment practice. State and federal agencies, as discussed below, require certain records to be maintained.

The following general suggestions, however, apply to the method of recordkeeping that an employer may wish to use to insure, to the extent feasible, nondiscriminatory employment decisions and a defense against allegations of discrimination.

2

Recruiting and Hiring Records

Broadcast stations should maintain extensive records concerning their affirmative action efforts. In the event of a complaint to the FCC, a principal focus will be upon whether the station has adhered to its FCC Equal Employment Opportunity Program. Accordingly, when vacancies are to be filled, a broadcaster should maintain a memorandum or checklist indicating that the procedures to which the station committed itself in its model equal employment program have been followed.

For example, in connection with recruiting and hiring, a broadcast station should retain letters sent to minority recruiting sources listed in the station's Equal Employment Opportunity Program, newspaper and other advertisements which publicize job openings (particularly those in newspapers, magazines or other media listed in the station's Equal Employment Opportunity Program) and documentation concerning other efforts to increase the flow of minority applicants.

Applications for job openings should be retained permanently in the personnel files of employees who are hired and, for unsuccessful applicants, should be maintained for a minimum of one year, the retention period required under the Age Discrimination in Employment Act, discussed further below (Title VII of the Equal Employment Opportunity

Act requires a retention of the applications for six (6) months after they are submitted or acted upon.)

Generally, stations will want to maintain current applications for employment based upon the particular job or job group to which the application is directed. To avoid stale applications, it is generally preferable to state clearly on the application form that applications for employment remain active only for sixty (60) days. In this way, applicants will be on notice that, following the sixty (60) day period, they will have to reapply in order to be considered for a job. Applications should be accepted only when there are job openings. Unsolicited resumes may be discarded immediately.

Where promotions are concerned, an employer will want to retain sufficient documentation to defend the selection of a particular employee for a higher level position. This information may come, for example, from evaluations by supervisors or from employee-supplied information on skills and on specific jobs of interest.

In circumstances of involuntary termination, a broadcaster ideally would have on hand supervisory evaluations and records of the station's discipline system verifying the objective factors resulting in the termination.

Existing personnel records may contain extraneous information that could be prejudicial to the employee or the company. To maintain a more effective personnel file system, employers should review periodically their personnel records to eliminate improperly included material. In particular, consideration should be given to various state privacy laws which govern the collection and the disclosure of information on employees. In some jurisdictions, employees may have a right to review personnel files and to challenge the accuracy of the information they contain.

Specific employment record retention requirements of federal regulations and statutes are discussed below.

The EEOC administers Title VII of the 1964 Civil Rights Act, the Equal Pay Act, and the Age Discrimination in Employment Act (ADEA). The regulations under these statutes contain record retention requirements which apply to broadcasters who employ a minimum number of people. The requirements are discussed below. These requirements are in addition to the EEO reporting standards of the FCC. Broadcasters also may be subject to state EEO laws and regulations which impose further reporting and records retention requirements.

All broadcasters are required to post notices outlining employees' and job applicants' rights under the various employment statutes. The notices must be posted in a place accessible to employees and job applicants. The notice is on a form specified by the agency and made available to employers at no cost.

The EEOC and Office of Federal Contract and Compliance Programs have developed a joint poster which consolidates the notice requirements for those statutes under their jurisdiction. Certain states may also have notice posting requirements. It is important that an employer post all required notices. If it does not, an employee may be able to file a charge against an employer long after the time limit which otherwise would be imposed.

3 Records Required Under ADEA

a Applicability

The ADEA record requirements apply generally to employers with 20 or more employees. No particular form of records is required. 29 C.F.R. § 1627.2.

b Records Which Must Be Kept

The employer must retain for three (3) years after employment ceases records for each employee which contain the following information concerning the employee:

- i** name;
- ii** address;
- iii** date of birth;
- iv** occupation;
- v** rate of pay; and
- vi** compensation earned each week. Normally, this information already would be on file for current employees. 29 C.F.R. § 1627.3(a).

c Records Which Must Be Retained If Made or Used

In addition to the records which an employer must make and retain, ADEA regulations require that records relating to the following personnel actions must be retained for a period of one year after the person-

nel action to which the record relates if the employer makes or uses any of these records during the course of his or her business (29 C.F.R. § 1627.3(b)(1):

- i** job applications, resumes or other inquiries about employment if submitted to an employer in response to an advertisement or other notice of existing or anticipated job openings, including records pertaining to the failure or refusal to hire any individual;
- ii** promotion, demotion, transfer, selection for training, layoff, recall, or discharge of any employee;
- iii** job orders submitted by an employer to an employment agency or labor organization for recruitment of personnel for job openings;
- iv** test papers completed by applicants or candidates for any position which disclose the results of any employer-administered aptitude or other employment test considered by the employer in connection with any personnel action;
- v** the results of any physical examination where the examination is considered by any employer in connection with any personnel action; and
- vi** any advertisements or notices to the public or to employees relating to job openings, promotions, training programs, or opportunities for overtime work.

d Employee Benefit Plans

You must keep on file a copy of any employee benefit plans, such as pension and insurance plans, and a copy of any seniority systems and merit systems which are in writing. 29 C.F.R. § 1627.3(b)(2).

- i** These records must be retained for as long as the benefit plan is in effect and for at least one year after a plan is terminated.
- ii** If you have a benefit plan which is not in writing, you must keep on file a memorandum which:
 - outlines the plan or systems;
 - tells how the plan has been explained to employees; and
 - includes notations about any changes or revisions in the plan.

e Preemployment Records of Temporary Employees

A shorter retention period applies to application forms and other preemployment records of applicants for positions which are temporary—provided that the applicant knows the position is temporary. These records must be kept for 90 days after the personnel action to which the record relates. 27 C.F.R. § 1627.3(b)(3).

f Enforcement Actions

If an enforcement action is begun, the Equal Employment Opportunity Commission (EEOC) will direct records to be retained beyond the otherwise applicable period.

4 Other Requirements of the EEOC**a Applicability**

The EEOC regulations under Title VII do not require that specific records be kept, although the EEOC has indicated that it may require the specific categories of records in the future. Employers with 100 or more employees or with 50 or more employees and federal contracts or subcontracts totaling at least \$50,000 per year are required to submit an annual report (EEO-1). 41 C.F.R. § 601.7(a). Parent corporations must file the reports even if individual station employee totals do not exceed the threshold figure. Generally, an employer with multiple establishments, such as broadcast stations at different locations, will file a headquarters report, a consolidated report and a separate report for each establishment employing more than 50 persons. These reports may be completed on the basis of a visual inspection of the workplace. The EEOC recommends that any permanent records of employee racial or ethnic identity be kept separate from the employee's basic personnel forms and other records that would be examined in making personnel decisions.

b Records Which Must Be Retained If Made or Used

Any personnel or employment record which an employer makes or keeps must be retained for at least six months after the date of any personnel action to which the record relates or the date the record is made, whichever is later. The personnel records of any individual who is terminated must be retained for at least six (6) months after termination. If a charge of discrimination is filed, all personnel records "relevant to the charge" must be retained until the charge is resolved. Records "relevant to the charge" include:

- i** records relating to the person filing the charge;
- ii** records relating to persons that held positions similar to or positions sought after by the aggrieved person; and
- iii** applications or test papers of the person filing the charge and any persons who applied for or obtained similar positions.

c EEOC Guidelines

In addition to the record retention rules in the EEOC Regulations, the EEOC has issued "Uniform Guidelines on Employee Selection." Although in form the Guidelines are voluntary, they include record keeping requirements. These standards indicate the records which the EEOC will expect to find if it investigates an employer. It is uncertain whether the failure to keep these records would be a violation in itself. In some instances, however, the absence of these records may lead the EEOC to pursue a discrimination charge that otherwise would have been dropped.

- i** **Employers with fewer than one hundred (100) employees should maintain records of:**
 - the number of persons hired, promoted, and terminated for each job by sex, and where appropriate, race and national origin;
 - the number of applicants for hire and promotion by sex, and, where appropriate, race and national origin; and
 - the selection procedures used. These records should be obtained for each race or national origin group constituting more than 2 percent of the area labor force. If the employer believes that the selection method has an adverse impact on any particular group, the employer should retain evidence of the validity of the selection procedure.
- ii** **Employers with one hundred (100) or more employees should maintain records of:**
 - information showing whether the total selection process has an adverse impact on any particular group (sex, race, national origin). (The guidelines call for a determination to be made at least annually as to whether a selection process has an adverse impact on any group comprising 2 percent or more of the area labor force.); and

- which components, if any, of the total selection process have an adverse impact on a particular group.

d Retention Periods

The records outlined above are to be retained on an annual basis, unless the data shows an adverse impact on a particular group. If the data shows an adverse impact, the records are to be retained for two years after the adverse impact has been eliminated. 29 C.F.R. § 1607.15A(2)(b).

C Time and Pay Records Under the Fair Labor Standards Act (FLSA)

1 Applicability

The FLSA sets minimum wage, overtime pay, equal pay, and child labor standards for employment subject to its provisions. The act covers every employee engaged in interstate or foreign commerce or in the production of goods for interstate or foreign commerce, and employees in certain other enterprises. The FLSA record retention requirements will apply to virtually all broadcast stations.

2 Required Records

Every covered employer must keep certain records about each worker who is entitled to minimum wage and overtime pay under FLSA. The act requires no particular form for the records, but requires that the records include certain identifying information about the employee and data about the hours worked and the wages earned, and that this information be accurate. Pursuant to 29 C.F.R. § 516.12, certain employees in the broadcasting industry are exempt from overtime pay requirements. These employees include any announcer, news editor, or chief engineer employed by a radio or television station, the major studio of which is located:

- in a city or town with a population of 100,000 or less, except where such city or town is part of a standard metropolitan area which has a total population in excess of 100,000, or;
- in a city or town which with a population of 25,000 or less, which is part of a standard metropolitan area but at least 40 miles from the principal city in such area.

Employers covered by the FLSA must record and retain records containing the following information concerning its employees (29 C.F.R. § 516.2):

a Identification Records

- i** employee's full name and social security number;
- ii** home address, including zip code;
- iii** birthdate, if younger than 19 years old; and
- iv** sex and occupation of the employee.

b Hours

- i** time of day and day of week when employee's work week begins;
- ii** hours worked each day; and
- iii** total hours worked each work week.

c Wages

- i** For Non-Exempt Employees:
 - the basis on which the employee's wages are paid (e.g., \$7.00/hour);
 - regular hourly pay rate for any week when overtime is worked;
 - amount and nature of each payment excluded from the "regular rate" (i.e., bonuses, gifts, paid holidays and vacations, travel expenses, overtime, etc.). 29 C.F.R. § 516.2(6)(iii);
 - total daily or weekly straight-time earning (including wages earned during overtime hours minus the excess compensation);
 - total overtime earnings for the work weeks (i.e., excess above straight-time or above wages earned during overtime worked);
 - all additions to or deductions from the employee's wages for each pay period;
 - total wages paid each pay period; and
 - date of payment and the pay period covered by the payment.

ii For Exempt Employees:

- total daily or weekly straight time earning (including wages earned during overtime hours minus the excess compensation); and
- all additions to or deductions from the employee's wages for each pay period;
- the basis on which the employee's wages are paid (such as the monetary amount paid, expressed as earnings per hour, per day, per week, etc.).

Most of the information required by FLSA is the kind of information that any company would usually keep in the ordinary course of business. Many office employees work on a fixed schedule from which they seldom vary. In such cases, the employer may keep a record showing the exact schedule of daily and weekly hours that the worker is expected to follow and merely indicate that the worker did follow the schedule. When a worker is on a job for a longer or shorter period of time than the schedule shows, the employer should record the exact number of hours that the worker actually worked.

3 **Retention Periods**

- All records containing the information required above should be retained for at least three (3) years. 29 C.F.R. § 516.5.
- The records on which wage and hour computations are based must be retained for at least three (3) years. These records would include employment and earnings records such as time cards, work time schedules, and records of additions to or deductions from wages.
- Records that must be kept for two (2) years include records an employer makes explaining the basis for paying any wage differential to employees of the opposite sex doing substantially equal work in the same establishment; basic employment and earnings records; wage rate tables; worktime schedules; orders, shipping and bills records; records of additions or deductions in wages paid. 29 C.F.R. § 516.6(d).
- Records required to be kept under the FLSA should always be open for inspection by representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor. 29 C.F.R. § 516.7. Copies of these records may be kept on microfilm if the employer is willing to provide facilities for viewing them.

D Immigration Reform and Control Act of 1986

For all employees hired after November 6, 1986, employers and employees must jointly complete Immigration & Naturalization Service Form I-9, an employment eligibility verification form. Each employee must provide his or her:

- complete name;
- address;
- date of birth;
- Social Security number; and
- employee immigration status (citizen, permanent resident, etc.).

In addition, each employer must complete its section by:

- examining evidence of employee identity and employment eligibility (i.e., birth certificate or U.S. passport); and
- recording the document's identification number and expiration date.

The complete form I-9 must be retained by the employer for three years after the date of hiring.

Because the Immigration Reform and Control Act is relatively new, recordkeeping and reporting obligations may change as implementing regulations are issued.





CORPORATE AND OTHER BUSINESS RECORDS

State law imposes upon corporations the duty and responsibility to maintain books and records. The corporation's articles may impose additional requirements; ignoring those requirements may call into question the validity of actions taken by the officers and directors. A corporation, in any event, could scarcely function without basic records of its directors and shareholders and their actions. Specific legal requirements for corporate books and records vary from jurisdiction to jurisdiction; in some instances they are imposed by statute and in others by case law. Core corporate documents generally include the following:

- Capital stock ledger or other records of stock ownership and transfer,
- Articles of incorporation and amendments,
- Bylaws and amendments,
- Minutes of meetings of shareholders,
- Minutes of meetings of the board of directors,
- Records of corporate elections,
- Proxies, and
- Records establishing qualification to do business in a state other than that in which the corporation is incorporated.

Generally, these core records of corporate existence and ownership will be retained as permanent records.

Whether or not incorporated, the owner of a business will keep a wide variety of records for its own purposes. For a broadcast station, these may include:

- Deeds to real estate,
- Copyright registrations,
- Trademark registrations,
- Mortgage and other financial documents,
- Financial reports,
- Contracts and leases, and
- Insurance records.

These records generally do not present the difficulties of recordkeeping requirements imposed by statute or regulation. Generally, the records are retained as long as they are useful to preserve and document the station's legal rights. Thus, deeds to real estate, trademark, copyright and insurance records will be retained indefinitely. Expired contracts, leases and the bulk of a station's financial records will be retained for the applicable period for limitations of actions.



APPENDIX

SAMPLE RECORD RETENTION SCHEDULE FOR A BROADCAST STATION

This sample schedule illustrates one balancing of the need to retain and the need to discard. An individual station's particular circumstances may call for a different balancing. "P" stands for "perpetual" in the following schedule.

I

FCC RECORDS

A

Public File

1

Retain (a) while an application is pending and thereafter until final FCC action on the second renewal application after the renewal application for the license term during which the item was placed in the public file; or (b) in the case of a contract or agreement, until the conclusion of the license term during which the contract or agreement expired.

Applications and Application Materials:

- Construction Permit
- Renewal of License
- Transfer of Assignment
- Extension of Time to Construct New Station
- Change Affecting Program Service
- Statement Concerning Petitions to Deny an Application
 - Ownership Information
 - Ownership Reports
 - Documents Relating to Ownership and Control
 - Management Agreements
 - Network Affiliation Agreements (Television)
- Agreements with Citizens Groups
- Annual Employments Reports

2

Retain Indefinitely:

FCC Manual "The Public and Broadcasting"

3

Retain for Two (2) Years:

- Political Broadcasting Records
- Documentation on Sponsorship of Programming Addressing a Controversial Issue of Public Importance

- 4** **Retain for Three (3) Years:**
Letters from the Public
- 5** **Retain for the Term of the License:**
Quarterly Issues-Programs Lists
- B** **Other FCC Records**
- 1** **Retain for Two (2) Years:**
Equipment Performance Data
Station Logs (or until FCC notification if reflecting communications incident to a disaster or if the subject of a claim, complaint or investigation)
“Want Ad” Sponsors
- 2** **At a Minimum, Retain During their Period of Effectiveness for FCC Purposes:**
Station Licenses
Designation of Chief Operator
Agreements with Chief Operator Serving on Contract Basis
Written Consent to Rebroadcast Another Station’s Programming
Tower Sharing Agreements
Contracts with Time Brokers
Time Sales Contracts for Four or More Hours Per Day
Contracts with Engineering Personnel
FCC Subchannel Leasing Agreements
Applications to Modify Transmission Systems on FCC Form 302
AM Technical Data required under § 73.1225(d) (impedance measurements, field strength measurements, proofs)

II	ACCOUNTING AND TAX RECORDS	YEARS
	(All time periods in this section are for the period of time after the filing of the tax return for the year to which the record relates.)	
	Accounts Receivable Reconciliation	6
	Bank Statements	3-6

Bank Reconciliation	3-6
Cancelled Checks	
Dividends	4
Payroll	4
Tax Payment	P
Vouchers	4-7
Capital Expenditure Reports	P
Cash Receipts Journal	10-P
Check Register	7
Deposit Slips	3
Depreciation Schedules	P
Expense Distribution Ledger	P
Expense Reports	7
Financial Statements	
Certified	P
Periodic	2
Fixed Assets Records	P
General Ledger	P
Invoices	3-7
Journal Vouchers	P
Music License Reports & Contracts	10
Network Billing Statements	6
Payroll Tax Reports	7
Receivable Ledger	7
Trial Balances - General Ledger	P
Vouchers and Supporting Invoices	
Capital Expenditures	7
Other	7
Petty Cash	7
Travel & Entertainment	7
Voucher Registers	P

III**EMPLOYER-EMPLOYEE RECORDS****Years****A****Payroll Records**

Payroll Tax Reports	10
Authorizations for Change in Payrolls (After Completion)	3
Earnings Histories	P
Employee Earnings Record	P
Payroll Journal Sheets	7
Salary Summaries	3
Time Cards	7

Wage & Tax Statement (W2)	P
Withholding Exemption Certificates (W4) (After Completion)	3

B Personnel Records

Accident Reports and Logs (OSHA Forms)	6
Applications for Employment Employees (After Termination)	3
Non-Employees	2
Employee Earnings Register or Records	10-P
Employee Withholding Statements (After Termination)	4-10
Pension Records	
Pension Plan and Amendments	P
Records Showing Employee Eligibility for Pensions	P
Personal Information	
Information as to Employees and Former Employees Necessary to Administration of Pension	P
Records of Authority to Pay Pension	P
Employment Contracts (After Termination)	6-10
Personnel Records of Former Employees	
Authorization for Deductions From Payroll Check (After Authorization Becomes Ineffective)	3
Employee Insurance Records	10-P
Employee Official Personal File (After Termination of Employee)	6
Workmen's Compensation Claims (After Completion)	10
Job Description	P
Evaluation File	P
Labor Agreements or Contracts	P

IV CORPORATE AND OTHER BUSINESS RECORDS

Annual Reports	P
Articles or Corporate Charter; Bylaws	P
Audit Reports	P
Audit Workpapers	
Capital Stock Ledger	P
Corporate Minute Book	P
Financial Statements	P
Incorporation Documents	P
Proxies	P
Stock Transfer Ledger	P
Records of Corporate Elections	P
Records of Qualification to Do Business	P

V OTHER**A CREDIT & COLLECTION**

Credit Information File	1
Policy	P
Promissory Notes (After Payment)	3
Records, Reports and Authorization for Writing Off Uncollectible Accounts	10
Revocations	4

B Miscellaneous

Blueprints; Technical Drawings	P
Copyright	P
Deeds or Contracts Concerning Real Estate	P
Insurance	
Expired Policies	10
Employee Insurance Records	10-P
Leases (After Expiration)	10
Music Licensing Report and Contracts	10
Trade Mark Registration Applications	P
Mortgages (After Completion)	5
Patents	P
Records of Lawsuits and Other Claims—After Settlement or Final Decision	6-P





APPENDIX

INTERNAL REVENUE SERVICE RULING ON MICROFILMED RECORDS

Rev. Proc. 81-46

SEC. 1. PURPOSE

.01 The purpose of this revenue procedure is to update Rev. Proc. 76-43, 1976-2 C.B. 667, which sets forth the conditions under which microfilm (including microfiche) reproduction of general books of account will be considered books and records within the meaning of section 6001 of the Internal Revenue Code. General books of account which include cash books, journals, voucher registers, ledgers, etc., and supporting records of detail.

SEC. 2. CHANGES

.01 Previous sections 3.02 and 3.03 requiring (1) permission from the Internal Revenue Service to establish a microfilm system and (2) the Service's review of such system have been eliminated.

.02 Section 5.01 revises previous section 4.01 to eliminate specific standards of microfilm systems.

.03 Section 4.03 has been added to provide that those taxpayers considered not in compliance with this revenue procedure may be subject to all applicable penalties under subtitle F of the Code.

SEC. 3. BACKGROUND

.01 Rev. Rul. 75-265, 1975-2 C.B. 460, holds that microfilm reproduction of general books of account and supporting records of detail will be considered books and records within the meaning of section 6001 of the Code when such books are maintained in accordance with Rev. Proc. 75-33, 1975-2 C.B. 559. Rev. Proc. 75-33 was superseded by Rev. Proc. 76-43.

.02 In undertaking a system of micrographic reproduction of books and records, the taxpayer is responsible for the integrity and availability of the books and records, and for a quality that is sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown in any return of tax or information.

.03 If a taxpayer uses microfilm, books, records, statements, and returns to which section 6001 of the Code applies, they are required to be authentic, accessible, and readable.

SEC. 4. PROCEDURE

.01 Taxpayers who want to keep books and records on microfilm must meet the requirements set forth in section 5 of this revenue procedure (1) if they have a micrographic system that includes the ability to produce records on microfilm directly on-line from the computer or off-line from magnetic tape, or (2) if they have records photographed onto microfilm from original documents, "hard copy" printouts, etc.

.02 Taxpayers whose micrographic systems do not meet the requirements of section 5 will be considered not in compliance with section 6001 of the Code and section 1.6001 of the Income Tax Regulations.

.03 Taxpayers whose micrographic systems are found to be not in compliance with this revenue procedure may be subject to all applicable penalties under subtitle F of the Code.

SEC. 5. REQUIREMENTS

.01 The following requirements apply to microfilm:

1. Taxpayers must set forth in writing the procedures governing the establishment of a microfilm system, and the individuals who are responsible for maintaining and operating the microfilm system with appropriate authorization from the Board of Directors, general partner(s), or owner, whichever is applicable;
2. The microfilm system must be complete and must be used consistently in the regularly conducted activity of the business;
3. Taxpayers must establish procedures with appropriate documentation so the original document can be followed through the micrographic system;
4. Taxpayers must establish internal procedures for inspection and quality assurance;
5. Taxpayers are responsible for the effective identification, processing, storage, and preservation of microfilm, making it readily available for as long as the contents may become material in the administration of any Internal Revenue law;
6. Taxpayers must keep a record of where, when, by whom, and on what equipment the microfilm was produced;
7. When displayed on a microfilm reader (viewer) or reproduced on paper, the material must exhibit a high degree of legibility and

readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers;

8. A detailed index of all microfilmed data must be maintained and arranged in a manner that permits the immediate location of any particular record;

9. All microfilming and processing duplication, quality control, storage, identification, and inspection must meet industry standards as set forth by the American National Standards Institute, National Micrographics Association, or National Bureau of Standards;

10. The taxpayer must make available upon the Service's request a reader/printer in good working order at the examination site for reading, locating, and reproducing any record maintained on microfilm; and

11. If any part of the taxpayer's books and records are maintained in any machine-sensible data medium (for example, magnetic tape or magnetic disk) prior to microfilming, the taxpayer must contact the local District Director to get an automatic data processing records evaluation under Rev. Rul. 71-20, 1971-1 C.B. 392.



APPENDIX

STATE TAX COMMISSIONERS

ALABAMA	Commissioner of Revenue Department of Revenue Montgomery, Alabama 36130
ALASKA	Commissioner of Revenue Department of Revenue Juneau, Alaska 99811
ARIZONA	Department of Revenue Phoenix, Arizona 85007
ARKANSAS	Department of Finance Administration Division of Revenues Little Rock, Arkansas 72203
CALIFORNIA	State Board of Equalization Sacramento, California 95814
COLORADO	Department of Revenue Denver, Colorado 80261
CONNECTICUT	Department of Revenue Services Hartford, Connecticut 06115
DELAWARE	Department of Finance Wilmington, Delaware 19801
D.C.	Department of Finance and Revenue Washington, D.C. 20001
FLORIDA	Department of Revenue Tallahassee, Florida 32304
GEORGIA	State Revenue Commissioner Atlanta, Georgia 30334
HAWAII	Department of Taxation Honolulu, Hawaii 96809
IDAHO	State Tax Commission Boise, Idaho 83722
ILLINOIS	Department of Revenue Springfield, Illinois 62708
INDIANA	Department of Revenue Indianapolis, Indiana 46204

IOWA	Department of Revenue Des Moines, Iowa 50319
KANSAS	Department of Revenue Topeka, Kansas 66625
KENTUCKY	Revenue Cabinet Frankfort, Kentucky 40620
LOUISIANA	Department of Revenue and Taxation Baton Rouge, Louisiana 70821
MAINE	Bureau of Taxation Augusta, Maine 04330
MARYLAND	State Comptroller Annapolis, Maryland 21401
MASSACHUSETTS	Department of Revenue Boston, Massachusetts 02204
MICHIGAN	Department of Treasury Revenue Division Lansing, Michigan 48922
MINNESOTA	Department of Revenue St. Paul, Minnesota 55145
MISSISSIPPI	State Tax Commission Jackson, Mississippi 39205
MISSOURI	Department of Revenue Jefferson City, Missouri 65105
MONTANA	Department of Revenue Helena, Montana 59620
NEBRASKA	Department of Revenue Lincoln, Nebraska 68509
NEVADA	Tax Commission Carson City, Nevada 89710
NEW HAMPSHIRE	Department of Revenue Administration Concord, New Hampshire 03301
NEW JERSEY	Department of the Treasury Trenton, New Jersey 08625
NEW MEXICO	Taxation and Revenue Department Santa Fe, New Mexico 87509
NEW YORK	Department of Taxation and Finance Albany, New York 12226
NORTH CAROLINA	Department of Revenue Raleigh, North Carolina 27640

NORTH DAKOTA	Tax Commissioner Bismarck, North Dakota 58505
OHIO	Department of Taxation Columbus, Ohio 43215
OKLAHOMA	Tax Commission Oklahoma City, Oklahoma 73194
OREGON	Department of Revenue Salem, Oregon 97310
PENNSYLVANIA	Department of Revenue Harrisburg, Pennsylvania 17105
RHODE ISLAN	Department of Administration Providence, Rhode Island 02908
SOUTH CAROLINA	Tax Commission Columbia, South Carolina 29214
SOUTH DAKOTA	Secretary of Revenue Pierre, South Dakota 57501
TENNESSEE	Department of Revenue Nashville, Tennessee 37242
TEXAS	Comptroller of Public Accounts Austin, Texas 78774
UTAH	Tax Commission Salt Lake City, Utah 84134
VERMONT	Commissioner of Taxes Montpelier, Vermont 05602
VIRGINIA	Department of Taxation Richmond, Virginia 23282
WASHINGTON	Department of Revenue Olympia, Washington 98504
WEST VIRGINIA	State Tax Department Charleston, West Virginia 25305
WISCONSIN	Department of Revenue Madison, Wisconsin 53708
WYOMING	State Board of Equalization Cheyenne, Wyoming 82002



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Mr. Krasnow has served as Senior Vice President and General Counsel of the National Association of Broadcasters. He holds a Doctorate of Jurisprudence from Harvard Law School and a Masters of Law from Georgetown University. He is Treasurer of the Broadcast Capital Fund, Washington Counsel for the Broadcast Financial Management Association and a partner in the Washington, D.C. law firm of Verner, Lipfert, Bernhard, McPherson and Hand. Mr. Krasnow is co-author of three books including *Buying or Building A Broadcast Station*, and *101 Ways To Cut Legal Fees and Manage Your Lawyer*. He has been described the *Legal Times* as "a dean of the Washington communications bar" and by *American Film Magazine* as a "superlawyer of communications."



