

Legal Edge

Record Retention—Reason & Risk

by Kent J. Pagel

An update on how long you are required to keep accounting and employment documentation.

What to keep in terms of records and how long to keep them are two questions commonly asked of me by component manufacturers. This is the case even if the manufacturer keeps many of its records digitally as they still retain a great deal of hard copy records and generally have no plan or system in place for discarding such records.

You may think the answer to these questions could be easily found under particular state law. That is not the case however. No matter the state you conduct business in, there is no single statute of limitations for the many categories of records component manufacturers hang on to. And where states do impose rules or suggestions, they may not correspond with the federal requirements and seem to change from year to year.

The federal requirements also vary tremendously, do not apply to all types of records, and may even contradict themselves from agency to agency. For example—OSHA requires that records of job-related injuries and illnesses be kept for five years; the Equal Employment Opportunity Commission (EEOC) stipulates that documents about job applicants and personnel records be kept from one to three years; and the Department of Health and Human Services requires that certain records be held for six years. The IRS also imposes record retention requirements of up to seven years for certain financial records and some of the Small Business Administration (SBA) recommendations actually conflict with the IRS requirements.

The uncertainty cannot be resolved either through an online search or by reviewing published treatises. A Google search will quickly lead you to an overwhelming number of suggested policies and far too many misguided suggestions. Treatises can be found, but they are primarily geared to providing guidance to professionals who can in turn advise their clients on record retention for a fee.

When it comes to record retention philosophies, some manufacturers attempt to avoid adverse consequences and hang on to anything and everything forever—just to err on the safe side. This strategy may prove effective, assuming they have kept good records and can easily locate them when needed. On the other hand, such companies should be prepared for their records stockpile to grow and the expense of housing them to increase. Finally, keeping too much information can also increase a company's future litigation risk.

The other side of the extreme are manufacturers that trash everything early and often. This practice can be dangerous if a record should legally be retained and especially in the event such company becomes the subject of a regulatory inquiry or litigation where failing to produce records may be the difference between winning or losing.

However confusing this topic can be, component manufacturers should know that it is possible to strike a balance between saving too much and keeping too little. I believe when it comes to record retention, a manufacturer ought to have a foundation in place that recognizes generally state and federal legal requirements and at the same time analyzes what to keep and for how long from the standpoint of

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“Lessons or Losses”

The Enron episode of 2001 demonstrates that potential disaster awaits corporations with no or poor record retention policies. In the wake of Enron, many are urging that a mere listing of document types and how long they are to be kept is not a document retention policy! They would suggest at a minimum a record retention policy would also include the following.

- The policy should be written, dated, and disseminated to all employees.
- The policy should be written in plain English—simple words are needed because the policy will probably be lengthy.
- Individual creators of records should not be responsible for determining the retention or the destruction of individual records. All documents should be maintained and destroyed in accordance with the retention standards adopted by the company.
- A company should schedule regular audits of the employees' use of the policy to ensure compliance.
- The company should schedule at least annual purging periods—when employees review records in their control and destroy those that are beyond their retention life.
- The policy should include a procedure for notifying all employees with dispatch if certain categories of documents are exempted by events such as pending, threatened, or reasonably foreseeable, litigation.
- A good, preexisting document retention policy will have destroyed all unnecessary records before the litigation starts and will be able to locate, after the litigation starts, the relevant records that the company has retained.
- The company should set procedures for regular review, revision and update of the policy.

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reason and risk. Let's take a look at some examples to see what this means.

EXAMPLE: The IRS may choose to audit any income tax return within the federally mandated statute of limitations period. For this reason, companies must maintain tax information for seven years. This timeframe should serve as a benchmark for every company record retention plan.

EXAMPLE: Most who opine on how long a company should retain its insurance policies will support their opinion with a statement that no state or federal law requires a business to retain an insurance policy. In turn they may suggest that a company keep a policy for three years or so. On the other hand those in the know will tell you that if your com-

pany is to ever face a lawsuit years after selling trusses and components, you will be glad if you can easily put your hands on a complete copy of all applicable property and casualty insurance policies. An insurance policy can only help and not hurt a component manufacturer and the costs of storing policies is not that significant. A manufacturer with a well reasoned record retention policy contemplates this reality and will make sure that at least all company property and casualty insurance policies are maintained indefinitely.

EXAMPLE: As with the previous example concerning insurance policies, there is no per se legal requirement on how long a component manufacturer must keep approved truss design and truss placement drawings. On the other hand, retaining approved drawings might be the difference between winning and losing a lawsuit if the issue of approval becomes a fact question. On the other hand, retaining drawings that were submitted to a building designer for approval and never approved might result in a different outcome. How one decides with regard to record retention of approved shop drawings should depend on their knowledge of how good a job their company has done in obtaining approvals.

To guide manufacturers in preparing their own corporate policy, I have developed a sample record retention schedule using my premise of reason and risk (see page 32). Keep in mind this is a guideline only. Go to **Support Docs** at www.sbcmag.info for copy of this guideline listed alphabetically by record type. **SBC**

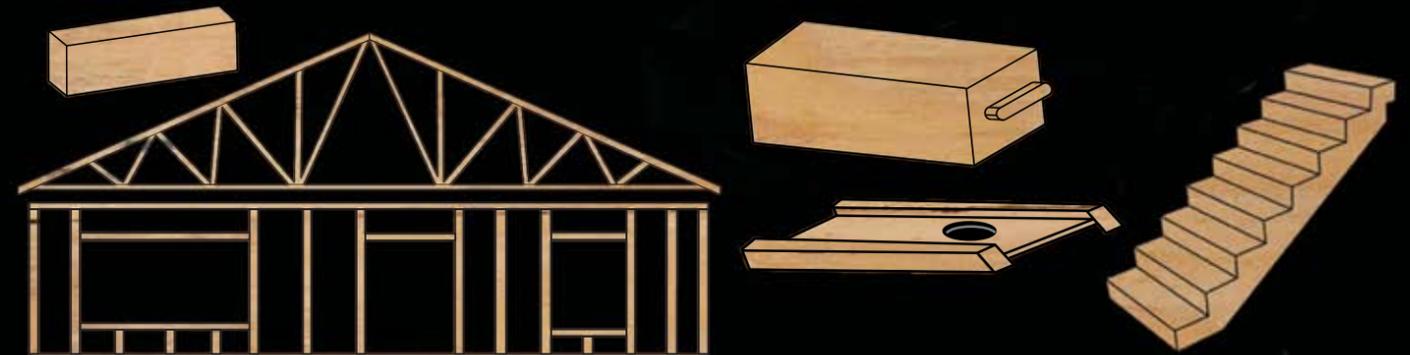
Kent J. Pagel is the President and Senior Shareholder of Pagel, Davis & Hill, a professional corporation. He also serves as the outside counsel for WTCA.

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THE RISKS WON'T CHANGE; THE WAY YOU PROTECT YOURSELF CAN.

Types of Records	Retention Period
Receiving sheets	1 year
Certificates of insurance furnished by company to others	1 year after termination of policy
Correspondence (general, including with customers and vendors)	2 years
Daily production/manufacturing reports	2 years
Duplicate deposit slips	2 years
Employment applications—if employee not hired	2 years
Safety reports	2 years
Promissory notes payable to company	2 years after note is paid in full
Employee job evaluation ratings (after termination)	3 years
Petty cash vouchers	3 years
Workers' Compensation—loss prevention reports, payroll records, and premium worksheets should be kept three years after termination of the policy	3 years after termination of policy
I-9s (after termination)	3 yrs after hire or 1 year after termination, whichever is later
Budgets	4 years
Construction issue paperwork / RFIs /Revision and check sets	4 years
Construction issue plans	4 years
Customer files	4 years
Plant product quality inspections	4 years
Insurance policies—group insurance	4 years after expiration
Certificates of insurance furnished by others to company	4 years after the termination of policy
OSHA logs of job-related injuries and illnesses	5 years
Accounts payable ledgers and schedules	7 years
Accounts receivable ledgers and schedules	7 years
Bank statements	7 years
Checks (canceled, see exceptions below)	7 years
Contracts, mortgages, notes, and leases (expired)	7 years
Delivery tickets	7 years
Electronic fund transfer documents	7 years
Employee personnel records (after termination)	7 years
Employment applications—if employee hired	7 years
Expense analyses and expense distribution schedules	7 years
Freight records	7 years
Inventories of products, materials, supplies	7 years
Invoices	7 years
Invoices from vendors	7 years
Journals	7 years
Notes receivable ledgers and schedules	7 years
Payroll records and summaries, pensions, payroll taxes	7 years
Plant cost ledgers	7 years
Purchasing and related records —inventory and non-inventory items	7 years
Purchase orders	7 years
Sales records	7 years

Types of Records	Retention Period
Scrap and salvage records (inventories, sales, etc.)	7 years
Social Security forms	7 years
Subsidiary ledgers	7 years
Time books/cards	7 years
Unemployment insurance forms	7 years
Vouchers for payments to vendors, employees, etc. (including allowances and reimbursement of employees officers, etc., for travel and entertainment expenses)	7 years
Employer's copy of W-2 earnings statement; W-4 forms; and Withholding tax statements	7 years
Agreements, contracts, leases, and permits	7 years after expiration or termination
Workers' Compensation—accident and claim reports should be kept seven years after termination of the claim	7 years after termination of claim
Accident reports and claims (settled cases)	7 years from settlement
Accident reports and claim records (pending or unsettled)	Until settled
Customer contract originals	10 years
Truss Design and Truss Placement Plan Approvals	10 years
Contracts, mortgages, notes and leases (still in effect)	While in effect
Annual reports	Permanently
Cash books	Permanently
Capital stock and bond records: ledgers, transfer registers, stubs showing issues, options, etc.	Permanently
Checks (canceled for important payments, i.e., taxes, purchases of property, special contracts, etc.)	Permanently
Correspondence (legal and important matters only)	Permanently
Deeds and bills of sale	Permanently
Depreciation schedules	Permanently
Financial statements (end-of-year, other months optional)	Permanently
General and private ledgers (and end-of-year trial balance)	Permanently
Insurance policies—including property and casualty and workers' compensation	Permanently
Licenses	Permanently
Minutes of meetings of the board of directors and stockholders, including by-laws and charter	Permanently
Patents and related papers	Permanently
Property appraisals by outside appraisers	Permanently
Retirement and pension records	Permanently
Tax returns and worksheets, agents' reports, any documents relating to income tax liability	Permanently
Trade mark registrations Trademark registrations and copyrights	Permanently
Union agreements	Permanently

SOURCES:

1. <http://www.sba.gov/gopher/Business-Development/Success-Series/Vol1/Prof/prof11.txt>
2. Internal Revenue Service Publication 583 (1/2007), *Starting a Business and Keeping Records*
3. Pagel, Davis & Hill, PC.



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6300 Enterprise Lane • Suite 200 • Madison, WI 53719
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www.sbcmag.info • admgr@sbcmag.info