

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 13 PUBLIC RECORDS
PART 4 RECORDS MANAGEMENT REQUIREMENTS FOR ELECTRONIC MESSAGING

1.13.4.1 ISSUING AGENCY: State Commission of Public Records and the State Records Administrator
[1.13.4.1 NMAC - Rp, 1.13.4.1 NMAC, 3/31/2015]

1.13.4.2 SCOPE: all state agencies as defined by the Public Records Act, Section 14-3-1 et seq. NMSA 1978.
[1.13.4.2 NMAC - Rp, 1.13.4.2 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.3 STATUTORY AUTHORITY: Public Records Act, Sections 14-3-4 and 14-3-6 NMSA 1978.
[1.13.4.3 NMAC - Rp, 1.13.4.3 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.4 DURATION: Permanent
[1.13.4.4 NMAC - Rp, 1.13.4.4 NMAC, 3/31/2015]

1.13.4.5 EFFECTIVE DATE: March 31, 2015, unless a later date is cited at the end of a section.
[1.13.4.5 NMAC - Rp, 1.13.4.5 NMAC, 3/31/2015]

1.13.4.6 OBJECTIVE: To ensure that electronic messages, and any attachments which may be transmitted with the electronic message, including text messages, social media and e-mail, that are identified as public records, are retained economically and efficiently for as long as they have legal, fiscal, business or historical value.
[1.13.4.6 NMAC - Rp, 1.13.4.6 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.7 DEFINITIONS:

A. “Archives” means the permanent records of the state of New Mexico, which may include government and private collections of the Spanish, Mexican, territorial and statehood periods, assessed to have significant historical value to warrant their preservation by the state of New Mexico.

B. “Attachments” are electronic file(s) sent along with an electronic message.

C. “Disposition” means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

D. “Electronic message” includes, but is not limited to, a text message, social media and e-mail that is created and delivered in an electronic format.

E. “Native format” means the file format that a software application uses to create or save files.

F. “Non-record” means extra copies of documents kept solely for convenience of reference, stocks of publications, transitory records, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency, extra copies of correspondence, preliminary drafts, blank forms, transmittal letters or forms that do not add information, sample letters, and informational files.

G. “Social media” means forms of electronic communication through which users create online communities to share information, ideas, messages and other content (e.g., twitter, facebook, instagram, pinterest, linkedin, etc.).

H. “Transitory” means messages which serve to convey information of temporary importance in lieu of oral communication. Transitory messages are only required for a limited time to ensure the completion of a routine action or the preparation of a subsequent record. Transitory messages are not required to control, support or to document the operations of government.

[1.13.4.7 NMAC - Rp, 1.13.4.7 NMAC, 3/31/2015; A, 11/30/2015; A, 7/15/2016]

1.13.4.8 ABBREVIATIONS:

A. “FRRDS” means functional records retention and disposition schedule.

B. “NMAC” stands for New Mexico administrative code.

C. “NMSA” stands for New Mexico statutes annotated.

[1.13.4.8 NMAC - Rp, 1.13.4.8 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.9 PUBLIC RECORDS: To comply with the Public Records Act, Section 14-3-1 et seq. NMSA 1978, electronic messages must be managed pursuant to established record retention and disposition schedules adopted by the commission and published in 1.21.2 NMAC, Retention and Disposition of Public Records. [1.13.4.9 NMAC - Rp, 1.13.4.9 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.10 MANAGEMENT RESPONSIBILITIES: The development and implementation of an electronic message management program is the responsibility of each agency records custodian, as defined by the Public Records Act, Section 14-3-2 (B) and (I) NMSA 1978. It is also management's responsibility to provide guidance to employees on the proper retention and legal disposition of electronic messages. Agency records management programs must clearly define the roles and responsibilities of users in creating, receiving, categorizing, retaining and disposing or archiving electronic messages. [1.13.4.10 NMAC - Rp, 1.13.4.10 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.11 RETENTION AND SCHEDULING REQUIREMENTS: Electronic messages determined to be a public record shall be classified, filed and retained on the basis of content.

A. Attachments classified as public records shall be categorized under the appropriate record classification identified in 1.21.2 NMAC, Retention and Disposition of Public Records.

B. An electronic message that contains multiple subjects with different retention periods shall be retained according to the longest retention period.

C. An electronic message scheduled as permanent may be transferred to the state archives under the provisions of 1.13.10 NMAC, Records Storage and Access.

D. Non-record electronic messages may be destroyed without the prior approval of the state records administrator.

[1.13.4.11 NMAC - Rp, 1.13.4.11 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.12 IDENTIFYING THE OFFICIAL COPY OF RECORD: An agency policy for managing electronic messages should include directions regarding how to determine the official copy of record. Typically, the official copy is an electronic message received from an outside source, the sender's copy or the final electronic message of a thread discussion.

[1.13.4.12 NMAC - N, 3/31/2015; A, 11/30/2015]

1.13.4.13 FILING ELECTRONIC MESSAGES: Procedures for filing electronic messages will vary based on the agency's needs and the particular hardware and software in use.

A. The department of information technology may provide an agency with a centrally managed enterprise electronic messaging system. However, the department of information technology's system is not designed to be a records management system. Agencies using a department of information technology system must instruct all public officials using the system how to copy public records from their electronic messaging account to a records management system.

B. Electronic messages sent or received from a computer outside a state electronic messaging system that is classified as a public record, shall be transferred to an agency's records management system for proper retention and disposition.

C. Non-records are not required to be retained by an agency and regular deletion should be included in an agency's procedure for management of electronic messages.

D. Electronic systems used to manage electronic messages shall ensure that messages and attachments classified as public records are maintained in their native format until their final disposition and can be accessed, retrieved and read.

[1.13.4.13 NMAC - Rp, 1.13.4.12 NMAC, 3/31/2015; A, 11/30/2015; A, 7/15/2016]

1.13.4.14 DISPOSITION: Electronic messages and attachments that are classified as public records are subject to the provisions in 1.13.10 NMAC, Records Storage and Access and 1.13.30 NMAC, Disposition of Public Records and Non-Records.

A. Electronic messages and attachments, classified as public records, shall not be destroyed without the prior written approval of the state records administrator (1.13.30 NMAC, Disposition of Public Records and Non-Records).

B. Electronic messages potentially relevant to a pending audit, investigation or litigation shall be preserved, even if the retention period has been met.

C. An electronic message that is legally confidential should be marked as confidential.

D. An electronic message that is legally confidential and transferred to the state archives shall be identified as confidential and the legal designation for confidentiality shall be cited.

[1.13.4.14 NMAC - Rp, 1.13.4.14 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.15 [RESERVED]

[1.13.4.15 NMAC - Rp, 1.13.4.15 NMAC, 3/31/2015]

HISTORY OF 1.13.4 NMAC:

History of Repealed Material:

1.13.4 NMAC, Records Management Requirements for Electronic Messaging, filed 6/13/2007 - Repealed 3/31/2015.

[See Attorney General Opinion No. 60-72 for guidance related to transitory records.]