

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 13 PUBLIC RECORDS
PART 30 DISPOSITION OF PUBLIC RECORDS AND NON-RECORDS

1.13.30.1 ISSUING AGENCY: State Commission of Public Records and the State Records Administrator.
[1.13.30.1 NMAC - Rp, 1.13.30.1 NMAC, 11/28/2017]

1.13.30.2 SCOPE: All state agencies and any public entity that use the state records center services.
[1.13.30.2 NMAC - Rp, 1.13.30.2 NMAC, 11/28/2017]

1.13.30.3 STATUTORY AUTHORITY: Public Records Act, Sections 14-3-4 and 14-3-6 NMSA 1978.
[1.13.30.3 NMAC - Rp, 1.13.30.3 NMAC, 11/28/2017]

1.13.30.4 DURATION: Permanent.
[1.13.30.4 NMAC - Rp, 1.13.30.4 NMAC, 11/28/2017]

1.13.30.5 EFFECTIVE DATE: November 28, 2017, unless a later date is cited at the end of a section.
[1.13.30.5 NMAC - Rp, 1.13.30.5 NMAC, 11/28/2017]

1.13.30.6 OBJECTIVE: To establish requirements for the proper and orderly destruction of public records.
[1.13.30.6 NMAC - Rp, 1.13.30.6 NMAC, 11/28/2017]

1.13.30.7 DEFINITIONS:

A. “Chief records officer” means a person designated by an agency’s records custodian to administrate the agency’s records management program, refer to 1.13.12.10 NMAC.

B. “Confidential” means information provided to, created by or maintained by a government agency and that is exempt from release under state or federal laws.

C. “Custodial agency” means the agency responsible for the creation, maintenance, safekeeping and preservation of public records, regardless of physical location.

D. “Degaussing” means the process of removing magnetism from magnetically recorded tape thereby rendering the information unreadable.

E. “Destruction” means the disposal of records of no further operational, legal, fiscal or historical value by shredding, burial, pulping, electronic overwrite or some other process, resulting in the obliteration of information contained on the record.

F. “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).

G. “Functional records retention and disposition schedule” means a rule adopted by the commission pursuant to Section 14-3-6 NMSA 1978 describing the function of records, establishing a timetable for their life cycle and providing authorization for their disposition.

H. “Inactive record” means a record no longer needed to conduct current business but required to be maintained for operational, legal, fiscal or historical purposes until it meets its retention.

I. “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.

J. “On-site destruction” means destruction of records approved by the state records administrator to be destroyed at a location other than the records center.

K. “Permanent records” means records considered unique or so valuable in documenting the history or business of an organization that they are preserved in an archives.

L. “Records” means information preserved by any technique in any medium now known or later developed, that can be recognized by ordinary human sensory capabilities either directly or with the aid of technology.

M. “Records liaison officer” means a person designated by the records custodian to interact with the state commission of public records, refer to 1.13.12.11 NMAC.

N. “**Records management**” means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.

O. “**Recycling**” means the process that recovers the raw materials of a medium allowing for the reuse of various media. Overwriting on magnetic media is a means of recycling.

P. “**Retention**” means the period of time during which records shall be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

Q. “**State archives**” means the principle location within the state records center and archives that maintains, preserves and makes available to the public the permanent and historical records of the state of New Mexico.

R. “**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.

S. “**Trigger event**” means the event which begins the retention period.
[1.13.30.7 NMAC - Rp, 1.13.30.7 NMAC, 11/28/2017; A, 3/13/2018; A, 9/11/2018]

1.13.30.8 ASSIGNMENT OF RESPONSIBILITIES: Section 14-3-4 NMSA 1978 authorizes the commission of public records to appoint a state records administrator to carry out the purposes of the Public Records Act. The state records administrator is responsible for establishing records management programs within state government for the purpose of ensuring the efficient and economical management of public records throughout their lifecycle from their creation, utilization, maintenance, retention, preservation and final disposition.

A. The commission of public records hereby delegates the authority to order the routine destruction of public records, in accordance with adopted records retention and disposition schedules, to the state records administrator.

B. The state records administrator shall prescribe the appropriate method of destruction of public records.

C. The state records center and archives, in accordance with the rules established by the state records administrator and the commission of public records, is the authorized facility for the receipt, storage or disposition of all inactive and infrequently used records of present or former state agencies.

[1.13.30.8 NMAC - Rp, 1.13.30.8 NMAC, 11/28/2017]

1.13.30.9 DISPOSITION OF RECORDS:

A. Agencies shall ensure the proper authorized disposition of their records regardless of format or medium.

B. Records may be destroyed with the written approval of the state records administrator and the written consent of the records custodian, designated chief records officer or records liaison officer of the custodial agency.

C. Records may be transferred to the state archives with the written approval of the state records administrator and the written consent of the records custodian or designated chief records officer of the custodial agency; once the transfer is authorized and the records are in the physical custody of the state archives, the legal custody of the records is vested in the state records administrator.

D. Agencies shall follow rules issued by the state records administrator governing the methods of destruction.

[1.13.30.9 NMAC - Rp, 1.13.30.9 NMAC, 11/28/2017]

1.13.30.10 DIRECT TRANSFER OF RECORDS TO THE STATE ARCHIVES:

A. An agency may transfer records with a retention of permanent directly to the state archives. Records eligible for direct transfer to archives shall be submitted on a form approved by the state records administrator. No direct transfer of records shall occur without the review and approval of the state records administrator.

B. Records transferred directly to state archives shall be accompanied by an itemized records index on a form approved by the state records administrator. A copy of the index for each box shall be placed in the corresponding box. The complete index shall be attached to the request and an electronic copy shall be submitted to the state archives on a format approved by the state records administrator. The shipment box number (i.e., 1 of 10, 2 of 20, etc.) shall be affixed to the boxes prior to delivery to the state archives. All folders in the box shall be clearly labeled and identify the contents of the folder.

C. Records involved in litigation, an audit or investigation are not eligible for transfer to the state archives.

D. Only closed records shall be accepted for transfer to the state archives.
[1.13.30.10 NMAC - Rp, 1.13.30.10 NMAC, 11/28/2017]

1.13.30.11 ON-SITE DESTRUCTION OF RECORDS: On-site destruction of records may occur at the custodial agency's location. For approval of on-site destruction, the records custodian, chief records officer or records liaison officer shall submit a request on a form approved by the state records administrator.

A. The form may be submitted electronically with a valid digital signature issued by the state records administrator.

B. The state records administrator or designee may inspect records prior to approval of on-site destruction.

C. The state records administrator may suspend destruction of records determined to have historical value and, upon approval of the Commission, transfer the records to the state archives.

D. For legal and audit purposes, the agency shall retain a certificate of destruction as proof of the records destroyed. The certificate of destruction shall include, at a minimum, the following information:

(1) For paper records:
(a) place and date of pick up;
(b) printed name and signature of employee(s) performing service;
(c) printed name and signature of witnesses;
(d) number of pounds destroyed/shredded (vendor) or number of boxes (agency certified);

(e) date of destruction/shredding;
(f) identification of company's authorizing agent by name and position;
(g) printed name and signature of official certifying the destruction (vendor or designated records management personnel); and
(h) statement that shredded records cannot be read, interpreted, or reconstructed.

(2) For electronic records:
(a) records classification;
(b) printed name and signature of employee(s) performing destruction;
(c) printed name and signature of record owner;
(d) number of e-records destroyed;
(e) date of destruction;
(f) printed name and signature of official certifying the destruction (designated records management personnel); and
(g) statement that destroyed records cannot be read, interpreted, or reconstructed.

E. Approved methods for on-site destruction of records are as follows:

(1) Records that contain confidential or sensitive information shall be destroyed through a bonded, insured, and national association for information destruction (NAID) AAA document recycling vendor by shredding in such a manner that the information cannot be read, interpreted or reconstructed.

(2) Records that do not contain confidential or sensitive information shall be destroyed by:
(a) recycling by a bonded document recycling vendor;
(b) shredding; or
(c) dumpsite burial.

(3) Records which have been contaminated may be destroyed by:
(a) any of the approved methods described above; or
(b) incineration.

(4) Agencies shall select from the following methods of destruction for electronic records:
(a) erasure from electronic media and all back up media;
(b) overwriting of reusable magnetic media multiple times as recommended by the United States (U.S.) department of defense;
(c) degaussing of the magnetic media; or
(d) physical destruction of the media as recommended by the U.S. department of defense.

[1.13.30.11 NMAC - Rp, 1.13.30.11 NMAC, 11/28/2017; A, 6/12/2018]

1.13.30.12 RECORDS DELIVERED TO THE RECORDS CENTER FOR DESTRUCTION: Agencies storing records at their location may deliver records that have met their retentions to the records center for destruction. For approval to deliver records to the records center for destruction, the records custodian, chief records officer or records liaison officer shall submit a request on a form approved by the state records administrator.

A. The form may be submitted electronically with a valid digital signature issued by the state records administrator.

B. The state records administrator or designee may inspect records prior to the acceptance of the shipment for destruction.

C. The state records administrator may suspend destruction of records determined to be of historical value and, upon approval of the Commission, transfer the records to the state archives.

D. The approved request for destruction shall match items delivered to the records center for destruction. When a discrepancy is found between what is listed on the approved request and what is delivered to the records center, the shipment shall be rejected and the agency shall remove the shipment from the records center.

E. Agencies utilizing the records centers for destruction services shall use boxes equivalent to 15" x 10" x 12" in size.

F. Records destroyed through the records center shall be assessed a fee per box. Agencies shall have a purchase order in place prior to delivery of the shipment to the records center. For information on the fee schedule, refer to 1.13.2 NMAC.

G. Destruction, returns and storage services will be suspended if the agency has an invoice that is 90 days or more past due.

[1.13.30.12 NMAC - Rp, 1.13.30.12 NMAC, 11/28/2017; A, 6/12/2018]

1.13.30.13 DISPOSITION OF RECORDS STORED IN THE RECORDS CENTER:

A. Upon receiving a disposition authorization notice for records stored in the records center, only the custodial agency's records custodian or chief records officer shall review the report of records to be destroyed or transferred to archives and respond by the established deadline. Records liaison officers do not have authority to sign the disposition authorization notice for records stored at the records center.

B. Failure to return a completed disposition authorization notice by the established deadline shall result in a storage fee for records that are eligible for destruction. In addition, the return of withdrawn boxes, storage and disposition services will be suspended. For information on the fee schedule, refer to 1.13.2 NMAC.

C. Records destroyed through the annual destruction process shall be assessed a fee per box. For information on the fee schedule, refer to 1.13.2 NMAC.

D. Destruction, returns and storage services will be suspended if the agency has an invoice that is 90 days or more past due.

[1.13.30.13 NMAC - Rp, 1.13.30.13 NMAC, 11/28/2017; A, 6/12/2018]

1.13.30.14 DESTRUCTION OF NON-RECORDS: Destruction of non-records is the sole responsibility of the custodial agency and does not require the prior approval of the state records administrator. That responsibility includes identifying whether the information is a non-record or a public record. All state agencies and any public entity that use the state records center services shall submit a request on a form approved by the state records administrator. For the proper destruction of records with or without confidential or sensitive information, refer to 1.13.30.11 NMAC.

[1.13.30.14 NMAC - Rp, 1.13.30.14 NMAC, 11/28/2017]

1.13.30.15 DESTRUCTION OF RECORDS HELD BY CONTRACTORS: All records or data created or managed by a contractor or non-government entity for a governmental agency shall be disposed of in accordance with the procedures established in 1.13.30 NMAC.

[1.13.30.15 NMAC - Rp, 1.13.30.15 NMAC, 11/28/2017]

1.13.30.16 MANAGEMENT RESPONSIBILITIES: The development and implementation of a records management program is the responsibility of each agency records custodian, as defined by the Public Records Act. It is also management's responsibility to provide guidance to employees on the proper legal disposition of public records and non-records. Agency records management programs must clearly define the roles and responsibilities of users disposing public records and non-records.

[1.13.30.16 NMAC - Rp, 1.13.30.16 NMAC, 11/28/2017]

HISTORY OF 1.13.30 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

SRC Rule No. 70-3, Records Management Division, Regulations Regarding Destruction of Records and Appointment of Liaison Officers, filed 9/9/1970.

SRC Rule No. 89-05, Regulations Regarding the Public Records Act, filed 5/22/1989.

History of Repealed Material:

1.13.30 NMAC, Destruction of Public Records, filed 6/16/2004 - Repealed effective 6/01/2006.

1.13.30 NMAC, Destruction of Public Records and Non-Records, filed 5/10/2006 - Repealed effective 11/30/2015.

1.13.30 NMAC, Destruction of Public Records and Non-Records, filed 11/17/2015 - Repealed effective 11/28/2017.

NMAC History:

1 NMAC 3.55, Destruction of Public Records, filed 12/1/1994.

1 NMAC 3.2.50.1, Destruction of Public Records, filed 4/18/1997.

1.13.30 NMAC, Destruction of Public Records, filed 6/16/2004.

1.13.30 NMAC, Destruction of Public Records and Non-Records, filed 5/10/2006.

1.13.30 NMAC, Destruction of Public Records and Non-Records, filed (11/17/2015) was replaced by 1.13.30 NMAC, Destruction of Public Records and Non-Records effective 11/28/2017.