

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 18 EXECUTIVE RECORDS RETENTION AND DISPOSITION SCHEDULES (ERRDS)
PART 305 ERRDS, OFFICE OF THE ATTORNEY GENERAL**

1.18.305.1 ISSUING AGENCY: State Commission of Public Records - State Records Center and Archives
[1.18.305.1 NMAC - Rp, 1.18.305.1 NMAC, 5/2/2005]

1.18.305.2 SCOPE: office of the attorney general
[1.18.305.2 NMAC - Rp, 1.18.305.2 NMAC, 5/2/2005]

1.18.305.3 STATUTORY AUTHORITY: Section 14-3-4 NMSA 1978, it shall be the duty of the commission to adopt and publish rules to carry out the purposes of the Public Records Act. Section 14-3-6 NMSA 1978, the administrator shall establish a records management program for the application of efficient and economical management methods for the creation, utilization, maintenance, retention, preservation and disposal of public records.
[1.18.305.3 NMAC - Rp, 1.18.305.3 NMAC, 5/2/2005; A, 12/31/2012]

1.18.305.4 DURATION: permanent
[1.18.305.4 NMAC - Rp, 1.18.305.4 NMAC, 5/2/2005]

1.18.305.5 EFFECTIVE DATE: May 2, 2005, unless a later date is cited at the end of a section.
[1.18.305.5 NMAC - Rp, 1.18.305.5 NMAC, 5/2/2005]

1.18.305.6 OBJECTIVE: To establish a records retention schedule for the orderly management and retirement of records necessary for carrying out the Public Records Act per Section 14-3-6 NMSA 1978.
[1.18.305.6 NMAC - Rp, 1.18.305.6 NMAC, 5/2/2005]

1.18.305.7 DEFINITIONS:

- A. **“Administrator”** means the state records administrator (Section 14-3-2 NMSA 1978).
- B. **“Agency”** means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico (Section 14-3-2 NMSA 1978).
- C. **“Amicus curiae”** means a person or entity that is not party to a lawsuit, but that petitions the court or is requested by the court to file a brief in the lawsuit.
- D. **“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. The term also refers to the organizational unit of the SRCA storing these records.
- E. **“Audit”** means a periodic examination of an organization to determine whether appropriate procedures and practices are followed.
- F. **“Commission”** means the state commission of public records (Section 14-3-2 NMSA 1978).
- G. **“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).
- H. **“Extradition”** means the legal surrender of an alleged criminal to the jurisdiction of another state, county or government for trial.
- I. **“Garnishee”** means a debtor against whom a plaintiff has instituted a process of garnishment.
- J. **“Garnishment”** means a legal proceeding whereby money belonging to a debtor but in possession of another is applied to the payment of the debt.
- K. **“Habeas corpus”** means a writ issued to bring a person before a court or judge in order to release that person from unlawful restraint or detention.
- L. **“Microphotography”** means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted by the commission.
- M. **“Non-record”** means extra copies of documents kept solely for convenience of reference, stocks of publications, 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 reading file or informational files.

N. **"Pending litigation"** means a proceeding in a court of law whose activity is in progress but not yet completed.

O. **"Public record"** means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein (Section 14-4-2 NMSA 1978).

P. **"Records custodian"** means the statutory head of the agency using or maintaining the records or the custodian's designee.

Q. **"Record destruction"** means the process of totally obliterating information on records by any method to make the information unreadable or unusable under any circumstances.

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

S. **"Records retention and disposition schedule"** means rules adopted by the commission pursuant to Section 14-3-4 NMSA 1978 describing records of an agency, establishing a timetable for their life cycle and providing authorization for their disposition.

T. **"Rendition"** means the return of a fugitive to the state in which he or she is accused of having committed a crime.

U. **"Requisition"** means a formal request of one government to another demanding return of a fugitive or criminal.

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

[1.18.305.7 NMAC - Rp, 1.18.305.7 NMAC, 5/2/2005; A, 12/31/2012]

1.18.305.8 ABBREVIATIONS AND ACRONYMS:

- A. "AG" stands for the attorney general.
- B. "AGO" stands for the office of the attorney general.
- C. "CFR" stands for code of federal regulations.
- D. "EDRRDS" stands for education records retention and disposition schedules.
- E. "ERRDS" stands for executive records retention and disposition schedules.
- F. "GRRDS" stands for general records retention and disposition schedules.
- G. "IRS" stands for the internal revenue service of the United States treasury department.
- H. "JRRDS" stands for judicial records retention and disposition schedules.
- I. "LRRDS" stands for legislative records retention and disposition schedules.
- J. "LGRRDS" stands for local government records retention and disposition schedules.
- K. "SRCA" stands for state records center and archives.
- L. "USC" stands for United States code.
- M. "WIPP" stands for the waste isolation pilot project.

[1.18.305.8 NMAC - N, 5/2/2005; A, 12/31/2012]

1.18.305.9 INSTRUCTIONS:

A. Records retention and disposition schedules identify the types of records maintained by state agencies and specify a period of time which records must be retained. A retention period may be stated in terms of months or years and is sometimes expressed as contingent upon the occurrence of an event. There are several types of records retention and disposition schedules promulgated by the commission for state agencies. General schedules list records common to all agencies and executive schedules list records specific to an agency. Each record series will be represented in the format listed below.

- (1) **Program** - describes the function of the records
- (2) **Maintenance system** - describes how an agency files (organizes) records
- (3) **Description** - describes the purpose and content of a record
- (4) **Retention** - defines the length of time records must be kept before they are eligible for destruction or archival preservation.

- B.** For records of a general administrative nature, refer to the GRRDS, General Administrative, 1.15.2 NMAC.
- C.** For records of a financial nature, refer to the GRRDS, General Financial, 1.15.4 NMAC.
- D.** For records of a personnel nature, refer to the GRRDS, General Personnel (Interpretive), 1.15.7 NMAC.
- E.** For records of a medical nature, refer to the GRRDS, General Medical, 1.15.8 NMAC.
- F.** Retention periods shall be extended until six months after all current or pending litigation; current claims, audit exceptions or court orders involving a record have been resolved or concluded.
- G.** The descriptions of files are intended to be evocative, not complete. For example, there will always be some documents that are included in a file that are not listed in the description, and similarly, not every file will contain an example of each document listed in the description.
- H.** Confidentiality is denoted for files likely to contain confidential materials or information; however files without a confidentiality note may contain confidential or privileged information. Failure to include a confidentiality note in the description of a record series does not waive confidentiality. Refer questions concerning the confidentiality of a file to legal counsel for the agency.
- I.** Access to confidential documents, information or files shall be only by authorization of the agency records custodian (Section 14-2-8 NMSA 1978), or by the office of the attorney general or by court order, unless otherwise provided by law. Release of confidential documents to law enforcement and other government agencies, shall only be upon specific statutory authorization or court order.
- J.** Records may be photographed, microfilmed, digitized or converted to computer output microfilm provided a microphotography plan has been approved by the state records administrator (Section 14-3-17 NMSA 1978). Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction as evidence in all courts or administrative agencies (Section 14-1-6 NMSA 1978).
- K.** Public records placed on magnetic tapes, disks or other data processing media shall be retained for the length of time specified in records retention and disposition schedules and are subject to the same confidentiality and access restrictions as paper records. See also 1.13.70 NMAC, Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems.
- L.** Email is a transmission medium for content that may or may not be a public record. Email messages that contain information sent or received by an agency in connection with the transaction of official state business or in pursuance of law are public records and are subject to retention requirements established in records retention and disposition schedules. Email messages are required to be categorized, filed and retained on the basis of content (1.13.4 NMAC, Records Management Requirements for Electronic Messaging). The content of email messages may vary considerably; therefore, each email shall be evaluated to determine if it meets the definition of a public record as defined in the Public Records Act. Non-records or transitory emails that do not provide evidence of official agency policies or business transactions may be deleted.
- M.** Non-scheduled public records created by an agency in pursuance of law or in connection with the transaction of public business shall have a retention period of permanent until such time the non-scheduled record has been scheduled and a retention period adhering to operational, legal, fiscal, historical or other purposes is established.

[1.18.305.9 NMAC - Rp, 1.18.305.9 NMAC, 5/2/2005; A, 12/31/2012]

1.18.305.10 - 1.18.305.18 [RESERVED]

1.18.305.19 INVESTIGATIVE CASE FILES:

- A.** **Program:** investigations
- B.** **Maintenance system:** numerical by investigative case number
- C.** **Description:** records concerning an investigation of alleged violations of the law except for the acts cited in the *statutory acts compliance files*; 1.18.305.26 NMAC. *Investigative case files* may include: consumer protection investigative files, antitrust investigative files, pyramid protection scheme investigative files, etc. Files may contain motor vehicle records, criminal histories, complaints, evidence, photographs of evidence, copies of search warrants, copies of arrest warrants, assurance of discontinuance, civil investigative demands, civil investigative demand enforcement records, transcripts, newspaper clippings, correspondence, memoranda, etc.
- D. Retention:**
- (1) **Complaints and referrals that do not result in an investigation:**
- (a) **antitrust actions:** six years after file closed

- (b) **pyramid promotional scheme:** four years after file closed, or four years after no file activity
- (c) **consumer protection:** five years after file closed, or five years after no file activity
- (d) **medicaid fraud:** three years after file closed
- (e) **all others:** six years after case closed
- (2) **Records that result in an investigation, but do not become *legal case files*:**
- (a) **medicaid fraud:** three years after case closed then transfer to archives for review and final disposition
- (b) **all other files:** 10 years after case closed then transfer to archives for review and final disposition
- (3) **Records that become *legal case files*:** [See *legal case files*, 1.18.305.21 NMAC]
- E. **Confidentiality:** Portions may be confidential pursuant to: Subsection A of Section 14-2-1 NMSA 1978 (attorney-client privileged information; physical or mental examinations of persons confined to any institution; letters of reference concerning employment; matters of opinion in personnel files; tactical response plans); Section 31-21-6 NMSA 1978 (probation and parole information); Section 24-1-20 NMSA 1978 (medical treatment records); Section 29-10-4 NMSA 1978 (arrest record information concerning those not charged with a crime); Section 32A-3B-32 NMSA 1978 (juvenile records); Section 32A-5-8 NMSA 1978 (adoption records); Section 41-8-4 NMSA 1978 (arson reports); Section 43-2-11 NMSA 1978 (substance abuse treatment); 5 USC, Section 552a (i.e., social security number) and Subsection C of Section 57-1-5 NMSA 1978 (i.e., records obtained prior to the filing of an action under the Antitrust Act).
- [1.18.305.19 NMAC - Rp, 1.18.305.502, 511, 521, 522, 702 & 801 NMAC, 5/2/2005]
- [*Investigative case files* may become *legal case files* if sufficient cause is found. All corresponding records (indexes, logs, etc.) will have the same disposition as the file, regardless of media type. After *investigative case files* are closed, place corresponding log entry into corresponding *investigative case files*]

1.18.305.20 INVESTIGATION TRACKING SYSTEMS:

- A. **Program:** investigations
- B. **Maintenance system:** numerical by primary key
- C. **Description:** systems track and maintain complaints, referrals and investigations concerning alleged violations of law. Systems exclude data covered by [*statutory acts compliance system*, 1.18.305.26 NMAC]. Data may include inquiry number; date received; date entered; referred by; complainant's date of birth, social security number, address, telephone number; target's name, date of birth, allegations; agent assigned; assignment date; report due date; supervisor name; status of case; case number code; synopsis; details; status; recommendations, etc.
- D. **Retention:**
- (1) **Complaints and referrals that do not result in an investigation:**
- (a) **antitrust actions:** six years after file closed
- (b) **pyramid promotional scheme:** four years after file closed, or four years after no file activity
- (c) **consumer protection:** five years after file closed, or five years after no file activity
- (d) **medicaid fraud:** three years after file closed
- (e) **all others:** six years after case closed
- (2) **Records that result in an investigation, but do not become *legal case files*:**
- (a) **medicaid fraud:** three years after case closed then transfer to archives for review and final disposition
- (b) **all other files:** 10 years after case closed then transfer to archives for review and final disposition
- E. **Input documents:** All documents used as input for the *investigation tracking system* are filed in the corresponding *investigative case files*. Those documents include the following: referrals, complaints, etc.
- F. **Output documents:** Because the *investigation tracking systems* are data-based systems, required and ad hoc reports may be generated on request or on demand. When produced, these ad hoc reports are forwarded to the requesting entity. Some of the reports include the following: *investigation status report*, *case status update summary*, etc.
- G. **Confidentiality:** Portions may be confidential pursuant to: Subsection A of Section 14-2-1 NMSA 1978 (attorney-client privileged information; physical or mental examinations of persons confined to any institution; letters of reference concerning employment; matters of opinion in personnel files; tactical response

plans); Section 31-21-6 NMSA 1978 (probation and parole information); Section 24-1-20 NMSA 1978 (medical treatment records); Section 29-10-4 NMSA 1978 (arrest record information concerning those not charged with a crime); Section 32A-3B-32 NMSA 1978 (juvenile records); Section 32A-5-8 NMSA 1978 (adoption records); Section 41-8-4 NMSA 1978 (arson reports); Section 43-2-11 NMSA 1978 (substance abuse treatment); 5 USC, Section 552a (social security number) and Subsection C of Section 57-1-5 NMSA 1978 (i.e., records obtained prior to the filing of an action under the Antitrust Act).

[1.18.305.20 NMAC - Rp, 1.18.305.706 NMAC, 5/2/2005]

[Retention is on data only.]

1.18.305.21 LEGAL CASE FILES:

- A. **Program:** legal
- B. **Maintenance system:** numerical by case number
- C. **Description:** Records related to civil or criminal litigation or administrative proceedings, or to the settlement of actual or threatened litigation or administrative proceedings. File may contain decisions, complaints, court orders, motions, pleadings, briefs, transcripts, attorney notes, discovery requests, investigative reports, findings of fact, notices, applications, petitions, conclusions of law, legal exhibits, releases, correspondence, memoranda, etc.
- D. **Retention:** permanent. Transfer to archives 10 years after case closed.
- E. **Confidentiality:** Portions may be confidential pursuant to: Subsection A of Section 14-2-1

NMSA 1978 (attorney-client privileged information; physical or mental examinations of persons confined to any institution; letters of reference concerning employment; matters of opinion in personnel files; tactical response plans); Section 31-21-6 NMSA 1978 (probation and parole information); Section 24-1-20 NMSA 1978 (medical treatment records); Section 29-10-4 NMSA 1978 (arrest record information concerning those not charged with a crime); Section 32A-3B-32 NMSA 1978 (juvenile records); Section 32A-5-8 NMSA 1978 (adoption records); Section 41-8-4 NMSA 1978 (arson reports) and Section 43-2-11 NMSA 1978 (substance abuse treatment).

[1.18.305.21 NMAC - Rp, 1.18.305.101 & 802 NMAC, 5/2/2005]

1.18.305.22 AMICUS BRIEF FILES:

- A. **Program:** legal
- B. **Maintenance system:** chronological by year brief filed
- C. **Description:** records concerning appellate court case briefs in which the attorney general participates as amicus curiae. File may contain legal brief, draft of recommendation, correspondence, memoranda, etc.
- D. **Retention:** four years from year case closed, then transfer to archives for review and final disposition

[1.18.305.22 NMAC - Rp, 1.18.305.103 NMAC, 5/2/2005]

1.18.305.23 SPECIAL ATTORNEY COMMISSION FILES:

- A. **Program:** special commissions
- B. **Maintenance system:** chronological by commission expiration date, then alphabetical by attorney surname
- C. **Description:** records concerning special commissions granted by the attorney general allowing lawyers who are not part of the attorney general's office to represent the state in a specific legal matter. Files may contain description of special commission scope, special commission request by the attorney general, starting date of special commission, attorney's resume, letter granting commission, correspondence, memoranda, etc.
- D. **Retention:** three years after commission expires

[1.18.305.23 NMAC - Rp, 1.18.305.152 NMAC, 5/2/2005]

[Any public record produced by attorneys with special commission shall be transferred to the AGO for proper retention and disposition]

1.18.305.24 ATTORNEY GENERAL OPINIONS FILES:

- A. **Program:** legal opinions
- B. **Maintenance system:** chronological by year, then numerical by order within year
- C. **Description:** records concerning the response to a request for a legal opinion by the attorney general submitted by the legislature, any elective or appointive state official, or any district attorney concerning any subject pending before them or under their control with which they have to deal officially or with reference to their duty in office (pursuant to Subsection D of Section 8-5-2 NMSA 1978). File may contain request for opinion,

advisory letter (or other response to request), background and research material, previous attorney general opinion, drafts of opinion, completed opinion, correspondence, memoranda, etc.

D. Retention: permanent. Transfer to archives 10 years after file closed.

[1.18.305.24 NMAC - Rp, 1.18.305.301, 302, 303 & 311 NMAC, 5/2/2005]

1.18.305.25 STATUTORY ACTS COMPLIANCE FILES:

A. Program: legal compliance

B. Maintenance system: alphabetical by act names, then numerical by file number

C. Description: records concerning the complaint and investigation of alleged violations of civil

statutory acts (i.e., Lobbyist Registration Act, Sections 2-11-1 through 2-11-9 NMSA 1978; Campaign Reporting Act, Sections 1-19-1 through 1-19-37 NMSA 1978; Public Regulation Commission Act, Sections 8-8-1 through 8-8-21 NMSA 1978; Governmental Conduct Act, Sections 10-16-1 through 10-16-18 NMSA 1978; Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978; and the Open Meetings Act, Sections 10-15-1 through 10-15-4 NMSA 1978). File may contain complainant form, request for review, outcome of violation, correspondence, memoranda, etc.

D. Retention: five years after file closed

E. Confidentiality: Portions of this file may be confidential pursuant to Section 14-2-1 NMSA 1978 (i.e., attorney-client privileged information).

[1.18.305.25 NMAC - Rp, 1.18.305.315 & 318 NMAC, 5/2/2005]

[A *statutory acts compliance file* may become a *legal case file* if sufficient cause is found.]

1.18.305.26 STATUTORY ACTS COMPLIANCE SYSTEM:

A. Program: legal compliance

B. Maintenance system: numerical by primary key

C. Description: system captures and maintains complaints and responses pertaining to alleged violations of statutory acts (i.e., Lobbyist Registration Act, Campaign Reporting Act, Public Regulation Commission Act, Governmental Conduct Act, Inspection of Public Records Act and Open Meetings Act). Data may include complainant name, respondent name, issue, author, record identification number, review status, etc.

D. Retention: five years after close of calendar year in which complaint closed

E. Input documents: All documents used as input for the *statutory acts compliance system* are filed in the corresponding *statutory acts compliance file*. Those documents include the following: complaint form, correspondence, memoranda, etc.

F. Output documents: All documents generated by the *statutory act compliance system* are produced (printed) because of public request or administrative reporting responsibilities. Because the *statutory act compliance system* is a data-based system, ad hoc reports may be generated on request or on demand. When produced, these reports are forwarded to the requesting entity. Some of these reports include the following: *pending complaints by date*, *open complaints by complainant last name*, etc.

[1.18.305.26 NMAC - Rp, 1.18.305.314 & 317 NMAC, 5/2/2005]

[Retention is on data only.]

1.18.305.27 SCHOOL BOND ISSUE TRANSCRIPTS:

A. Program: school bond

B. Maintenance system: chronological by calendar year issued, then by school district name

C. Description: records concerning the review of proposed school bonds by the AG as to form and legality, pursuant to Section 22-18-9 NMSA 1978 and Section 22-18-7 NMSA 1978. File may contain draft transcript of proceeding, final bond issue transcript of proceedings, copy of the bond, opinions of bond council, opinions of attorney general, resolutions, correspondence, memoranda, etc.

D. Retention:

(1) **Draft bond issue transcripts and draft material:** two years after close of calendar year in which issued, or upon delivery of final bond transcripts, whichever occurs first

(2) **Final bond issue transcripts:** 21 years after close of calendar year in which issued

[1.18.305.27 NMAC - Rp, 1.18.305.307 NMAC, 5/2/2005]

1.18.305.28 AGENCY CONTRACT REVIEW SYSTEM:

A. Program: contract reviews

B. Maintenance system: numerical by primary key

C. **Description:** system tracks the review of state agency contracts conducted by the attorney general's office. Data may include originating agency name, contract identification number, contractor name, attorney general's office reviewing attorney initials, date of submission, date of review, etc.

D. **Retention:** five years after close of calendar year in which contract is reviewed

E. **Input documents:** All documents used as input for the *agency contract review system* are state agency contracts submitted for review. These *contract-agreement files* [1.15.4.307 NMAC] are returned to the submitting agency

F. **Output documents:** Because the *agency contract review system* is a data-based system, ad hoc reports may be generated on request or on demand. When produced, these reports are forwarded to the requesting entity. Some of the reports include the following: *contracts by agency name, current status of agency contract review, etc.*

[1.18.305.28 NMAC - Rp, 1.18.305.308 NMAC, 5/2/2005]

[Retention is on data only.]

1.18.305.29 GARNISHMENT FILE:

A. **Program:** garnishment

B. **Maintenance system:** alphabetical by surname of garnishee

C. **Description:** records concerning the request and tracking of state employees' wage garnishment, and other garnishment involving state agencies. File may include application for writ of garnishment, writ of garnishment, answer by garnishee, satisfaction of judgment, correspondence, memoranda, etc.

D. **Retention:** three years after file closed

[1.18.305.29 NMAC - N, 5/2/2005]

1.18.305.30 AGENCY LEGAL ADVICE FILES:

A. **Program:** civil matters

B. **Maintenance system:** alphabetical by client name

C. **Description:** records concerning advice given by the AGO to state agencies related to miscellaneous civil matters. File may contain background information, court documentation, transcripts, research material, attorney notes, opinion request, memorandum, etc.

D. **Retention:** five years after advice issued then transfer to archives for review and final disposal

E. **Confidentiality:** Portions of this file may be confidential pursuant to Section 14-2-1 NMSA 1978 (attorney-client privileged information).

[1.18.305.30 NMAC - Rp, 1.18.305.306 NMAC, 5/2/2005]

1.18.305.31 ADMINISTRATIVE PROSECUTION CASE FILES:

A. **Program:** litigation

B. **Maintenance system:** alphanumerical by case name and attorney general number

C. **Description:** records concerning administrative prosecutions by the AG litigation division initiated at the request of state boards and commissions. Files may contain notice of contemplated action, pleadings, investigative report, minutes of board meetings, board's decision, motions, court appeals, correspondence, memoranda, etc.

D. **Retention:** 10 years after case closed then transfer to archives for review and final disposition

E. **Confidentiality:** Portions may be confidential pursuant to: Subsection A of Section 14-2-1 NMSA 1978 (attorney-client privileged information; physical or mental examinations of persons confined to any institution; letters of reference concerning employment; matters of opinion in personnel files; tactical response plans); Section 31-21-6 NMSA 1978 (probation and parole information); Section 24-1-20 NMSA 1978 (medical treatment records); Section 29-10-4 NMSA 1978 (arrest record information concerning those not charged with a crime); Section 32A-3B-32 NMSA 1978 (juvenile records); Section 32A-5-8 NMSA 1978 (adoption records); Section 41-8-4 NMSA 1978 (arson reports) and Section 43-2-11 NMSA 1978 (substance abuse treatment).

[1.18.305.31 NMAC - Rp, 1.18.305.451 NMAC, 5/2/2005]

1.18.305.32 SERVICE OF PROCESS FILES:

A. **Program:** litigation

B. **Maintenance system:** chronological by year, then alphabetical by plaintiff name

C. **Description:** official notice delivered to the AGO in which a lawsuit is brought against a state agency. File may contain copies of lawsuit, summons, complaint, related attachments, etc.

D. Retention: three years from date of service
[1.18.305.32 NMAC - Rp, 1.18.305.452 NMAC, 5/2/2005]

1.18.305.33 SERVICE OF PROCESS LOGS:

- A. **Program:** litigation
 - B. **Maintenance system:** chronological by year
 - C. **Description:** records concerning the delivery of summons and lawsuits to the AGO Log may contain date of service, summary of summons, summary of complaint, etc.
 - D. **Retention:** five years from date of service
- [1.18.305.33 NMAC - N, 5/2/2005]

1.18.305.34 CHARITABLE ORGANIZATION FILES:

- A. **Program:** charitable organizations registration
- B. **Maintenance system:** alphabetical by charitable organization name
- C. **Description:** records concerning the registration of charitable organizations soliciting or operating within New Mexico. File contains initial and annual financial information. The initial information may consist of charitable organization registration form, unified registration statement for charitable organizations, copy of IRS letter of determination of non-profit status, copy of *application for recognition of exemption under section 501(a)* [IRS form 1024], copy of *application for recognition of exemption under section 501(c)(3) of the internal revenue code* [IRS form 1023], articles of incorporation, correspondence, memoranda, etc. The annual information may consist of attorney general annual report form, complaint concerning a nonprofit organization, *charitable organization annual report form* [IRS form cco-2], copy of *return of organization exempt from income tax* [IRS form 990], copy of *short form return of organization exempt from income tax* [IRS form 990EZ], copy of *return of private foundation or section 4947(a)(1) nonexempt charitable trust treated as a private foundation* [IRS form 990PF], copy of associated financial information [*schedule a* of IRS form 990, 990EZ, or 990PF] and all attachments, copy of the organization's annual audit performed by an independent certified public accountant, late fees levied, fees paid, correspondence, memoranda, etc.

D. Retention:

- (1) **Initial information:** three years after registration has expired
- (2) **Annual financial information:** three years after close of fiscal year in which submitted

[1.18.305.34 NMAC - Rp, 1.18.305.501 NMAC, 5/2/2005]

[Religious or educational organizations are excluded from registration, pursuant to Section 57-22-4 NMSA 1978.]

1.18.305.35 LAND SUBDIVISION FILES:

- A. **Program:** land subdivisions
- B. **Maintenance system:** alphabetical by county located in and then by subdivision name
- C. **Description:** records concerning selling, leasing or otherwise conveying of any land in a subdivision, pursuant to Sections 47-6-17 and 47-6-18 NMSA 1978. Files may contain a disclosure statement; copies of adoption and modification of county subdivision regulations; documents concerning the proposed subdivision; brochures; publications; subdivision advertising material; state engineer's report on water availability; maps; plats; correspondence; memoranda, etc.

D. Retention: permanent. Transfer to archives five years after date filed.

[1.18.305.35 NMAC - Rp, 1.18.305.512 NMAC, 5/2/2005]

1.18.305.36 APPEAL CASE FILES:

- A. **Program:** appeals
- B. **Maintenance system:** chrono-numeric by attorney general case number (year and sequence within year)
- C. **Description:** records concerning the appeal of court decisions concerning criminal convictions. These case files may include summary case files, general case files, habeas corpus case files and death penalty appeal case files. Summary case files are records concerning the legal appeal of a final judgment of a court including orders of suppression, judgment and sentences, probation and parole violations, orders dismissing causes, interlocutory appeals, etc. Summary case files may contain notice of appeal, docketing statement, calendar notice, memo of opposition, mandates, court order, portions of the record proper, etc. General case files are records concerning the appeal of a final judgment of a court that is unresolved at the summary stage. General case files may contain appeal, docketing statement, calendar notice, memorandum in opposition, brief in chief, answer brief, reply

brief, notice for oral argument, court's final opinion, photos, videos, sound recordings, physician reports, psychologist reports, portions of the records proper, etc. Habeas corpus case files are records concerning petitions filed by inmates relating to their conditions of confinement. Habeas corpus case files may contain petitions for writ of habeas corpus, disciplinary packets, investigation records, answers to complaint, motions, final orders, correspondence, memoranda, etc. Death penalty appeal case files are records concerning the legal appeals of persons sentenced to death. Death penalty appeal case files may contain prosecution records, defense records, copies of judgment and sentence, order, notice of appeal, statement of issues, calendar notice, videotapes, sound recordings, transcripts, requests for exhibits, brief, state answer brief, reply brief, expert witness information, mandate, correspondence, memoranda, etc.

D. Retention: permanent, transfer to archives 25 years from date case closed

E. Confidentiality: Portions of this record may contain confidential information pursuant, but not limited to, 5 USC Section 552a (i.e., social security number), Section 14-6-1 NMSA 1978 (i.e., medical information), Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (1996) (i.e., health information).

[1.18.305.36 NMAC - Rp, 1.18.305.601, 602, 604 & 605 NMAC, 5/2/2005; A, 12/31/2012]

1.18.305.37 EXTRADITION REVIEW CASE FILES:

A. Program: extraditions

B. Maintenance system: chronological by year of extradition, then alphabetical by fugitive surname

C. Description: records concerning the review of applications for requisition or rendition of fugitives by the AGO for legal sufficiency. Files may contain affidavit for arrest warrants, photographs, fingerprints, warrants for arrest, criminal complaint affidavit, application for requisition or rendition, application for extradition, waivers of extradition, correspondence, memoranda, etc.

D. Retention: five years from the date file closed

[1.18.305.37 NMAC - Rp, 1.18.305.603 NMAC, 5/2/2005]

[Final decisions concerning extraditions or renditions are by the governor. These decisions are contained within the record series *extradition and rendition files*, 1.18.356.19 NMAC. The Uniform Criminal Extradition Act, Sections 31-4-1 through 31-4-31 NMSA 1978, describes proper rules and procedures concerning extradition, rendition and requisition.]

1.18.305.38 WASTE ISOLATION PILOT PLANT FILES:

A. Program: environment

B. Maintenance system: numerical by document number

C. Description: records concerning WIPP compliance with state and federal laws and the development of federal rules and regulations under which WIPP safety is determined. Files may contain technical reports, testimony concerning WIPP, research documents, correspondence, etc.

D. Retention: permanent. Transfer to archives 10 years from date document received.

E. Confidentiality: Portions of this file may be confidential pursuant to Section 14-2-1 NMSA 1978 (attorney-client privileged information).

[1.18.305.38 NMAC - Rp, 1.18.305.621 NMAC, 5/2/2005]

HISTORY OF 1.18.305 NMAC:

Pre-NMAC History:

SRC Rule 69-5, Records Retention and Disposal Schedule for Office of the Attorney General, 7/2/69.

SRC Rule 74-22, Records Retention and Disposal Schedule for Attorney General's Office, 9/9/74.

SRC Rule 74-22, Amendment No. 1, 11/30/79.

SRC Rule 86-06, Records Retention and Disposition Schedule for Attorney General, 9/11/86.

SRC Rule 86-06, Amendment No. 1, 4/11/94.

History of Repealed Material:

1.18.305 NMAC, ERRDS, Office of the Attorney General, filed 6/21/2002 - Repealed 5/2/2005