

This is an amendment to 1.13.30 NMAC, Sections 1, 3, 5, 6, 7, and 9, effective June 30, 2004. This action also renumbers and reformats 1 NMAC 3.2.50.1 to 1.13.30 NMAC in conformance with current NMAC requirements.

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 13 PUBLIC RECORDS
PART 30 DESTRUCTION OF PUBLIC RECORDS

1.13.30.1 ISSUING AGENCY: Commission of Public Records - State Records Center and Archives
[12-1-94; Rn, 1 NMAC 3.55, 5-15-97; 1.13.30.1 NMAC - Rn, 1 NMAC 3.2.50.1.1 & A, 6/30/2004]

1.13.30.2 SCOPE: all state agencies.
[12-1-94; Rn, 1 NMAC 3.55, 5-15-97; 1.13.30.2 NMAC - Rn, 1 NMAC 3.2.50.1.2, 6/30/2004]

1.13.30.3 STATUTORY AUTHORITY:

A. Section 14-3-4(C) (D) NMSA 1978. Duties and powers of commission. It shall be the duty of the commission to: decide, by majority vote, any disagreements between the administrator and any state officer regarding the disposition of records within the custody of said officer, such decisions to have the effect of law; and consider the recommendations of the administrator for the destruction of specifically reported records, and by unanimous vote either order or forbid such destruction. (Emphasis added.)

B. Section 14-3-6 NMSA 1978. Administrator, duties. The administrator shall establish a records management program for the application of efficient and economical management methods to the creation, utilization, maintenance, retention, preservation and disposal of official records. The administrator shall establish records disposal schedules [records retention and disposition schedules] for the orderly retirement of records and adopt regulations necessary for the carrying out of the Public Records Act.

C. Section 14-3-9 (C) NMSA 1978. Disposition of public records. Public records in the custody of the administrator may be transferred or destroyed only upon order of the commission. (Emphasis added.)

D. Section 14-3-10 NMSA 1978. Disagreement as to value of records. In the event the attorney general and the administrator determine that any records in the custody of a public officer including the administrator are of no legal, administrative or historical value, but the public officer having custody of the records or from whose office the records originated fails to agree with such determination or refuses to dispose of the records, the attorney general and the administrator may request the state commission of public records to make its determination as to whether the records should be disposed of in the interests of conservation of space, economy or safety.

E. Section 14-3-11 NMSA 1978. Destruction of records. If it is determined by the administrator, attorney general and agency head that destruction of public records will be recommended, the administrator shall have prepared a list of records, together with a brief description of their nature, and shall place upon the agenda of the next meeting of the commission the matter of destruction of records. The records may be stored in the center awaiting decision of the commission. The commission's decision with reference to destruction of the records shall be entered on its minutes, together with the date of its order to destroy the records and a general description of the records which it orders to be destroyed. A copy of the commission's order shall be filed with the librarian of the supreme court library (now the state records center and archives, state rules division). No public records shall be destroyed if the law prohibits their destruction. (Emphasis added.)

F. Section 30-26-1 (E) NMSA 1978. Tampering with public records consists of: knowingly destroying, concealing, mutilating or removing without lawful authorization any public record or public document belonging to or received or kept by any public authority for information, records or pursuant to law. Whoever commits tampering with public records is guilty of a fourth degree felony.]
Section 14-3-6 of the Public Records Act (Chapter 14, Article 3, NMSA 1978) gives the state records administrator the authority to establish records and information management programs for the application of efficient and economical management methods for the creation, utilization, maintenance, retention, preservation and disposal of public records.

[12-1-94; Rn, 1 NMAC 3.55, 5-15-97; 1.13.30.3 NMAC - Rn, 1 NMAC 3.2.50.1.3 & A, 6/30/2004]

1.13.30.4 DURATION: permanent

[12-1-94; Rn, 1 NMAC 3.55, 5-15-97; 1.13.30.4 NMAC - Rn, 1 NMAC 3.2.50.1.4, 6/30/2004]

1.13.30.5 EFFECTIVE DATE: December 1, 1994 unless a later date is cited at the end of a section[or paragraph].

[12-1-94; Rn, 1 NMAC 3.55, 5-15-97; 1.13.30.5 NMAC - Rn, 1 NMAC 3.2.50.1.5 & A, 6/30/2004]

1.13.30.6 OBJECTIVE: [To provide for the efficient and systematic destruction of public records.] To establish methods for the orderly, efficient, and systematic destruction of public records necessary for carrying out the Public Records Act per Section 14-3-6 NMSA 1978.

[12-1-94; Rn, 1 NMAC 3.55, 1.13.30.6 NMAC - Rn, 1 NMAC 3.2.50.1.6 & A, 6/30/2004]

1.13.30.7 DEFINITIONS:

A. Records: 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, Subsection A of 1.13.70.8 NMAC.

B. Public records: 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. (Subsection C of Section 14-3-2 NMSA 1978). Public records are records either related to or received in pursuance of statutory requirements or in connection with the transaction of public business that belong to the office concerned. Value is the key ingredient of a public record. It is determined by:

(1) legal value to the state of New Mexico: to meet federal requirements; document property and water rights, etc.; generally to protect or enforce the rights of the state and its citizens;

(2) administrative value: provides a chronology of actions, provides legitimacy of the operation; functions, policies, decisions, procedures, or other activities of the government;

(3) historical value: for example, New Mexico's records of the Spanish colonial government, the Mexican republic, early U.S. territorial government, etc. Also, an agency's primary mission records, which are files concerning the establishment of an agency, its development and policies, its progress, operation summaries, plans for future development, etc.; and

(4) financial value: accounting for whom, why, where and when money was budgeted, received or expended.

C. Non records:

(1) Library or museum material of the state library, state institutions and state museums, extra copies of documents reserved only for convenience of reference and stocks of publications and processed documents are non records (Subsection C of Section 14-3-2 NMSA 1978)

(2) The following specific types of materials are non records:

(a) extra copies of correspondence;

(b) documents preserved only for convenience of reference;

(c) blank forms/books that are outdated;

(d) materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the office/agency;

(e) preliminary drafts of letters, reports, and memoranda that do not represent significant basic steps in preparation of records;

(f) shorthand notes, steno tapes, mechanical recordings that have been transcribed, except where noted on agency retention schedules;

(g) routing and other interdepartmental forms which are not significant evidence of the activity concerned and do not otherwise have value as described above;

(h) stocks of publications already sent to archives and processed documents preserved for supply purposes only;

(i) form and guide letters, sample letters, form paragraphs; [and]

(j) subject files, including copies of correspondence, memoranda, publications, reports and other information received by agency and filed by subject (also referred to as reading files or information files).

D. Records retention and disposition schedule: An official rule issued by the commission of public records which identifies the general and specific public records of state government and sets the minimum period of legal retention by record classification or type.

E. Custodial agency: The agency originating a public record.

F. Records liaison: The individual in the custodial agency responsible for authorizing the destruction of records. Subsection G of Section 14-3-4 NMSA 1978

G. Technology sensitive media: Any media created by any process or system that employs a mechanical, photo optical, magnetic, electronic or other technological device for producing or reproducing records.]

A. “Administrator” means the state records administrator and the individual responsible for carrying out the purposes of the Public Records Act, specifically Section 14-3-15 NMSA 1978. “The official custodian and trustee for the state of all public records and archives of whatever kind which are transferred to him from any public office of the state or from any other source” (Section 14-3-6 NMSA 1978). The state records administrator has the overall administrative responsibility for carrying out the purposes of the Public Records Act and is the director of the New Mexico state records center and archives.

B. “Agency” means any state agency, department, bureau, board, commission, institution or other organization of the state government, including district courts. Sections 14-3-2 and 14-3-15 NMSA 1978.

C. “Archives” means the New Mexico state archives the entity responsible for selecting, preserving, and making available permanent records.

D. “Commission of public records” means the governing body of the NM state records center and archives that was created by an Act of the 24th Legislature of New Mexico convened January 13, 1959 (Sections 14-3-1 to 14-3-16, NMSA 1978). The commission is composed of: the attorney general; the secretary of state; the secretary of the NM general services department; the state auditor; the state law librarian; the director of the museum of New Mexico; and a recognized, professionally trained historian in the field of New Mexico history, resident in New Mexico, and appointed by the governor for a term of six years.

E. “Computer” means an electronic device designed to accept data (input), perform prescribed mathematical and logical operations at high speed (processing), and supply the results of these operations (output). This includes, but is not limited to, mainframe computers, minicomputers, and microcomputers, personal computers, portable computers, pocket computers, tablet computers, telephones capable of storing information, PDAs, and other devices.

F. “Custodial agency” means the agency responsible for the maintenance, care, or keeping of public records, regardless of whether the records are in that agency’s actual physical custody and control.

G. “Custodian” means the person (guardian) responsible for the maintenance, care, or keeping of a public body’s records, regardless of whether the records are in that person’s actual physical custody and control. The statutory head of the agency using or maintaining the records or his designee.

H. “Custody” means the guardianship or records, archives, and manuscripts, which may include both physical possession (protective responsibility) and legal title (legal responsibility).

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

J. “Electronic records” means records whose informational content has been encoded and recorded on a medium like magnetic tape, drums, discs, or punched paper tape and can be retrieved by finding aids known as software documentation. The encoded information is retrievable only with the help of a computer.

K. “Non-records or non-essential records” means records listed on a records retention schedule for routine destruction, the loss of which presents no obstacle to restoring daily business. The following specific types of materials are non-records: extra copies of correspondence documents preserved only for convenience of reference blank forms or books which are outdated materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the office or agency preliminary and non-final drafts of letters, reports, and memoranda which may contain or reflect the working or deliberative process by which a final decision or position of the agency, board, department, or subdivision thereof is reached shorthand notes, stenographic tapes, mechanical recordings which have been transcribed, except where noted on agency retention schedules routing and other interdepartmental forms which are not significant evidence of the activity concerned and do not otherwise have value as described above stocks of publications already sent to archives and processed documents preserved for supply purposes only form and guide letters, sample letters, form paragraphs subject files, including copies of correspondence, memoranda, publications, reports, and other information received by agency and filed by subject (also referred to as reading files or information files)

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

M. “Public records” 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, 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 or the government, or because of the informational and historical value of data contained therein (Section 14-3-2 NMSA 1978).

N. "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 (1.13.70 NMAC).

O. "Records center" means a facility designed and constructed to provide low-cost, efficient storage and reference service on records that have become inactive but have not reached their disposition date. The state records center, as defined by Subsection E of Section 14-3-2 NMSA 1978, is the "...central records depository which is the principal state facility for the storage, disposal, allocation or use of non-current records of agencies, or materials obtained from other sources."

P. "Records custodian" means the statutory head of the agency or his or her designee.

Q. "Records liaison" means the individual in the custodial agency designated by the records custodian to cooperate with, assist, and advise the state records administrator in the performance of the administrator's duties (Section 14-3-4 NMSA 1978). The records liaison in an agency is responsible for implementing the records retention and disposition schedules within his or her agency. The records liaison is also responsible for authorizing the storage and or destruction of his or her agency's records.

R. "Records retention and disposition schedules" means the document that specifies actions for the retention and disposition of current, inactive, and non-current records series of an organization or agency.

S. "Records series" means file units, documents, or electronic records arranged according to a filing system or maintained as a unit because they relate to a particular subject or function, result from the same activity, have a particular form, or share some other relationship arising from their creation, receipt, or use.
[12-1-94; Rn, 1 NMAC 3.55, 5-15-97; 1.13.30.7 NMAC - Rn, 1 NMAC 3.2.50.1.7 & A, 6/30/2004]

1.13.30.8 DESTRUCTION OF PUBLIC RECORDS:

A. The state records center and archives is responsible for the timely and appropriate destruction of all public records.

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

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

[12-1-94; Rn, 1 NMAC 3.55, 5-15-97; 1.13.30.8 NMAC - Rn, 1 NMAC 3.2.50.1.8, 6/30/2004]

1.13.30.9 METHODS OF DESTRUCTION:

[A. 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 as identified in a record retention and disposition schedule. (If it's in a current retention schedule, it is a public record. If there is any doubt, treat it as a public record or contact the state records center and archives.) Non records should be destroyed via approved method of destruction for that type of information. To ensure information is destroyed, use one of the following methods:

- (1) witnessed incineration;
- (2) witnessed dump site burial;
- (3) recycling through bonded recycler;
- (4) witnessed shredding;
- (5) when there are no issues of security, it is appropriate to place non records in trash bins or waste paper baskets.

B. Approval for destruction of public records: The destruction of public records must be approved by the state records administrator and may occur on site at the custodial agency or through the state records center.

C. Agency destruction of public records: Agencies who choose to store public records for the life cycle of the records may either contact the state records center for pick up and destruction or they may elect to use the following procedure (1 NMAC 3.2.50.1.9.3.1) for disposition of public records.

(1) Agency procedure for on site destruction of public records.

(a) Agency shall request in writing permission to destroy public records. The request shall include:

- (i) record retention schedule item no.;
 - (ii) item description of the records to be destroyed;
 - (iii) inclusive dates of the records to be destroyed; [and]
 - (iv) quantity of boxes, sacks, etc.
- (b) The state records administrator shall review and, if appropriate, order in writing the transfer to archives or the destruction of the public records.
- (c) Once written permission has been received, agency shall destroy the records via approved method of destruction:
 - (i) witnessed incineration
 - (ii) witnessed dump site burial
 - (iii) witnessed shredding
 - (iv) recycling through bonded recycler
- (d) Agency shall certify destruction in writing and submit certification to the state records administrator. For both legal and audit purposes, the agency should retain a copy of the certification for its file. (Appendix 1)
- (2) Agency procedure for records center destruction:
 - (a) The records liaison officer shall prepare and submit a request for pick up and destruction (scrap paper or records) form SRC 2 to the state records administrator. (Appendix 2)
 - (b) The state records administrator shall review a request, and, if appropriate, order in writing either the transfer to archives or the destruction of the public records.
- D. Records center destruction of public records:
 - (1) The state records center will effect the timely and efficient destruction of public records which have met their retention period and have been released by the agency's records liaison:
 - (a) The state records center shall notify custodial agencies of records that have been stored for the scheduled retention period.
 - (b) The state records center will schedule, at least quarterly, the destruction of all public records which have been stored for the scheduled retention period.
 - (2) Custodial agencies receiving notification of records eligible for destruction shall review the report of records to be destroyed:
 - (a) The agency shall notify the state records center of any records scheduled for destruction which must be held and shall cite appropriate reason; e.g., pending litigation, audit in process, audit pending, etc.
 - (b) The agency shall approve destruction in writing.
 - (3) The state records center procedure for destruction of records stored at the records center or delivered to the records center for destruction shall be to:
 - (a) prepare a report of records to be destroyed for review by the archives division and approval by the state records administrator;
 - (b) direct the archives division to review and separate records for further review;
 - (c) obtain an order by the state records administrator for the routine destruction of public records.
 - (d) destroy records by:
 - (i) bonded recycler for public records without confidentiality requirements;
 - (ii) witnessed shredding for confidential records only;
 - (e) prepare and/or file certificate of destruction (Appendix 1).
- E. Destruction of paper records in alternative media. Destruction of paper records converted to alternative media shall comply with the applicable standards to ensure reliability and authenticity prior to their destruction:
 - (1) Destruction of paper public records converted to microfilm:
 - (a) Agencies must meet all requirements of 1 NMAC 3.2.60.1 prior to destruction of microfilmed paper records.
 - (b) Agencies must comply with 1 NMAC 3.2.50.1.9.3 for on site destruction of public records or request pick up and destruction by the state records center.
 - (2) Destruction of paper records converted to electronic or technology sensitive media:
 - (a) Agencies must meet all provisions of 1 NMAC 3.2.70.1 prior to destruction of converted paper records.
 - (b) Agencies must comply with 1 NMAC 3.2.50.1.9.3 for on site destruction of public records or request pick up and destruction by the state records center.

F. Destruction of microfilm. When destruction of microfilm is required, and the microfilmed record has met its required retention period, destruction of the microfilm will be accomplished by witnessed shredding.

G. Destruction of electronic or technology sensitive media. When destruction of a record in electronic or technology sensitive media is required:

(1) Non records: See Paragraph 9.1 of this rule.

(2) Public records shall be deleted or destroyed in accordance with a current retention schedule. See Paragraph 9.2 and Sub Section 9.3 of this rule.

(3) Confidential or restricted records shall be overwritten on all machine readable media on which it is stored, or the storage media may be physically destroyed.

(4) Supporting documentation (e.g., audit trails and results, certification records, etc.) should be disposed of in conjunction with the record(s) they support.]

A. 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 as identified in a record retention and disposition schedule. (If it's in a current retention schedule, it is a public record. If there is any doubt, treat it as a public record or contact the state records center and archives.) Non-records may be destroyed via the approved method of destruction for that type of information. To ensure information is destroyed, use one of the following methods:

(1) witnessed incineration;

(2) witnessed dumpsite burial;

(3) recycling through bonded recycler;

(4) witnessed shredding; or

(5) when there are no issues of security, it is appropriate to place non-records in trash bins or waste paper baskets.

B. Approval for destruction of public records: The destruction of public records must be approved by the state records administrator and may occur on-site at the custodial agency or through the state records center.

C. Agency destruction of public records: Agencies who choose to store public records for the life cycle of the records may either contact the state records center for destruction or they may elect to use the following procedure (Paragraph 1 of this subsection) for disposition of public records.

(1) Agency procedure for on-site destruction of public records.

(a) Agency shall request in writing permission to destroy public records. The request shall include:

(i) record retention and disposition schedule item number;

(ii) item description of the records to be destroyed;

(iii) inclusive dates of the records to be destroyed (or disposition trigger date); and

(iv) quantity of boxes, sacks, etc.

(b) The state records administrator shall review and, if appropriate, order in writing the transfer to archives or the destruction of the public records.

(c) Once written permission has been received, agency shall destroy the records via approved method of destruction:

(i) witnessed incineration;

(ii) witnessed dumpsite burial;

(iii) witnessed shredding; or

(iv) recycling through a bonded recycler

(d) Agency shall certify the destruction in writing and submit the certification to the state records administrator. For both legal and audit purposes, the agency should retain a copy of the certification for its file.

(2) Agency procedure for records center destruction.

(a) The records liaison officer shall prepare and submit a request for disposition to the state records administrator.

(b) The state records administrator shall review a request and, if appropriate, order in writing either the transfer to archives or the destruction of the public records.

D. Records center destruction of public records.

(1) The state records center will effect the timely and efficient destruction of public records that have met their retention period and have been released by the agency's records liaison.

(a) The state records center shall notify custodial agencies of records that have been stored for the scheduled retention period.

(b) The state records center will schedule, at least quarterly, the destruction of all public records that have been stored for the scheduled retention period.

(2) Custodial agencies receiving notification of records eligible for destruction shall review the report of records to be destroyed.

(a) The agency shall notify the state records center of any records scheduled for destruction which must be held and shall cite appropriate reason; e.g., pending litigation, audit in process, audit pending, etc.

(b) The agency shall approve destruction in writing.

(3) The state records center procedure for destruction of records stored at the records center or delivered to the records center for destruction shall be to:

(a) prepare a report of records to be destroyed for review by the archives division and approval by the state records administrator;

(b) direct the archives division to review and separate records for further review;

(c) obtain an order by the state records administrator for the routine destruction of public records.

(d) destroy records through:

(i) bonded recycler for public records without confidentiality requirements; and

(ii) witnessed shredding for confidential records only.

(e) direct the recycler to prepare and submit to the state records center and archives a certificate of destruction showing the date of destruction, the method of destruction, the names of person or persons that witnessed the destruction, and the signature or signatures of the person or persons who witnessed the destruction.

E. Destruction of paper records in alternative media. Destruction of paper records converted to alternative media shall comply with the applicable standards to ensure reliability and authenticity prior to their destruction.

(1) Destruction of paper public records converted to microfilm.

(a) Agencies must meet all requirements of 1.14.2 NMAC prior to destruction of microfilmed paper records.

(b) Agencies must comply with Subsection C of this section for on-site destruction of public records or request destruction by the state records center.

(2) Destruction of paper records converted to electronic or technology sensitive media.

(a) Agencies must meet all provisions of 1.13.70 NMAC prior to destruction of converted paper records.

(b) Agencies must comply with Subsection C of this section for on-site destruction of public records or request pick up and destruction by the state records center.

F. Destruction of microfilm. When destruction of microfilm is required and the microfilmed record has met its required retention period, destruction of the microfilm will be accomplished by witnessed shredding.

G. Destruction of electronic or technology sensitive media. When destruction of a record in electronic or technology sensitive media is required.

(1) Non-records: See Subsection A of this section.

(2) Public records shall be destroyed in accordance with a current retention schedule. See Subsections B and C of this section.

(3) Supporting documentation (e.g., audit trails and results, certification records, etc.) should be disposed of in conjunction with the record(s) they support.

H. The destruction of an electronic record can have two possible avenues, either the information and the record media are destroyed or the information is obliterated because the media for electronic records can remain useful and only the information needs to be destroyed. An agency shall select the best method for the destruction of an electronic record based on the retention of the record, the media and the nature or sensitivity of the information. For a local hard disk, methods one and two that follow should be sufficient. For other magnetic, optical, or solid-state storage media, agency information systems staff should be consulted. Agencies shall select from the following methods of destruction:

(1) erasure from electronic media and all back up media;

(2) emptying of electronic trash receptacle;

(3) witnessed overwriting of reusable magnetic media multiple times as recommended by the US department of defense;

(4) witnessed degaussing of the magnetic media; or

(5) witnessed physical destruction of the media as recommended by the US department of defense.
[12-1-94; Rn, 1 NMAC 3.55, 5-15-97; 1.13.30.9 NMAC - Rn, 1 NMAC 3.2.50.1.9 & A, 6/30/2004]
[Subsection H of Section 1.13.30.9 NMAC was developed from information contained in *U.S. department of defense 5220-m, national industrial security program.*]