

This is an amendment to 1.21.2 NMAC, amending Sections 7, 9 and 428 and adding section 620 effective 06/12/2018.

1.21.2.7 DEFINITIONS: The following terms shall have the respective meanings provided in this rule. Terms not defined in this rule which are defined in the Public Records Act, Section 14-3-1 et seq. NMSA 1978 shall have the respective meanings accorded such terms in the act.

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. **“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).

C. **“Executive level”** means elected and appointed officials, statutory agency heads and management personnel with decision making authority granted by the agency head.

D. ~~“File closed” means the date the trigger event occurred, or, for electronic records, equivalent to the date last modified unless otherwise stated in retention.~~

~~E.~~ **“Historical”** means records deemed to have archival value by the commission.

~~F.~~ **E. “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 official records, preliminary drafts, blank forms, transmittal letters or forms that do not add information, sample letters, and reading files or informational files.

~~G.~~ **F. “Official copy of record”** the single record determined to be the official copy for the purposes of fulfilling the retention requirements.

~~H.~~ **G. “Retention”** means the period of time during which the official copy of record shall be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

~~I.~~ **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.

~~J.~~ **I. “Trigger event”** means the ~~[closing]~~ event ~~[of a record]~~ which begins the retention period.

[1.21.2.7 NMAC - N, 10/01/2015; A, 11/30/2016; A, 06/12/2018]

1.21.2.9 INSTRUCTIONS:

A. The records retention and disposition schedule identifies the types of records maintained by all agencies and specifies a period of time for which the official copy of record must be retained. A retention period may be stated in terms of months or years and is contingent upon the occurrence of a trigger event. Each record classification will be itemized by NMAC section number and title in the format listed below.

(1) **Category** - describes the hierarchy of the function

(2) **Description** - describes the function of the record classification

(3) **Retention** - defines the length of time records must be kept before they are eligible for destruction or archival preservation

B. Record classification descriptions are not intended to be exhaustive. Descriptions may include records that do not appear in the files, and conversely, files may include records not listed in the description.

C. Refer questions concerning the confidentiality of a record to legal counsel for the agency. For the destruction of confidential records, please refer to 1.13.30 NMAC.

D. Public records should be maintained in their native format (paper/digital). Records may be microfilmed or digitized provided a microphotography plan has been approved by the state records administrator. Refer to Section 14-3-17 NMSA 1978 and 1.14.2 NMAC. Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes.

E. Agencies are encouraged to create secondary and tertiary descriptors for each classification (e.g., account receivable - invoices - acme inc., goods and services - IT consulting - data hub LLC., infrastructure project files - railroad project - Lamy station upgrade, etc.). These additional descriptors will assist with the accessibility of the records.

F. Upon storage or disposition, public records shall be classified according to content and retained at a minimum for the length of time specified in the records retention and disposition schedule.

G. For guidance on electronic messaging, refer to 1.13.4 NMAC.

H. For guidance on the destruction of non-record material, refer to 1.13.30 NMAC.

I. Records classifications related to the legislative [~~and judicial branches~~] branch of government provided herein are applicable for legislative [~~and judicial~~] agencies that utilize the records center services and permanent archival repository.

J. 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.

K. For guidance on classifying county and municipal records, refer to the records retention and disposition guidance for counties and municipalities.

L. For guidance on destruction of county records, refer to Section 14-1-8 NMSA 1978.

M. Classifications that have a disposition of transfer to archives may be submitted for direct transfer before the allotted time period specified in the retention with the approval of the custodial agency and state records administrator.

N. Upon adoption of this rule, records retained at the records center shall be reclassified according to the new records classifications for retention and disposition.

O. The official copy of a record may contain duplicates of other records. If your program requires the submission of documentation, and your agency is not required to submit this documentation to another agency for additional or final processing, your agency is the keeper of the official copy of record.

P. Records transferred to the state archives will be reviewed for final disposition.

[1.21.2.9 NMAC - N, 10/01/2015; A, 11/30/2015; A, 11/30/2016; A, 06/12/2018]

1.21.2.428 FINANCIAL - CAMPAIGN:

A. **Category:** Governance and compliance - election management.

B. **Description:** Records related to candidate, elected and appointed officials financial records.

C. **Retention:** [~~destroy five years from date file closed~~] permanent, transfer to archives 10 years from date file closed.

[1.21.2.428 NMAC - N, 10/01/2015; A, 11/30/2015; A, 06/12/2018]

1.21.2.620 COURT PROCEEDINGS:

A. **Category:** Legal and judiciary - court administration.

B. **Description:** records related to court proceedings including, but not limited to, tapes, court reporter notes, and transcripts. Does not include appellate case files.

C. **Retention:** ~~destroy~~ when associated case is no longer eligible for appeal.

[1.21.2.620 NMAC - N, 06/12/2018]

This is an amendment to 1.13.12 NMAC, Sections 9, 10 and 11 effective 06/12/2018.

1.13.12.9 DESIGNATED RECORDS CUSTODIAN: If a statutory records custodian elects to designate an individual to serve on his or her behalf as a designated records custodian, the following requirements and responsibilities are assigned.

A. The designated records custodian shall be the individual responsible for satisfying all statutory requirements of the records custodian as delineated in the Public Records Act (14-3-1 NMSA, 1978).

B. All designated records custodians shall attend the required basic records management training offered by the state commission of public records before they can store, withdraw, access or request the disposition of records.

C. Designated records custodians are required to attend the basic records management training once every three fiscal years.

[1.13.12.9 NMAC - N, 11/28/2017; A, 06/12/2018]

1.13.12.10 CHIEF RECORDS OFFICER: If a chief records officer is designated by the records custodian, the following responsibilities are assigned.

A. The chief records officer shall be the individual with the authority to oversee the agency's records management program.

B. The chief records officer shall perform the following duties:

(1) coordinate the response to the disposition authorization (destruction and transfer to state archives);

(2) establish and maintain a centralized tracking system for the agency's storage containers (including the containers' indices, metadata and locators) and the disposition of records;

(3) disseminate information on any pending litigation, a discovery order, subpoena, government investigation or audit;

(4) ensure staff is adequately trained on proper records management practices; and

(5) develop policies and procedures pertaining to records management issues (i.e., handling confidential materials, new hire orientation, e-mail management, disposition of records when an employee leaves the agency, metadata development, etc.).

C. The chief records officer shall have the same authorities and responsibilities as a record liaison officer. The chief records officer shall have the authority to submit records for direct transfer to archives.

D. All chief records officers shall attend the required basic records management training offered by the state commission of public records before they can store, withdraw, access or request the disposition of records.

E. Chief records officers are required to attend the basic records management training once every three fiscal years.

[1.13.12.10 NMAC - Rp, 1.13.12.9, 11/28/2017; A, 06/12/2018]

1.13.12.11 RECORDS LIAISON OFFICER: If a record liaison officer is designated by the records custodian, the following responsibilities are assigned.

A. Records liaison officers shall be authorized to interact with the state commission of public records and the state records administrator for the purposes of storage, withdrawal, access or disposition of records.

B. All records liaison officers shall attend the required basic records management training offered by the state commission of public records before they can store, withdraw, access or request the disposition of records.

C. Records liaison officers are required to attend the basic records management training once every three fiscal years.

[1.13.12.11 NMAC - Rp, 1.13.12.10, 11/28/2017; A, 06/12/2018]

This is an amendment to 1.13.10 NMAC, Sections 7 and 11, effective 06/12/2018.

1.13.10.7 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 1.13.12.9 NMAC.
- B. "Custodial agency" means the agency responsible for the creation, maintenance, safekeeping and preservation of public records, regardless of physical location.
- C. "Custody" means the guardianship of records, archives and manuscripts, which may include both physical possession (protective responsibility) and legal title (legal responsibility).
- D. "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.
- E. "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).
- F. "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.
- G. "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.
- H. "Master microfilm" means the original microform produced from which duplicates or intermediates can be obtained.
- I. "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 provided by information system technology pursuant to rules adopted by the commission.
- J. "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 informational files.
- K. "Pending litigation" means threatened, pending or active proceedings in a court of law whose activity is in progress but not yet completed.
- L. "Pick-up only personnel" means personnel authorized by a records custodian, chief records officer or record liaison officer to only pick-up records from the records center.
- M. "Records liaison officer" means a person designated by the records custodian to interact with the state commission of public records, refer to 1.13.12.10 NMAC.
- N. "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.
- O. "Trigger event" means the [e]osing event [of-a-record] which begins the retention period.
[1.13.10.7 NMAC - Rp, 1.13.10.7 NMAC, 11/30/2015; A, 07/11/2017; A, 06/12/2018]

1.13.10.11 STORAGE OF RECORDS WITH A FINITE RETENTION AT THE RECORDS CENTER:

- A. The records management division provides storage to agencies for inactive public records. Non-record materials shall not be submitted for storage in the records center.
- B. Records involved in pending litigation, an audit or investigation are not eligible for transfer to the records center.
- C. Agencies shall submit storage transmittal form(s) electronically using a form approved by the administrator.
- D. Each storage transmittal form shall contain records of one media type and designate one storage location.
- E. Records will not be accepted for storage whose retention will be met within 36 months.
- F. Barcode labels provided by the records center staff shall be affixed to the records storage boxes prior to delivery. The labels shall be placed two to three-inches below the handle side of the storage box.
- G. The records custodian, the chief records officer and the records liaison officer shall be notified by the records management division when records in storage have met the legal retention period and are eligible for destruction.

H. If an agency does not respond to the authorization to destroy records by the established deadline, the administrator shall charge the custodial agency a storage fee for the storage of 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.

I. A storage fee shall be charged for records that are eligible for destruction but are not destroyed at the request of the custodial agency. For information on the fee schedule, refer to 1.13.2 NMAC.

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

[1.13.10.11 NMAC - Rp, 1.13.10.13 NMAC, 11/30/2015; A, 07/11/2017; A 06/12/2018]

This is an amendment to 1.13.30 NMAC, amending Sections 7, 11, 12 and 13 effective 06/12/2018.

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 [closing] event [of a record] which begins the retention period.
[1.13.30.7 NMAC - Rp, 1.13.30.7 NMAC, 11/28/2017; A, 03/13/2018; A, 06/12/2018]

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 order the transfer of records to the state archives for review and appraisal.~~

~~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 but not limited to the following information:~~

- ~~(1) place and date of pick up;~~
- ~~(2) printed name and signature of employee(s) performing service;~~
- ~~(3) printed name and signature of witnesses;~~
- ~~(4) number of pounds destroyed/shredded (vendor) or number of boxes (agency certified);~~
- ~~(5) date of destruction/shredding;~~
- ~~(6) identification of company's authorizing agent by name and position;~~
- ~~(7) printed name and signature of official certifying the destruction (vendor or records liaison officer); and~~

~~(8) statement that shredded records cannot be read, interpreted, or reconstructed.] 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, 06/12/2018]

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 order the transfer of records to the state archives for review and appraisal.]~~ 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, 06/12/2018]

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, 06/12/2018]