

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

1.13.30.1 ISSUING AGENCY: State Commission of Public Records - State Records Center and Archives.

[1.13.30.1 NMAC - Rp, 1.13.30.1 NMAC, 06/01/2006]

1.13.30.2 SCOPE: All state agencies.

[1.13.30.2 NMAC - Rp, 1.13.30.2 NMAC, 06/01/2006]

1.13.30.3 STATUTORY AUTHORITY: Section 14-3-6 NMSA 1978 provides 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.

[1.13.30.3 NMAC - Rp, 1.13.30.3 NMAC, 06/01/2006]

1.13.30.4 DURATION: Permanent.

[1.13.30.4 NMAC - Rp, 1.13.30.4 NMAC, 06/01/2006]

1.13.30.5 EFFECTIVE DATE: June 01, 2006 unless a later date is cited at the end of a section.

[1.13.30.5 NMAC - Rp, 1.13.30.5 NMAC, 06/01/2006]

1.13.30.6 OBJECTIVE: To establish requirements for the proper and orderly destruction of public records created by state agencies.

[1.13.30.6 NMAC - Rp, 1.13.30.6 NMAC, 06/01/2006]

1.13.30.7 DEFINITIONS:

A. "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).

B. "Archives" means the New Mexico state archives the entity responsible for selecting, preserving and making available permanent records.

C. "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.

D. "Confidential" means information provided to, created by or maintained by a government agency and that is exempt from release under state or federal laws, because disclosure would cause substantial harm or constitute an invasion of privacy or is otherwise prohibited by law.

E. "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.

F. "Custody" means the guardianship of records, archives and manuscripts, which may include both physical possession (protective responsibility) and legal title (legal responsibility).

G. "Degaussing" means the process of removing magnetism from magnetically recorded tape thereby rendering most of the information non-reconstructable.

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

I. "Disposition" means the final action that puts into effect the results of an appraisal decision for a record series (e.g., transfer to archives or destruction).

J. "Electronic public record" means any information that is recorded in a form that only an electronic device can process and that satisfies the definition of a public record in Subsection G of Section 14-3-2 NMSA 1978.

K. "Non-records or non-essential records" 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 files or informational files.

L. "On-site destruction" means that once an agency has received approval from state records center and archives to destroy records, the agency has the option to destroy records on-site at the physical location of the agency using an approved method of destruction.

M. "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.

N. "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 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).

O. "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).

P. "Records center" means a facility designed and constructed to provide low-cost, effective storage for 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 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."

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

R. "Records liaison officer(s)" means a person in an agency responsible for authorizing the transfer, withdrawal or destruction of records and who acts on behalf of the records custodian.

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

T. "Records retention and disposition schedules" means rules adopted by the state commission of public records pursuant to Section 14-3-6 NMSA 1978 describing records of an agency, establishing a timetable for their life cycle and providing authorization for their disposition.

U. "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.

V. "Reformatting" means the process in which hard drives and floppy drives are reinitialized.

W. "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.
[1.13.30.7 NMAC - Rp, 1.13.30.7 NMAC, 06/01/2006]

1.13.30.8 [RESERVED]

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

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

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

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

D. The state records administrator has the authority to request any agency to designate a records liaison officer to cooperate with, assist and advise the state records administrator in the performance of his or her duties and to provide such other assistance and data as shall enable the commission and state records administrator to properly carry out the purposes of the Public Records Act (Section 14-3-4 NMSA 1978).

[1.13.30.9 NMAC - Rp, 1.13.30.8 NMAC, 06/01/2006]

1.13.30.10 DISPOSITION OF PUBLIC RECORDS:

A. Agencies shall ensure the proper authorized disposition of their records regardless of format or medium so that permanent records are preserved and records no longer of use to an agency are promptly deleted or destroyed based on retention periods established in records retention and disposition schedules and subject to the written approval of the state records administrator.

B. The records custodian for each agency shall assign one or more records liaison officers the responsibility for implementing records management requirements for all agency records at all levels and locations in all media including those received or created using electronic mail. The records liaison officer is responsible for authorizing the storage and destruction of his or her agency's records.

C. Agencies shall secure the written approval of the state records administrator before destroying any records or transferring records to the state archives.

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

[1.13.30.10 NMAC - Rp, 1.13.30.9 NMAC, 06/01/2006]

1.13.30.11 ON-SITE DESTRUCTION OF PUBLIC RECORDS: Destruction of public records may occur on-site at the custodial agency or through the state records center.

A. Agencies who choose to store public records on-site for the life cycle of the records shall contact the agency analysis bureau of the state records center and archives when the records have met their legal retention period.

B. The records liaison officer shall complete and submit the state records center and archives *request for disposition* form. The records liaison officer shall indicate on the form that the records are to be destroyed on-site. The *request for disposition* form shall contain but is not limited to the following: agency code, agency name, division, contact person, address, e-mail address, telephone number, fax number, destruction type, records title and description, disposition trigger date, quantity of boxes or bundles, records retention and disposition schedule section number, transfer to archives, record liaison officer signature and printed name, analyst review, records management division director review, records center section and archive section.

(1) The agency analysis bureau shall review the *request for disposition* and submit it to the state records administrator for approval. The state records administrator shall either approve or deny the request.

(a) When appropriate the state records administrator shall order the transfer of records to the state archives for review and appraisal.

(b) If the records listed on the *request for disposition* have met their legal retention period and are eligible for destruction, the agency shall receive a letter from the state records administrator authorizing the destruction of the records.

(c) The state records administrator shall notify an agency in writing if the request for on-site destruction is denied.

(2) Agencies that destroy records on-site shall certify the destruction in writing. A certificate of destruction shall be submitted to the agency analysis bureau of the state records center and archives. For legal and audit purposes, the records liaison officer(s) shall retain a copy of the certification on file. Agencies shall use only approved methods for agency on-site destruction of public records as identified below.

(a) Records that contain confidential or sensitive information shall be destroyed in such a manner that the information cannot be read, interpreted or reconstructed by:

(i) witnessed shredding, then pulping through a bonded document destruction vendor, or

(ii) witnessed macerating through a bonded document destruction vendor.

(b) Records without confidentiality requirements shall be destroyed by:

(i) recycling by a bonded document destruction vendor,

(ii) shredding;

(iii) macerating or

(iv) witnessed dumpsite burial.

(c) Electronic records shall be destroyed pursuant to 1.13.3 NMAC, Management of Electronic

Records.

[1.13.30.11 NMAC - Rp, 1.13.30.9 NMAC, 06/01/2006]

1.13.30.12 PUBLIC RECORDS DELIVERED TO THE RECORDS CENTER FOR DESTRUCTION:

Agencies storing public records on-site may elect to deliver public records that have met their retentions to the records center for destruction.

A. Agencies shall contact the agency analysis bureau of the state records center and archives when

records have met their legal retention period.

B. The records liaison officer(s) shall complete and submit the state records center and archives *request for disposition* form. The records liaison officer(s) shall indicate on the form whether the records are to be delivered to the Santa Fe or Albuquerque records center for destruction. The *request for disposition* form shall contain but is not limited to the following: agency code, agency name; division, contact person, address, e-mail address, telephone number; fax number, destruction type, records title and description, disposition trigger date, quantity of boxes or bundles, records retention and disposition schedule section number, transfer to archives, record liaison officer signature and printed name, analyst review, records management division director review, records center section and archive section.

C. The agency analysis bureau shall review the *request for disposition* and submit it to the state records administrator for approval. The state records administrator shall either approve or deny the request.

(1) When appropriate the state records administrator shall order the transfer of records to the state archives for review and appraisal.

(2) If the records listed on the *request for disposition* have met their legal retention period and are approved for destruction, the request shall be forwarded to the appropriate records center.

(3) Records center staff shall contact the agency to arrange a date and time for the records to be delivered to the records center.

(4) The records description and the number of boxes delivered to the records center shall match what is listed on the approved *request for disposition* form. Upon delivery if there is a discrepancy between what is listed on the approved *request for disposition* form and what is delivered to the records center, the shipment shall be rejected and sent back to the agency for clarification.

(5) The records center shall prepare a destruction order for the state records administrator's signature that lists the records approved for destruction that were delivered to the records center.

(6) Records approved for destruction shall be destroyed according to the procedures established in Subsection C of 1.13.30.13 NMAC for destruction of public records.

(7) The state records administrator shall notify an agency in writing if the request for destruction is denied.

[1.13.30.12 NMAC - Rp, 1.13.30.9 NMAC, 06/01/2006]

1.13.30.13 DESTRUCTION OF PUBLIC RECORDS: The state records center is responsible for the timely and efficient destruction of public records that have met their retention periods and that have been reviewed and released for destruction by the agency's record liaison officer and the state records administrator.

A. The state records center procedure for destruction of records (paper and microform) stored at the state records centers shall be to:

(1) schedule quarterly, the destruction of all public records stored in the records centers that have met their scheduled retention periods; and

(2) prepare a report notifying custodial agencies of records that have met their scheduled retention periods and are eligible for destruction or transfer to archives.

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

(1) The records liaison officer(s) shall notify the state records center of any records scheduled for destruction which must be held and shall cite the reason for holding the records beyond the retention period, e.g., pending litigation, audit in process or audit pending.

(2) The agency records liaison officer(s) shall approve the notice of destruction or the notice of transfer to the state archives in writing and return it to the records center.

(3) The records center shall:

(a) prepare a destruction order for the state records administrator's signature that lists the records approved for destruction; and

(b) prepare a transfer order for the state records administrator's signature that lists the records approved for transfer to the state archives.

C. The state records center shall adhere to the following standards in destroying records.

(1) It shall destroy records that contain confidential or sensitive information in such a manner that the information cannot be read, interpreted or reconstructed by:

(a) witnessed shredding, then pulping through a bonded document destruction vendor, or

(b) witnessed macerating through a bonded document destruction vendor.

(2) It shall destroy records without confidentiality requirements by:

(a) recycling by a bonded document destruction vendor,

(b) shredding,

- (c) macerating or
- (d) witnessed dumpsite burial.

(3) It shall direct the document destruction vendor to prepare and submit to the state records center a certificate of destruction showing the date of destruction, the method of destruction and the names and signatures of person or persons that witnessed the destruction.

D. Destruction of source documents 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 shall meet all requirements of 1.14.2 NMAC prior to destruction of microfilmed paper records.

(b) Agencies shall comply with 1.13.30.11 NMAC for on-site destruction of public records or 1.13.30.12 NMAC for public records delivered to the state records center for destruction.

(2) Destruction of paper records converted to electronic or machine readable media.

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

(b) Agencies shall comply with 1.13.30.11 NMAC for on-site destruction of public records or 1.13.30.12 NMAC for public records delivered to the state records center for destruction.

(3) Destruction of machine readable records converted to microform.

(a) Agencies shall meet all requirements of 1.14.2 NMAC prior to destruction of machine readable records.

(b) Agencies shall comply with 1.13.30.11 NMAC for on-site destruction of public records or request destruction by the state records center.

(c) Agencies shall meet all provisions of 1.13.70 NMAC prior to destruction of converted machine readable records.

E. Destruction of microfilm. When destruction of microfilm is required and the records contained on the microfilm have met the required retention period, destruction of the microfilm shall be accomplished by witnessed shredding.

F. Destruction of electronic media. When destruction of electronic media is required and the records contained on the electronic media have met the required retention period, destruction of the electronic media shall be accomplished by an approved method of destruction. For information on methods of destruction see Subsection G of 1.13.30.13 NMAC.

(1) For additional information on the destruction of non-records see 1.13.30.14 NMAC.

(2) Public records shall be destroyed in accordance with a current retention schedule.

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

G. The destruction of an electronic record involves two components. The first component includes the destruction of the information and the record medium. The second component is where the information is obliterated but the electronic medium is retained because it may still be useful. An agency shall select the best method for the destruction of an electronic record based on the retention of the record, the medium 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.

[1.13.30.13 NMAC - Rp, 1.13.30.8 and 9 NMAC, 06/01/2006]

1.13.30.14 DESTRUCTION OF NON-RECORDS: Destruction of non-records is the sole responsibility of the custodial agency and does not require the prior approval of the state records administrator. That responsibility includes identifying whether the information is a non-record or a public record.

A. Non-records that contain confidential or sensitive information exempted from disclosure by statute shall be destroyed in such a manner that the information cannot be read, interpreted or reconstructed. Non-records that contain confidential or sensitive information shall be destroyed by shredding, macerating or recycling through a bonded document destruction vendor.

B. Non-records without confidential requirements or that do not contain personal identifiers may be

destroyed in accordance with approved methods of destruction. To ensure information is destroyed, use one of the following methods:

- (1) dumpsite burial;
- (2) recycling through bonded recycler; or
- (3) shredding.

C. Electronic non-records that do not contain confidential or sensitive information may be destroyed by physical destruction of the media or erasure of the data from all media including back-up media. [1.13.30.14 NMAC - Rp, 1.13.30.9 NMAC, 06/01/2006]

1.13.30.15 DESTRUCTION OF PUBLIC RECORDS HELD BY CONTRACTORS: All public records or data created by a contractor or non-government entity for a state agency shall be disposed of in accordance with the procedures established in 1.13.30 NMAC. [1.13.30.15 NMAC - N, 06/01/2006]

HISTORY OF 1.13.30 NMAC:

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

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

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

History of Repealed Material:

1.13.30 NMAC, Destruction of Public Records, filed 6/16/2004 - Repealed effective 06/01/2006.

NMAC History:

1 NMAC 3.55, Destruction of Public Records, filed 12/1/94.

1 NMAC 3.2.50.1, Destruction of Public Records, filed 4/18/97.

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