

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 13 PUBLIC RECORDS
PART 4 RECORDS MANAGEMENT REQUIREMENTS FOR ELECTRONIC MESSAGING

1.13.4.1 ISSUING AGENCY: State Commission of Public Records - State Records Center and Archives
[1.13.4.1 NMAC - N, 6/29/2007]

1.13.4.2 SCOPE: all state agencies
[1.13.4.2 NMAC - N, 6/29/2007]

1.13.4.3 STATUTORY AUTHORITY: Sections 14-3-6 of the Public Records Act (Chapter 14, Article 3, NMSA 1978) gives the state records administrator the authority to establish and maintain an active, continuing program for economical and efficient management of the public records of state government and the authority to establish rules, standards, procedures and techniques for the effective management of public records.
[1.13.4.3 NMAC - N, 6/29/2007]

1.13.4.4 DURATION: Permanent
[1.13.4.4 NMAC - N, 6/29/2007]

1.13.4.5 EFFECTIVE DATE: June 29, 2007 unless a later date is cited at the end of a section.
[1.13.4.5 NMAC - N, 6/29/2007]

1.13.4.6 OBJECTIVE: To establish requirements for the management, preservation and disposition of public records sent or received through electronic messaging transmissions to ensure:

A. adequate documentation of agencies' statutory functions, policies, decisions, procedures and business transactions;

B. retention of public records in accordance with established records retention and disposition schedules promulgated by the commission of public records under Title 1, Chapters 15 through 20 of the New Mexico Administrative Code; and

C. the capture and preservation of permanent public records sent or received through e-messaging of historical and informational value.

[1.13.4.6 NMAC - N, 6/29/2007]

1.13.4.7 DEFINITIONS:

A. **Adequate documentation** means a record of the conduct of government business that is complete and accurate to the extent required to document functions, policies, decisions, procedures and business transactions designed to furnish the information necessary to protect the legal and financial rights of state government and of persons directly affected by an agency's activities.

B. **Administrator** means the state records administrator (Section 14-3-2 NMSA 1978).

C. **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).

D. **Archives** means the New Mexico state archives, the entity responsible for appraising, preserving and making available permanent public records.

E. **Authentic record** means a record that is what it purports to be and whose authenticity can be established by its mode and form of transmission, security controls and procedures for the identification, filing, retrieval and access, storing, disposition, transfer, preservation, and conservation of the record by its creator or legitimate successor.

F. **Business transaction** means the process of responding to external and internal requests for resources, goods, services or information relating to a defined area of government responsibility or authority and the exchange of resources, goods, services or information that occurs as a result, e.g., request for birth certificate via e-mail and response by vital records bureau.

G. **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 used to conduct the business of government.

H. **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.

I. Data is the plural for "datum" which means a single piece of information. Data refers to a collection of information, electronic or non-electronic. Data can also refer to raw facts, figures or symbols.

J. Destruction means the disposal of records of no further value by a method prescribed and authorized by the state records administrator [1.13.30 NMAC, Destruction of Public Records and Non-Records] such as: shredding, burial, incineration, pulping, electronic overwrite or some other process, resulting in the obliteration of information contained in the record.

K. Disposition means those actions taken regarding records no longer needed for current government business. Disposition may include either destruction or the transfer of records to the state archives.

L. E-message means an electronic mail message created in or received through an electronic mail system, including all attachments, such as word processing and other electronic documents sent over a communications network, using a computer or other electronic device. E-messages include text messages sent over a cell-phone or PDA.

M. Electronic mail system means a system that enables users to compose, transmit, receive and manage electronic mail across networks and through gateways connecting to other local area networks.

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

O. End-user means any person authorized by a state agency to access state IT and telecommunication resources, including a state employee, officer or contractor doing business with the agency.

P. Executive records retention and disposition schedule means a records retention and disposition schedule that identifies and establishes retention periods specific to an executive agency's program records.

Q. Filing means the process of sequencing and sorting records to make them easy to retrieve when needed.

R. General records retention and disposition schedules means a records retention and disposition schedule that specifies the disposition of support records common to many offices or agencies within government, such as general administrative, financial, or personnel records and establishes a timetable for their legal retention. See also **records retention and disposition schedule**.

S. Historical value means the value assigned to records by the state records administrator and the commission of public records because of their importance or usefulness in documenting past events in history.

T. Instant messaging (IM) means the exchange of typed messages between two or more people in real time through the internet.

U. Information technology (IT) means computer hardware and software and ancillary products and services, including: systems design and analysis; acquisition, storage and conversion of data; computer programming; information storage and retrieval; voice, radio, video and data communications; requisite systems; simulation and testing; and related interactions between users and information systems.

V. Judicial records retention and disposition schedule means records retention and disposition schedule that specifies the disposition of support records for the judiciary branch of state government.

W. Legislative records retention and disposition schedule means a records retention and disposition schedule that specifies the disposition of support records for the legislative branch of state government.

X. Legal custody means the lawful responsibility for the care, maintenance or keeping of a public body's public records, regardless of whether the records are in the public body's actual physical custody and control.

Y. Metadata means "data about data"; it is information that describes another set of data. Metadata is descriptive information that facilitates the management of and access to other information. For example transmission metadata accompanies an e-message and provides information about the sender, recipient, time of transmission and its receipt. Recordkeeping metadata provides indexing and retention data on electronic records and facilitates records management actions such as discovery, preservation and disposition.

Z. 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.

AA. Permanent records means records considered being unique or so valuable in documenting the history or business of an agency or organization that they are preserved in an archive.

BB. Personal digital assistant (PDA) means a handheld device that combines computing, telephone/fax, internet and networking features.

CC. Public records as defined in the Public Records Act (Section 14-3-2 NMSA 1978) 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 of the government, or because of the informational and historical value of data contained therein.

DD. Records custodian means any person responsible for the maintenance care or keeping of a public body's public records, regardless of whether the records are in that person's actual physical custody and control.

EE. Records and information requirements means all statements in statutes, regulations, and agency directives or authoritative issuances that require an agency to create and maintain certain records or information for a specific period of time.

FF. Recordkeeping system means a manual or electronic system in which records are collected, organized and categorized to facilitate their preservation, retrieval and disposition.

GG. Records liaison officer 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 destruction of his or her agency's records.

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

II. 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, results from the same activity, have a particular form or share some other relationship arising from their creation, receipt or use.

JJ. Transfer means the act of moving inactive records to a records center or archives. Moving records into the state archives also includes the transfer of custody from the custodial agency to the state archives.

KK. Transitory messages means e-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 e-messages are not required to control, support or to document the operations of government.

[1.13.4.7 NMAC - N, 6/29/2007]

1.13.4.8 ABBREVIATIONS:

- A. "E-messages" means electronic mail.
- B. "ERRDS" means executive records retention and disposition schedule.
- C. "GRRDS" means general records retention and disposition schedule.
- D. "JRRDS" means a judicial records retention and disposition schedule.
- E. "LRRDS" means a legislative records retention and disposition schedule.
- F. "IM" means instant messaging.
- G. "IPRA" means the Inspection of Public Records Act.
- H. "PDA" stands for personal digital assistant.
- I. "RRDS" stands for records retention and disposition schedule.
- J. "SRCA" means state records center and archives.

[1.13.4.8 NMAC - N, 6/29/2007]

1.13.4.9 PUBLIC RECORDS: Electronic mail has become the communication method of choice for state government and is often used to communicate substantive information previously committed to paper and transmitted by traditional methods. This combination of communication and record creation and recordkeeping has created ambiguities on the status of e-mail messages as public records. The management of e-mail messages touches on nearly all functions for which government agencies rely on recordkeeping, to furnish accurate, timely and complete information for efficient decision making in the management and operation of the agency. The need to manage e-mail messages properly is the same as that for other records to ensure compliance with New Mexico laws concerning the creation, retention, and access to public records. E-messages classified as public records are subject to records and information management requirements promulgated as rules by the SRCA and the requirements of the Public Records Act and the Inspection of Public Records Act (IPRA).

[1.13.4.9 NMAC - N, 6/29/2007]

1.13.4.10 MANAGEMENT RESPONSIBILITIES: Agencies are required to provide guidance to

employees on the proper use of the state's information technology resources, including the use of e-mail (1.12.10 NMAC, Internet, Intranet, Email and Digital Network Usage). The state maintains an enterprise electronic mail system that allows users to communicate electronically. Each agency using the system continues to have the responsibility to identify and maintain its records whether created electronically or on paper. E-mail messages that are identified as a public record shall be maintained in conformance with the agency's records retention and disposition schedule and records management plan. The management of electronic messaging is essential to ensure adequate control and retention of public records, the efficient and effective use of resources and the mitigation of legal liability to the state of New Mexico. Effective policies clearly define the roles and responsibilities of end users, managers, technical staff, records custodians, and records management staff to ensure that e-messages identified as public records by the custodial agency are:

- A. managed in compliance with applicable state and federal laws and regulations;
- B. maintained in an appropriate recordkeeping system;
- C. complete;
- D. readily available and accessible in a useable format; and
- E. authentic and secure.

[1.13.4.10 NMAC - N, 6/29/2007]

1.13.4.11 RETENTION AND SCHEDULING REQUIREMENTS: E-messages may include public records or transitory information. Only those e-messages classified as public records must be retained based on established retention periods published in GRRDS, JRRDS, LRRDS and ERRDS (Title 1, Chapters 15 through 20 of the NMAC). E-messages must be categorized, filed and retained on the basis of content. The content of e-messages may vary considerably; therefore, each e-message shall be evaluated to determine if it meets the definition of a public record as defined in the Public Records Act and 1.13.4 NMAC. Non-records or transitory e-messages that do not provide evidence of official agency policies or business transactions may be deleted.

A. E-messages and attachments classified as public records shall be categorized under the appropriate record series identified in a GRRDS, JRRDS, LRRDS, or ERRDS. E-messages and attachments identified as public records shall be retained and stored for as long as required under the appropriate retention period. E-messages scheduled as permanent shall be transferred to the state archives. E-messages that are public records include but are not limited to:

- (1) policies and directives;
- (2) correspondence or memoranda that contain final directives, determinations, instructions or guidance regarding public business;
- (3) minutes of governing boards, advisory groups, ad-hoc committees or work groups developing programs;
- (4) messages that authorize, establish or complete a business transaction; or
- (5) final reports or recommendations such as to legislative committees or produced by task forces or study groups.

B. Non-record and transitory e-messages do not set policy, provide directives, establish guidelines or procedures nor do they certify transactions; they may be destroyed without the prior approval of the state records administrator. Non-record and transitory e-messages include but are not limited to:

- (1) duplicate copies of messages sent to multiple people;
- (2) personal messages and announcements not related to official agency business;
- (3) preliminary drafts of letters, reports and memoranda;
- (4) messages considered brainstorming or preliminary thought processes in nature, reflecting the exchange of ideas preliminary to the development of a final decision or position of the agency;
- (5) transmittal e-messages that do not add substantive information to the attachment(s) being transmitted;
- (6) copies of documents distributed for convenience or reference;
- (7) announcements of social events, such as retirement parties;
- (8) spam (unsolicited, commercial e-messages);
- (9) messages to or from e-messages distributions lists (listserv) not directly related to agency business; and
- (10) instant messages.

[1.13.4.11 NMAC - N, 6/29/2007]

1.13.4.12 FILING E-MESSAGES: Filing solutions shall be based on a classification solution as described above in Subsection A of 1.13.4.11 NMAC. E-messages shall be filed in a manner that enhances their accessibility and facilitates record and information management requirements. E-messages classified as public

records shall be filed either in a manual, paper-based system or electronically. Placing e-messages in an organized recordkeeping system is critical for the application of records retention and disposition requirements. Procedures for filing e-messages will vary based on the agency's needs and the particular hardware and software in use. E-messages sent and received in an official capacity from a computer outside the state system that can be classified as public records shall be transferred to an agency's recordkeeping system for proper retention and disposition. Non-records or transitory messages are not required for retention by a state agency and regular deletion of such messages should be included in e-mail management procedures implemented by an agency.

A. Manual filing systems for text based messaging require that messages and attachments be printed. Once an e-message has been printed the e-message and attachment may be deleted from the e-mail system. The printed copy shall include the name(s) of the sender and all recipients and the date the message was sent.

B. All electronic systems used to file e-messages shall ensure that:

(1) e-messages and attachments classified as public records can be accessed, retrieved and read;
(2) metadata for e-message records sent or received are captured and preserved;
(3) e-message records are retained in a useable format for their required retention period as specified by approved records retention and disposition schedules; and

(4) permanent e-message records scheduled for transfer to the state records center and archives meet the criteria established in the 1.13.3 NMAC, Management of Electronic Records.

[1.13.4.12 NMAC - N, 6/29/2007]

1.13.4.13 STORAGE OF E-MESSAGES: E-messages that are public records shall be maintained in a useable format by the agency that created or received the public record.

[1.13.4.13 NMAC - N, 6/29/2007]

1.13.4.14 DISPOSITION: Content, transactional information and attachments associated with e-messages that are public records are subject to the provisions in 1.13.10 NMAC Records Custody, Access, Storage and Disposition and 1.13.30 NMAC, Destruction of Public Records and Non-Records. E-messages potentially relevant to an audit, investigation or litigation should be preserved, even if the retention period has been met.

[1.13.4.14 NMAC - N, 6/29/2007]

1.13.4.15 ACCESS: E-messages maintained by an agency are subject to IPRA (14-2-1 through 14-2-12 NMSA 1978). Filing solutions based on a classification system as described above in Subsection A of 1.13.4.11 NMAC may provide an organized and consistent indexing system by which e-messages may be easily retrieved.

[1.13.4.15 NMAC - N, 6/29/2007]

HISTORY OF 1.13.4 NMAC: [RESERVED]