

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 18 EXECUTIVE RECORDS RETENTION AND DISPOSITION SCHEDULES (ERRDS)
PART 308 ERRDS, OFFICE OF THE STATE AUDITOR

1.18.308.1 ISSUING AGENCY: New Mexico Commission of Public Records - State Records Center and Archives
[1.18.308.1 NMAC - Rp, 1.18.308.1 NMAC, 9/26/03]

1.18.308.2 SCOPE: Office of the State Auditor
[1.18.308.2 NMAC - Rp, 1.18.308.2 NMAC, 9/26/03]

1.18.308.3 STATUTORY AUTHORITY: Section 14-3-4 NMSA 1978, it shall be the duty of the commission to adopt and publish rules to carry out the purposes of the Public Records Act. Section 14-3-6 NMSA 1978, the administrator shall establish a records management program for the application of efficient and economical management methods for the creation, utilization, maintenance, retention, preservation and disposal of public records.
[1.18.308.3 NMAC - Rp, 1.18.308.3 NMAC, 9/26/03; A, 4/30/12]

1.18.308.4 DURATION: Permanent
[1.18.308.4 NMAC - Rp, 1.18.308.4 NMAC, 9/26/03]

1.18.308.5 EFFECTIVE DATE: September 26, 2003, unless a later date is cited at the end of a section.
[1.18.308.5 NMAC - Rp, 1.18.308.5 NMAC, 9/26/03]

1.18.308.6 OBJECTIVE: To establish a records retention schedule for the orderly management, retention, disposition and preservation of records necessary for carrying out the Public Records Act pursuant to Section 14-3-6 NMSA 1978.
[1.18.308.6 NMAC - Rp, 1.18.308.6 NMAC, 9/26/03; A, 4/30/12]

1.18.308.7 DEFINITIONS:

- A. "Administrator"** means the state records administrator (Section 14-3-2 NMSA 1978).
- B. "Agency"** means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico (Section 14-3-2 NMSA 1978).
- C. "Archives"** means the permanent records of the state of New Mexico, which may include government and private collections of the Spanish, Mexican, territorial and statehood periods, assessed to have significant historical value to warrant their preservation by the state of New Mexico. The term also refers to the organizational unit of the SRCA storing these records.
- D. "Audit"** means a periodic examination of an organization to determine whether appropriate procedures and practices are followed.
- E. "Commission"** means the state commission of public records (Section 14-3-2 NMSA 1978).
- 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. "Microphotography"** means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted by the commission.
- H. "Non-record"** means extra copies of documents kept solely for convenience of reference, stocks of publications, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency; extra copies of correspondence; preliminary drafts; blank forms, transmittal letters or forms that do not add information; sample letters; and reading file or informational files.
- I. "Pending litigation"** means a proceeding in a court of law whose activity is in progress but not yet completed.
- J. "Public record"** means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection

with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein (Section 14-4-2 NMSA 1978).

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

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

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

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

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

[1.18.308.7 NMAC - Rp, 1.18.308.7 NMAC, 9/26/03; A, 4/30/12]

1.18.308.8 ABBREVIATIONS AND ACRONYMS:

A. "CFR" stands for code of federal regulations.

B. "CPA" stands for certified public accountant.

C. "CPE" stands for continuing professional education.

D. "DFA" stands for department of finance and administration.

E. "EDRRDS" stands for education records retention and disposition schedules.

F. "ERRDS" stands for executive records retention and disposition schedules.

G. "GRRDS" stands for general records retention and disposition schedules.

H. "IPA" stands for independent public accountant.

I. "JRRDS" stands for judicial records retention and disposition schedules.

J. "LRRDS" stands for legislative records retention and disposition schedules.

K. "LGRRDS" stands local government records retention and disposition schedules.

L. "SRCA" stands for state records center and archives.

M. "USC" stands for United States code.

[1.18.308.8 NMAC - N, 9/26/03; A, 4/30/12]

1.18.308.9 INSTRUCTIONS:

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

(1) **Program** - describes the function of the records

(2) **Maintenance system** - describes how an agency files (organizes) records

(3) **Description** - describes the purpose and content of a record

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

B. For records of a general administrative nature, refer to the GRRDS, General Administrative, 1.15.2 NMAC.

C. For records of a financial nature, refer to the GRRDS, General Financial, 1.15.4 NMAC.

D. For records of a personnel nature, refer to the GRRDS, General Personnel, 1.15.6 NMAC.

E. For records of a medical nature, refer to the GRRDS, General Medical, 1.15.8 NMAC.

F. Retention periods shall be extended until six months after all current or pending litigation; current claims, audit exceptions or court orders involving a record have been resolved or concluded.

G. The descriptions of files are intended to be evocative, not complete. For example, there will always be some documents that are included in a file that are not listed in the description, and similarly, not every file will contain an example of each document listed in the description.

H. Confidentiality is denoted for files likely to contain confidential materials or information; however files without a confidentiality note may contain confidential or privileged information. Failure to include a confidentiality note in the description of a record series does not waive confidentiality. Refer questions concerning the confidentiality of a file to legal counsel for the agency.

I. Access to confidential documents, information or files shall be only by authorization of the agency records custodian (Section 14-2-8 NMSA 1978), or by the office of the attorney general or by court order, unless otherwise provided by law. Release of confidential documents to law enforcement and other government agencies, shall only be upon specific statutory authorization or court order.

J. Records may be photographed, microfilmed, digitized or converted to computer output microfilm provided a microphotography plan has been approved by the state records administrator (Section 14-3-17 NMSA 1978). Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction as evidence in all courts or administrative agencies (Section 14-1-6 NMSA 1978).

K. Public records placed on magnetic tapes, disks or other data processing media shall be retained for the length of time specified in records retention and disposition schedules and are subject to the same confidentiality and access restrictions as paper records. See also 1.13.70 NMAC, Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems.

L. Email is a transmission medium for content that may or may not be a public record. Email messages that contain information sent or received by an agency in connection with the transaction of official state business or in pursuance of law are public records and are subject to retention requirements established in records retention and disposition schedules. Email messages are required to be categorized, filed and retained on the basis of content (1.13.4 NMAC, Records Management Requirements for Electronic Messaging). The content of email messages may vary considerably; therefore, each email shall be evaluated to determine if it meets the definition of a public record as defined in the Public Records Act. Non-records or transitory emails that do not provide evidence of official agency policies or business transactions may be deleted.

M. Non-scheduled public records created by an agency in pursuance of law or in connection with the transaction of public business shall have a retention period of permanent until such time the non-scheduled record has been scheduled and a retention period adhering to operational, legal, fiscal, historical or other purposes is established.

[1.18.308.9 NMAC - Rp, 1.18.308.9 NMAC, 9/26/03; A, 4/30/12; A, 4/22/13]

1.18.308.10 - 100 [RESERVED]

1.18.308.101 AUDIT PROCESS TRACKING SYSTEM:

A. Program: audit

B. Maintenance system: numerical by primary key

C. Description: System maintains, monitors and tracks agencies' audits conducted by the state auditor or IPA firms. System contains data on the following: independent public accountant firms that conduct state agencies audits; audited agencies; state auditor's staff; professional service contracts; and state auditor's training conducted. IPA data may include firm name, mailing address, physical address, email address, web address, firm's regulation number, firm's regulation expiration date, firm's insurance company, coverage limit, deductible, coverage's expiration date, quality review program, quality review firm's name, quality review firm's address, review date, total hours available, total number of staff, staff's name, staff's CPA certificate number, CPA certificate expiration date, staff's hours of CPE, restrictions, etc. Audited agencies data may include agency's name, DFA or assigned code, executive director or cabinet secretary's name, telephone number, address, contract received, number of years of contract, contract's due date, report received, number of findings, ten day waiver, reviewing auditor's name, correction pages received date, etc. State auditor staff data may include last name, first name, staff number, professional title, date hired, continuing education hours, required hours complete, date, course title, location, sponsor, etc. Professional service contracts data may include agency's name, agency's number, contract amount, contract dates, date submitted, approval date, purpose of contract, etc. State auditor training conducted data may include first name, last name, organization name, address, qualified as CPE, work shop name, date, CPE hours, etc.

D. Retention:

- (1) **CPE data:** three years after close of fiscal year created
- (2) **All other data:** ten years after close of fiscal year created

E. Hardcopy input documents: all documents used as input for the *audit tracking system* are filed in the corresponding *IPA firm profile files* and *agency audit files*. Those documents include but are not limited to

the following: *firm profile datasheet*, firm's permit to practice, professional liability insurance certificate, copy of *peer quality review*, letter of acceptance, copies of certified public accountant licenses, *individual profile worksheets*, copies of governmental continuing professional education certificates, copies of *engagement letters*, copies of contracts, state auditor recommendation checklist, draft *audit report*, final *audit report* (annual and special), audit report release letter, etc.

F. Hardcopy output documents: the *audit tracking system* is a data based system. Ad hoc reports may be generated upon request or on demand. When produced, these reports are either forwarded to the requesting entity or filed in the corresponding file.

[1.18.308.101 NMAC - N, 9/26/03]

1.18.308.102 IPA FIRM PROFILE FILES:

A. Program: audit

B. Maintenance system: chrono-alphabetical by fiscal year then by firm name

C. Description: records concerning approval of independent public accountant firms to audit government agencies. File may contain *firm profile datasheet*, firm's organizational chart, firm's permit to practice, professional liability insurance certificate, copy of *peer quality review*, letter of comments, response letter, letter of acceptance, copies of certified public accountant licenses, *individual profile worksheets*, copies of governmental continuing professional education certificates, copies of continuing professional education reports, copies of *engagement letters*, copies of contracts, correspondences, memoranda, etc.

D. Retention: eight years after audit report released

[1.18.308.102 NMAC - N, 9/26/03]

1.18.308.103 AGENCY AUDIT FILES:

A. Program: audit

B. Maintenance system: numerical by assigned agency code

C. Description: record of the examination and verification by the office of the New Mexico state auditor or an independent public accounting firm of an agency's financial and accounting records and supporting documentation. File may contain copies of *engagement letter*, auditor's copies of contract, copies of requested agency's accounting and financial documents, state auditor recommendation checklist, copy of recommendation approval letter to agency, copy of approval letter of progress billing, draft *audit report*, final *audit report* (annual and special), *audit report* release letter, waiver to release *audit report* prior to release date, correspondence, memoranda, etc.

D. Retention:

(1) **Final audit reports (annual and special):** permanent. Transfer to archives three years after final report released

(2) **All other documentation (working papers, contracts, etc.):** six years from date final report released

E. Confidentiality: Portions of file may be confidential pursuant, but not limited to 12-6-3 NMSA 1978 (i.e., Annual and special audits, financial examinations) and 12-6-5 NMSA 1978 (i.e., Reports of audits).

[1.18.308.103 NMAC - Rp, 1.18.308.101 NMAC & 1.18.308.103 NMAC, 9/26/03; A, 4/30/12; A, 4/22/13]

1.18.308.104 PROPERTY DISPOSITION FILES:

A. Program: audit

B. Maintenance system: chronological by fiscal year then quarter and date received

C. Description: records concerning the authorization by the state auditor for the disposition of worn-out, unusable or obsolete property by agencies. File may contain thirty-day notification of disposition, copy of response, request for waiver of thirty-day notice, copy of denial of disposition, correspondence, memoranda, etc.

D. Retention: three years after the end of the fiscal year in which response letter is created

[1.18.308.104 NMAC - N, 9/26/03]

1.18.308.105 PROFESSIONAL SERVICE CONTRACT FILES:

A. Program: audit

B. Maintenance system: alphabetical by firm name

C. Description: records concerning contracts between IPA firms and agencies received by the state auditor to verify that services will not conflict with audit that will be conducted. File may contain copy of contract, statement of scope of work, copy of response, correspondence, memoranda, etc.

D. Retention: six years after termination of contract
[1.18.308.105 NMAC - N, 9/26/03]

1.18.308.106 AUDIT INVESTIGATION CASE FILES:

A. Program: audit investigations
B. Maintenance system: chronological by date, then numerical by investigative case number
C. Description: records concerning the state auditor's civil investigation of the financial affairs and transactions of an agency. File may include complaints, referrals, case assessments, investigative notes, news articles, case indexes, correspondence, etc.

D. Retention:
(1) Audit investigation case files that do not result in special audit, performance audit or attestation engagement: three years from date of final disposition of investigation.

(2) Audit investigation case files that result in special audit, performance audit or attestation engagement: 10 years from date of final disposition of investigation.

E. Confidentiality: Portions of this record may be confidential pursuant, but not limited to Section 14-2-1 NMSA 1978 (i.e., "law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime"), 12-6-3 NMSA 1978 (i.e., Annual and special audits, financial examinations) and 12-6-5 NMSA 1978 (i.e., Reports of audits).

[1.18.308.106 NMAC - N, 4/30/12]

1.18.308.107 AUDIT INVESTIGATION TRACKING SYSTEM:

A. Program: audit investigation
B. Maintenance system: numerical by primary key (investigative case number)
C. Description: system tracks, monitors and maintains complaints and investigative data regarding the state auditor's civil investigation of the financial affairs and transactions of an agency. System data may include incident type, incident number, incident description, reported parties, report date, case indexes, etc.

D. Data retention:
(1) Audit investigation case files that do not result in special audit, performance audit or attestation engagement data: three years from date of final disposition of investigation.

(2) Audit investigation case files that result in special audit, performance audit or attestation engagement data: 10 years from date of final of disposition of investigation.

E. Confidentiality: Portions of this record are confidential pursuant, but not limited to Section 14-2-1 NMSA 1978 (i.e., "law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime"), 12-6-3 NMSA 1978 (i.e., Annual and special audits, financial examinations) and 12-6-5 NMSA 1978 (i.e., Reports of audits).

F. Input: All documents used as input for the *audit investigation tracking system* are filed in the 1.18.308.106 *audit investigation case files*.

G. Output: Because the *audit investigation tracking system* is a data based system, ad hoc reports may be generated upon request or on demand. When produced, these reports are forwarded to the requesting entity.

[1.18.308.107 NMAC - N, 4/30/12]

HISTORY OF 1.18.308 NMAC:

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

SRC Rule 69-20, Records Retention and Disposal Schedule for State Auditor, 12/10/69.

SRC Rule 74-23, Records Retention and Disposal Schedule for State Auditor, 9/9/74.

SRC Rule 85-16, Records Retention and Disposition Schedule for Office of State Auditor, 8/27/85.

History of Repealed Material:

1.18.308 NMAC, ERRDS, Office of the State Auditor - Repealed 9/26/03