

WSR 24-10-114
PROPOSED RULES
SECRETARY OF STATE
[Filed May 1, 2024, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-07-037.

Title of Rule and Other Identifying Information: Custody of public records.

Hearing Location(s): On June 6, 2024, at 2:00-2:30 p.m., at the Washington Secretary of State, State Archives Building, 1129 Washington Street S.E., Olympia, WA 98501.

Date of Intended Adoption: June 7, 2024.

Submit Written Comments to: Terry Badger, P.O. Box 40238, Olympia, WA 98504-0238, email archives@sos.wa.gov, fax 360-664-8814, by June 5, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarify the custody of public records when located by agencies in temporary storage at the state records center to state that it is not prohibited for agencies to transfer records between each other when needed to perform a governmental function.

Reasons Supporting Proposal: By removing "physical" as part of the custody requirement, it makes it clear that local governments may use private record storage facilities and all agencies may use cloud storage providers.

Statutory Authority for Adoption: RCW 40.14.020.

Statute Being Implemented: RCW 40.14.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Office of the secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Terry Badger, Olympia, 360-902-4151.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. No fiscal impact.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

May 1, 2024
Amanda Doyle
Chief of Staff

OTS-5300.1

AMENDATORY SECTION (Amending WSR 93-04-001, filed 1/21/93, effective 2/21/93)

WAC 434-615-020 Custody. (1) Unless otherwise provided by law, public records must remain in the legal custody of the office in which they were originally filed, which shall be considered the office of record, or shall be destroyed or transferred pursuant to instructions from the state or local records committee as required by chapter 40.14 RCW. They shall not be placed in the legal (~~or physical~~) custody of any other person or agency, public or private, or released to individuals, except for disposition pursuant to law or unless otherwise expressly provided by law or by these regulations.

(2) Nothing in this rule shall be construed to prohibit an agency from transferring records to another agency whenever it is necessary that the agency possess the records in order to perform a governmental function. Any agency that has received records that should by law have been filed with another agency may transfer those records to the proper agency, or return to the filer.