

# Explanation of Edits to WAC 434-662

## Title

Change: Delete the words, “at the Washington State Digital Archives,” so the title now reads, “Preservation of Electronic Public Records.”

Effect: Clarifies electronic public records must be preserved even if an agency does not use the Washington State Digital Archives to meet pre-existing archive requirements for electronic public records.

## Section 010

### Purpose

Change: Add reference to chapter 43.105.250 RCW.

Effect: References the following language, better clarifying legislative intent:

Based upon the recommendations of the public information access policy task force, the legislature finds that government records and information are a vital resource to both government operations and to the public that government serves. Broad public access to state and local government records and information has potential for expanding citizen access to that information and for improving government services. Electronic methods for locating and transferring information can improve linkages between and among citizens, organizations, businesses, and governments. Information must be managed with great care to meet the objectives of citizens and their governments.

It is the intent of the legislature to encourage state and local governments to develop, store, and manage their public records and information in electronic formats to meet their missions and objectives. Further, it is the intent of the legislature for state and local governments to set priorities for making public records widely available electronically to the public. [1996 c 171 § 1.]

Change: Delete the words, “that have archival value,” from the sentence: Pursuant to the provisions of chapters 40.14, 42.56, and 43.105.250 RCW, the rules contained in this chapter are intended to ensure that electronic public records ~~that have archival value~~ are securely preserved ...”

Effect: Clarifies the rules do not exclusively apply to electronic public records with archival value. Proceeding sections of the proposed rules specify procedures for archival *and non-archival* electronic public records.

Change: Add the words “for their minimum retention period.” The sentence would read: Pursuant to the provisions of chapters 40.14, ~~and 42.56,~~ and 43.105.250 RCW, the rules contained in this chapter are intended to ensure that electronic public records ~~that have archival value~~ are securely preserved for their minimum retention period for present and future access ...

Effect: Clarifies the amount of time a record should be preserved.

Change: Add “/or” to the sentence: Pursuant to the provisions of chapters 40.14, 42.56, and 43.105.250 RCW, the rules contained in this chapter are intended to ensure that electronic public records are securely preserved for present and future access and/or are transferred to the Washington state digital archives for permanent retention ...”

Effect: Clarifies all agencies must securely preserve electronic public records for present and future access but an agency **may** use the Washington State Digital Archives to meet pre-existing requirements for storage of electronic public records. An agency may choose not to use the Washington State Digital Archives, but that does not relieve the agency of electronic public records archiving requirements.

Change: Delete the word “permanent” and change the words “insure permanent preservation” to “permanently preserved.”

Effect: Removes a phrase that is unnecessarily used twice and reduces the number of words used to convey the same concept.

Change: Add the words “legal and.” The sentence would read: ... so that valuable legal and historical records ...

Effect: Denotes another class of records for preservation.

Changed section in whole:

**WAC 434-662-010 Purpose.** Pursuant to the provisions of chapters 40.14, ~~and~~ 42.56, and 43.105.250 RCW, the rules contained in this chapter are intended to ensure that electronic public records ~~that have archival value~~ are securely preserved for their minimum retention period for present and future access and/or are transferred to the Washington state digital archives for ~~permanent~~ retention so that valuable legal and historical records of the state may be centralized, made more widely available, and ~~insure permanent preservation~~ permanently preserved.

## **Section 020**

### **Definitions**

Change: Add definition for “agency.”

Effect: Clarifies “Agency” means any department, office, commission, board, or division of state government; and any county, city, district, or other political subdivision or municipal corporation or any department, office, commission, court, or board or any other state or local government unit, however designated.

Change: In the definition of “archival value,” replace the word, “indefinite” with the words, “long term.” The definition reads, “‘Archival value’ means those public records, as determined by state archivist’s appraisal, that are worth of long term or permanent preservation by the archives due to their historical, legal, fiscal, evidential, or informational value.”

Effect: Provides an easier to comprehend term. The intent of using the word “indefinite” was not to imply infinite. “Long term” is clearer.

Change: In the definition of “archival value,” add the words, “or are designated such by statute.” The definition reads, “Archival value’ means those public records, as determined by state archivist’s appraisal, that are worth of long term or permanent preservation by the archives due to their historical, legal, fiscal, evidential, or informational value, or are designated such by statute.”

Effect: Provides information on another tool used to determine archival value.

Change: Put an “indent” before the definition of “authentication.”

Effect: Corrects a typo and shows “authentication” as a separate definition from “authentic.”

Change: In the definition for “authentication,” add the word “trustworthy.” The definition would read: “Authentication” means the process of verifying that a public record is acceptable as genuine, trustworthy, original, or authentic.

Effect: Mirrors the language used in the definition for “authentic.”

Change: In the definition of “chain of custody” replace the stricken language with the underlined language.

"Chain of custody" means the documentation of the succession of offices or persons who held public records, ~~from the moment they were created until they are presented as evidence in a court of law~~ in a manner that could meet the evidentiary standards of a court of law until their proper disposition according to an approved records retention schedule.

Effects: The changed language specifies standards for documentation for any custodian of public records, rather than from creation to a non-guaranteed event. Referencing the need to use an approved records retention schedule clarifies procedure.

Change: Add “record” to the definition of “confidential.” The definition would remain the same, but for “confidential record.”

Effect: The term “confidential” is defined in the proposed rule as a record. Changing the definition to “confidential record” adds accuracy.

Change: Delete the definition for “copy.”

Effect: Removes the definition for a term that is not used in the body of the proposed rules.

Change: Delete the definition for “data base.”

Effect: Removes the definition for a term that is not used in the body of the proposed rules.

Change: Delete the definition for “digital image.”

Effect: Removes the definition for a term that is not used in the body of the proposed rules.

Change: In the definition for “disposition,” delete the words, “preservation on microfilm or digital image.”

"Disposition" means the action taken with a record once its required retention period has expired. Disposition actions include but are not limited to transfer to the archives; ~~preservation on microfilm or digital image~~, or destruction.

Effect: Removes language that was inconsistent with the definition. Preservation on microfilm or digital image is an efficiency tool used for non-archival records.

Change: In the definition for "electronic record," the remove the stricken language and replace with "file format."

"Electronic record" includes those public records which are stored on machine readable ~~materials such as hard disks, floppy disks, CDs, DVDs, flash media cards, USB storage devices, magnetic tape, and any other media designed to store information electronically~~ file format.

Effect: Removes redundant language contained in the definition for "file format."

Change: Change the definition for "media file format" to a definition for "~~media~~ file format," deleting "media."

Effect: File format is independent of the media. The change removes an unnecessary word.

Change: Simplify the definition of "public record" to: "public record" has the same meaning as in Chapters 40.14 and 42.56 RCW.

Effect: Referencing the two RCW chapters that define public records better covers the full meaning intended for applicability throughout the proposed rules.

Change: In the definition for "retention period," delete the stricken language and replace it with the underlined language.

"Retention period" means the ~~minimum amount of time required for the retention of a records series on a records retention schedule or general records retention schedule approved by a state or local records committee~~ required minimum amount of time a records series must be retained to meet legal, fiscal, administrative or historical value as listed on an approved records retention schedule or general records retention schedule.

Effect: The changed language makes the definition clearer and more consistent with the Society of American Archivists Glossary (2005).

Change: Delete proceeding words after "spider" in the term defined for, "spider, web spider, web crawler, robot, and bot." The definition is now exclusively for, "spider."

Effect: Removes examples of similar programs from the concept defined. The deleted examples will be listed as such at the end of the definition.

Change: In the definition for "spider ..." delete the stricken language and add the underlined language.

"~~Spider, web spider, web crawler, robot, and bot~~" means a software program that automatically collects and retrieves on-line web content and all documents linked to such content. Examples include, but are not limited to: web spiders, web crawlers, robots, and bots.

Effect: Adding “collects” better explains the functions of the software program. Moving examples of similar software programs from the title to examples at the end is a more appropriate placement; it helps clarify “spider” as a concept.

Change: Delete the definition for “usable file format.”

Effect: Removes a definition for a term that is not used in the proposed rules.

## **Section 030**

### **Retention schedule and disposition of electronic public records**

Change: Replace reference to the “state or local records committee” with “state archivist.”

Effect: It is the State Archivist’s appraisal that determines archival value. This change makes the wording consistent with the definition for “archival value.”

Change: Replace the words, “can be” with the word, “are,” in the last sentence. The sentence would read: “Public records that are designated “archival” by the ~~state or local records committee~~ state archivist must be maintained pursuant to the provisions of this chapter until such time as they ~~can be~~ are transferred to the state archives.

Effect: Agencies can retain their own public records, but must do so to archival standards. If an agency can no longer maintain an archival public record, it must be transferred to Archives. Use of the word, “are,” provides clearer guidelines for proper procedure.

Changed section in whole:

**WAC 434-662-030 Retention scheduling and disposition of electronic public records.** Electronic records are bound by the same provisions as paper documents as set forth in chapter 40.14 RCW. Electronic records must be retained pursuant to the retention schedules adopted by the records committees. Destruction of, or changes to the retention period of, any public record, regardless of format, requires legal approval from the state or local records committee pursuant to chapters 40.14 RCW, 434-635 WAC and other applicable state laws. Public records that are designated "archival" by the state ~~or local records committee~~ archivist must be maintained pursuant to the provisions of this chapter until such time as they ~~can be~~ are transferred to the state archives.

## **Section 040**

### **Agency duties and responsibilities**

Change: Replace the word, “schedule” with “period.” The sentence would read: Electronic records must be retained in electronic format and remain usable, searchable, retrievable and authentic for the length of the designated retention ~~schedule~~ period.

Effect: Provides a more accurate term. It is a *period* of time a record must be maintained for ... it is documented on the *schedule*.

Change: Replace the words “state or local” with “applicable.” The sentence would read: Printing and retaining a hard copy is not a substitute for the electronic version unless approved by the ~~state or local~~ applicable records committee.

Effect: The previous language implied approval could be granted to an agency by either the state or local records committee. Referring to the applicable records committee is less ambiguous.

Change: Add the following two sentences to the end of the section: An agency is responsible for a security backup of active records. A security backup must be compatible with the current system configuration in use by the agency.

Effect: Moves requirements contained in section 080 to a more suitable section – agency duties and responsibilities. The language clarifies an agency’s security responsibilities for records in active use.

Changed section in whole:

**WAC 434-662-040 Agency duties and responsibilities.** Electronic records must be retained in electronic format and remain usable, searchable, retrievable and authentic for the length of the designated retention ~~schedule~~ period. Printing and retaining a hard copy is not a substitute for the electronic version unless approved by the ~~state or local~~ applicable records committee.

An agency is responsible for a security backup of active records. A security backup must be compatible with the current system configuration in use by the agency.

## **Section 050**

### **Disposition of electronic public records identified by records committees as archival**

Change: Delete the word “all.” The sentence would read:

Electronic records designated as "archival" must be retained in their original format along with the hardware and software required to read the data in that format unless ~~all~~ the converted records have been sampled for completeness and accuracy of the migration to a new system and/or file format.

Effect: Eliminates a word that was in conflict with the word “sampled.”

Change: Delete the stricken language and add the underlined language in the sentence: Original data, hardware, and software must be maintained ~~for a period not less than one year after~~ until successful migration to a new system has been verified.

Effect: Provides a clearer requirement for the duration of maintenance.

Change: Delete the stricken language and add the underlined language in the sentence: Agencies have a duty to work with the state archivist ~~for~~ to centralize, preserve and/or transfer ~~of~~ archival data records to the digital archives ~~once records are not in active use and/or a data migration is planned.~~

Effect: Brings the sentence in-line with the “Purpose” of the proposed rules and clarifies duties of agencies. Additionally, the change reflects the possibility that an agency may still need a record even if the record is not in active use.

Change: Add the following sentence to the end of the section: All records transferred to the digital archives will be administered and managed in accordance with all public access and disclosure laws and requirements.

Effect: Acknowledges Archive’s custodial duties and services pertaining to transferred records.

Changed section in whole:

**WAC 434-662-050 Disposition of electronic public records identified by records committees as archival.** Electronic records designated as "archival" must be retained in their original format along with the hardware and software required to read the data in that format unless ~~all~~ the converted records have been sampled for completeness and accuracy of the migration to a new system and/or file format. Original data, hardware, and software must be maintained ~~for a period not less than one year after~~ until successful migration to a new system has been verified. Agencies have a duty to work with the state archivist ~~for~~ to centralize, preserve and/or transfer of archival data records to the digital archives ~~once records are not in active use and/or a data migration is planned.~~ All records transferred to the digital archives will be administered and managed in accordance with all public access and disclosure laws and requirements.

## Section 055

### Disposition of electronic public records identified by records committees as nonarchival

Change: Replace the word, “media” with “records.”

Effect: The language actually refers to records, using “records” is a more accurate term.

Changed section in whole:

**WAC 434-662-055 Disposition of electronic public records identified by records committees as nonarchival.** Electronic ~~media~~ records rendered obsolete through the verified accurate migration to a more current media file format for readability and not designated as "archival" may be considered a secondary copy and disposed of as directed by chapter 40.14 RCW.

## Section 060

### Authentication and chain of custody of electronic records

Change: Delete the stricken words and add the underlined words in the sentence:

If there is a break in chain of custody, ~~the digital archives must be notified along with it~~ must be noted in the transmittal to the archives.

Effect: Provides clearer language on proper procedure to identify any break in the chain of custody.

Changed section in whole:

**WAC 434-662-060 Authentication and chain of custody of electronic records.** The agency must maintain chain of custody of the record, including employing sufficient security procedures to prevent additions, modifications, or deletion of a record by unauthorized parties. If there is a break in chain of custody, ~~the digital archives must be notified along with~~ it must be noted in the transmittal to the archives.

## **Section 070**

### **Use of encryption on electronic records**

Change: Replace the words “encryption key must be available and usable” with “agency must maintain the means to decrypt the record.”

The sentence would read: If encryption is employed on public records, the ~~encryption key must be available and usable~~ agency must maintain the means to decrypt the record for the life of the record ...

Effect: Provides more comprehensive language and better conveys the purpose of the requirement.

Change: Replace the term “retention schedule,” with “approved required minimum retention period.”

Effect: Provides a more accurate/clear reference to the retention period.

Change: Delete the last sentence: ~~For records designated as archival, the records must be transferred unencrypted to the digital archives.~~

Effect: Removes an unnecessary requirement. Encrypted records may be transferred encrypted so long as the means to decrypt the record is also provided.

Changed section in whole:

**WAC 434-662-070 Use of encryption on electronic records.** If encryption is employed on public records, the ~~encryption key must be available and usable~~ agency must maintain the means to decrypt the record for the life of the record as designated by the approved required minimum retention schedule period for that record. ~~For records designated as archival, the records must be transferred unencrypted to the digital archives.~~

## **Section 080**

### **Transfer of electronic records to the digital archives**

Change: Delete the section in whole.

Effect: Removes a misnamed section. The subject matter in the first two sentences pertains to agency duties and responsibilities and has been moved to section 040.

The last sentence was in conflict with the proposed rules and is not placed in any other section; once a record has been transferred to the Digital Archives an agency does not need to maintain that record in original format or create security microfilm – though they may choose to do so.

Changed section in whole:

~~WAC 434-662-080 Transfer of electronic records to the digital archives. Archival copies of records maintained at the digital archives may not be backward compatible with the originating system. Therefore, the agency is responsible for an appropriate security back-up of active business records maintained in their own systems. This does not relieve an agency's responsibility to maintain records in original format or create security microfilm as required by other provisions of law.~~

## Section 090

### Transmittal agreement for transfer of electronic records

Change: Replace the word “document” with “record” in subsection (1).

Effect: Makes the term consistent with terminology used for the retention schedule.

Change: Reword subsection 050 from “Required metadata fields;” to “Relevant metadata/indexing fields;”.

Effect: Better explains what information should be submitted.

Change: Add a new subsection (6) and renumber existing subsections 6 through 9, 7 through 10.

The new subsection (6) reads: The decryption means for any record transmitted in an encrypted format;

Effect: Specifies a necessary inclusion in the transmittal agreement if an encrypted record is transferred.

Change: Delete the stricken language and add the underlined language in the new subsection (8): ~~(7) (8) Identification of any confidential information or record access restriction~~ and the statutory authority for such confidentiality restriction;

Effect: Provides a broader requirement of ‘access restrictions’ rather than a requirement for identification of particular information or a record.

Change: In the provision in the newly numbered section 9, add the underlined language so the sentence reads:

~~(8) (9) Other technical information, such as backend database management systems,~~ necessary for ingestion of electronic data into the digital archives repository; and

Effect: Provides an example of technical information necessary for ingestion of electronic data.

Changed section in whole:

**WAC 434-662-090 Transmittal agreement for transfer of electronic records.**

The digital archives must develop a transmittal agreement for the transfer of electronic records from state and local government agencies to the digital archives. At a minimum, a transmittal agreement between the digital archives and a state or local government agency must contain:

- (1) Identification of the ~~document~~ record series;
- (2) Disposition authority;
- (3) Number of records to be transferred;
- (4) Method, schedule, and frequency of record transmittal;
- (5) ~~Required~~ Relevant metadata/indexing fields;
- (6) The decryption means for any record transmitted in an encrypted format;
- (7) Media file format;
- ~~(7) (8)~~ Identification of any ~~confidential information or record~~ access restriction and the statutory authority for such ~~confidentiality~~ restriction;
- ~~(8)~~ (9) Other technical information, such as backend database management systems, necessary for ingestion of electronic data into the digital archives repository; and
- ~~(9)~~ (10) Procedures for collecting any fees for public copies as provided by statute or ordinance.

**Section 100**

**Media format and protocol for transfer**

Change: Add the words “and protocol” to the title. The title of Section 100 would read: “Media format and protocol for transfer.”

Effect: Provides a more accurate title for the section by acknowledging the content covers protocol.

Change: Spell out the following abbreviations: CD, DVD, and USB. The sentence would read: portable media formats including, but not limited to tape, Compact Disc, Digital Versatile Disc, flash media cards, Universal Serial Bus storage devices, or diskette.

Effect: Clarifies meaning of abbreviations.

Change: Insert “external hard drive” to the list of portable media formats. The sentence would read: portable media formats including, but not limited to tape, Compact Disc, Digital Versatile Disc, flash media cards, Universal Serial Bus storage devices, external hard drives, or diskette.

Effect: Provides another example of a common portable media format.

Changed section in whole:

**WAC 434-662-100 Media format and protocol for transfer.** When feasible, electronic records will be directly transferred to the digital archives via web services, secure File Transfer Protocol, T-1 line or other direct transmission as outlined in the transmittal agreement. When direct transmission is not practicable, records must be transmitted via portable media formats including, but not limited to tape, Compact Disc,

Digital Versatile Disc, flash media cards, Universal Serial Bus storage devices, external hard drives, or diskette.

## **Section 110**

### **Metadata requirements**

Change: Add the following sentence after the first sentence: All transfers of electronic records to the digital archives must identify the name of the originating agency, the date of transfer, the records series, and other appropriate metadata as specified in the transmittal agreement.

Effect: Clarifies what metadata is required to sufficiently categorize, search and retrieve the transferred records.

Changed section in whole:

**WAC 434-662-110 Metadata requirements.** Electronic records transferred to the digital archives must contain sufficient metadata to categorize, search and retrieve the records. All transfers of electronic records to the digital archives must identify the name of the originating agency, the date of transfer, the records series, and other appropriate metadata as specified in the transmittal agreement. The digital archives will not accept electronic records that do not contain appropriate metadata as specified in the transmittal agreement.

## **Section 140**

### **Website management**

Change: Replace the word “spider” with the phrase “use a software program commonly known as a spider to copy”.

Effect: Eliminates a verb/noun disagreement with the definition of “spider” in Section 020.

Change: Add the following to the second sentence “that are determined to have archival value”. The sentence would read: Pursuant to a transmittal agreement, the digital archives will ~~spider~~ use a software program commonly known as a spider to copy state and local government web sites that are determined to have archival value either annually, or more frequently.

Effect: Specifies that only websites with archival value will be copied using spider software.

Change: Delete stricken language and add underlined language in subsection (2) to read as follows: (2) Pages available for public viewing on an agency website shall not contain a "no robots" or other tag precluding the ~~spidering of the site~~ use of spider software;

Effect: Clarifies that the provision pertains to an agency’s website and uses the correct noun definition of “spider.”

Change: Delete subsections (1), (2), (3) and (4). Replace with new subsections (1) and (2) as follows: (1) Each page shall contain identifying information as outlined in the transmittal agreement; (2) If an agency website is determined to have archival value and cannot be copied using a spider software program, the agency must copy all code for the website.”

Effects: Deletion of subsection (1) removes the requirement for meta tags. Deletion of subsection (2) removes “no robots” restrictions. However, if an archival website cannot be copied, the code for the website must be copied as per the new subsection (2). Deletion of subsection (3) has no effect – the new subsections allow for a transmittal agreement to establish terms for copying by spider software or an alternative procedure if spider software cannot be used. Provisions of subsection (4) - data contained in a back-end database management system, is now noted as an example of technical information necessary for ingestion of electronic data into the digital archives repository in the transmittal agreement in section 090; deletion of subsection (4) removes unnecessary language.

Changed section in whole:

**WAC 434-662-140 Web site management.** All state and local government agencies must retain all web content in accordance with the approved retention schedules. Pursuant to a transmittal agreement, the digital archives will ~~spider~~ use a software program commonly known as a spider to copy state and local government web sites that are determined to have archival value either annually, or more frequently. All state and local government agencies shall use the following best management practices in the maintenance of their web sites:

~~(1) Each page shall contain meta tags identifying the agency, program area, and date of last modification; —~~

~~— (2) Pages available for public viewing shall not contain a "no robots" or other tag precluding the spidering of the site;~~

~~— (3) Archived content should be stored on the web server in such a manner that it can be spidered; and;~~

~~(4) Data contained in back end data bases should be identified in the transmittal agreement.~~

(1) Each page shall contain identifying information as outlined in the transmittal agreement;

(2) If an agency website is determined to have archival value and cannot be copied using a spider software program, the agency must copy all code for the website.

## **Section 150**

### **E-mail management**

Change: Replace the first sentence with the following sentence: Emails created and received by any agency of the state of Washington in the transaction of public business are public records for the purposes of RCW 40.14 and are subject to all of the laws and

regulations governing the retention, disclosure, destruction and archiving of public records.

Effect: The new sentence more accurately conveys the message that e-mails pertaining to the transaction of public business are public records, rather than the original first sentence which inaccurately and too broadly described all e-mail as public records.

Change: Delete the second sentence, which reads: The e-mails of elected officials, agency directors, and other senior government officials and policy makers, are archival and must be retained per the approved state and local retention schedules.

Effect: Not all e-mails of the listed individuals are archival. Archival value is determined by the content of the message. Deleting the sentence removes a confusing requirement. The following sentence in Section 150 provides better accuracy by stating government officials' and public employees' e-mails are subject to records retention schedules and e-mails with archival value must be retained.

Change: Delete the stricken word and add the underlined words in the following sentence: The e-mails of all ~~other~~ elected government officials and public employees are subject to the records retention periods and disposition promulgated by the records committees, and any and all e-mails with archival value must be retained.

Effect: The deleted word is in reference to the preceding section which has been deleted. Add the two other words adds clarity as to whom is affected by the provision.

Changed section in whole:

**WAC 434-662-150 E-mail management.** ~~E-mail is a public record subject to all of the laws and regulations governing the retention, disclosure, destruction and archiving of public records. The e-mails of elected officials, agency directors, and other senior government officials and policy makers, are archival and must be retained per the approved state and local retention schedules.~~ Emails created and received by any agency of the state of Washington in the transaction of public business are public records for the purposes of RCW 40.14 and are subject to all of the laws and regulations governing the retention, disclosure, destruction and archiving of public records. The e-mails of all ~~other~~ elected government officials and public employees are subject to the records retention periods and disposition promulgated by the records committees, and any and all e-mails with archival value must be retained. Agencies may be relieved of the obligation to permanently retain archival e-mail by transmitting e-mail and all associated metadata to the digital archives pursuant to a transmittal agreement as provided for in WAC 434-662-090. This section does not apply to state legislators or members of the state judiciary.