



PROPOSED RULE MAKING

CR-102 (October 2017)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: October 20, 2017
TIME: 12:06 PM

WSR 17-22-019

Agency: Department of Natural Resources

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 17-18-054 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Chapter 332-10, Public Records-Department of Natural Resources and Board of Natural Resources

Hearing location(s):

Date: **Time:** **Location:** (be specific) **Comment:**

December 11, 2017	6:00pm	Conference Room 172, Natural Resources Building, 1111 Washington Street SE, Olympia	
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Date of intended adoption: 1/3/18 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Charles Malone and Jenny Hallengren-Sawyer

Address: PO Box 47041

Email: Charles.malone@dnr.wa.gov; and jenny.hallengren-sawyer@dnr.wa.gov

Fax: 360-902-1789

Other:

By (date) December 18, 2017

Assistance for persons with disabilities:

Contact Jenny Hallengren-Sawyer

Phone: 360-902-1542

Fax: 360-902-1789

TTY:

Email: jenny.hallengren-sawyer@dnr.wa.gov

Other:

By (date) _____

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Department of Natural Resources proposes amending the chapter to better conform such chapter to: (1) Recent changes in the statutory law concerning public records fees; (2) model rules recommended by the attorney general's office (chapter 44-14 WAC), and (3) current agency practices.

Reasons supporting proposal: The proposal addresses changes made by the legislature in adopting EHB 1595 (Chapter 304, Laws of 2017) and adopting ESHB 1594 (Chapter 303, Laws of 2017) as well as to update rules consistent with current agency practices.

Statutory authority for adoption: RCW 42.56.040; 42.56.070; 42.56.100; 42.56.120; and 42.56.520; and chapter 304, Laws of 2017.

Statute being implemented: Chapter 42.56 RCW, Public Records Act

Is rule necessary because of a:

Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) Department of Natural Resources Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Charles Malone	1111 Washington Street SE, Olympia, WA	360-902-1264
Implementation:	Jenny Hallengren-Sawyer	1111 Washington Street SE, Olympia, WA	360-902-1542
Enforcement:	Jenny Hallengren-Sawyer	1111 Washington Street SE, Olympia, WA	360-902-1542

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

No: Please explain: There is no fiscal impact.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

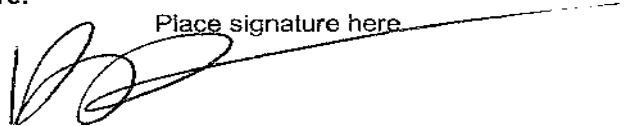
- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: 10/20/17

Name: Brule Burkhart

Title: Deputy Supervisor for Administration

Signature:
Signature:

Place signature here 

AMENDATORY SECTION (Amending Order 262, filed 6/16/76)

WAC 332-10-010 Purpose of rules. The purpose of this chapter shall be to insure compliance by the department of natural resources and the board of natural resources with the provisions of chapter ((42.17 RCW, Disclosure Campaign finances Lobbying Records)) 42.56 RCW, Public Records Act, and in particular with RCW ((42.17.250 through 42.17.340)) 42.56.040 through 42.56.550 of that act dealing with public records.

AMENDATORY SECTION (Amending WSR 01-07-049, filed 3/16/01, effective 4/16/01)

WAC 332-10-020 Definition. The following definitions shall apply in this chapter:

(1) "Public record" includes any writing containing information relating to the conduct of governmental or the performance of any governmental or proprietary function prepared, owned, used or retained by the department regardless of physical form or characteristics. See RCW ((42.17.020(26))) 42.56.010(3).

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents. See RCW ((42.17.020(28))) 42.56.010(4).

(3) "Board" means the board of natural resources, a policy setting board whose six members serve in an ex officio capacity. The duties of the board are described in RCW ((43.30.150)) 43.30.215.

(4) "Department" means the department of natural resources which is:

(a) A regulatory agency with regard to geology activities on state and privately owned land, and outdoor burning on state and privately owned forest land((τ))i

(b) A proprietary land management agency for state-owned land under the jurisdiction of the department((τ))i

(c) A service and information repository agency regarding surveys and maps of the state, farm forestry advice and general geology information((τ))i

(d) An agency that administers and enforces state forest protection laws and the forest practices regulations of the forest practices board and the department of ecology on state and privately owned forest land.

(5) "Commissioner" means the commissioner of public lands who is an elected official and serves as the administrator of the department. The commissioner, in accordance with RCW ((43.30.170)) 43.30.430, has delegated to the supervisor of the department the direct supervision of the department activities.

(6) "Supervisor" means ((one or more supervisor(s))) the supervisor of natural resources. RCW 43.30.020(6).

AMENDATORY SECTION (Amending WSR 01-07-049, filed 3/16/01, effective 4/16/01)

WAC 332-10-040 Operations and procedures of the department of natural resources. (1) The legal authority for the department's activities is provided principally by:

(a) The State Enabling Act, Sections ~~((Nos.))~~ 10 through 19;

(b) The state Constitution, Articles ~~((Nos.))~~ III, XV, XVI, XVII and Amendment ~~((No.))~~ 15;

(c) The Revised Code of Washington, Titles ~~((Nos.))~~ 43, 46, 58, 70, 76, 78, 79 and 84 RCW;

(d) The Washington Administrative Code, Titles ~~((Nos.))~~ 222 and 332 WAC.

(2) The commissioner and the board acting under their respective legal authorities determine policy for the department. The supervisor of the department:

(a) Provides direct supervision over the department's activities.

(b) Implements department policy through a line-functional staff comprised of several divisions and ~~((seven))~~ regional offices. The divisions develop operational programs and procedures within their respective specialties of resource management. These programs and procedures are carried out through the ~~((seven))~~ regional offices.

AMENDATORY SECTION (Amending WSR 91-14-014, filed 6/24/91, effective 7/25/91)

WAC 332-10-050 Public records available. All public records of the department are deemed to be available for public inspection and copying pursuant to these rules, ~~((except as otherwise provided by RCW 42.17.310 and other laws))~~ unless the record falls within the specific exemptions of the Public Records Act or other statute which exempts or prohibits disclosure of specific information or records. RCW 42.56.070(1).

The department is not required to retain every record it ever created or used. The department manages their records according to the state government general records retention schedule and the department of natural resources specific records retention schedule. Both schedules are available through the office of the secretary of state.

AMENDATORY SECTION (Amending WSR 91-14-014, filed 6/24/91, effective 7/25/91)

WAC 332-10-060 Public records officer for the department of natural resources and the board of natural resources. (1) The public records officer for the department ~~((is designated as the chief lands recorder located in the department's administrative office.))~~ of natural resources shall also serve as the public records officer for the board of natural resources. The name and contact information of the agency's public records officer to whom members of the public may direct requests for disclosure of public records and who will oversee

the agency's compliance with the public records disclosure requirements of this chapter shall be published in the state register at the time of designation and maintained thereafter on the code reviser web site for the duration of the designation. RCW 42.56.580.

(2) The public records officer shall be responsible for the following: The implementation of the department's rules and regulations regarding release of public records, coordinating the staff of the department in this regard, and generally insuring compliance by the staff with the public records disclosure requirements of chapter ((42.17)) 42.56 RCW.

~~((2) Additional public record officers may be designated for specific offices within the department:~~

~~(a) The secretary of the commissioner is designated as the public records officer for the board.~~

~~(b) The office manager located in each of the regional offices is designated as the public records officer for region office records.))~~

AMENDATORY SECTION (Amending WSR 91-14-014, filed 6/24/91, effective 7/25/91)

WAC 332-10-070 Office hours. Public records shall be available for inspection and copying, by appointment, during the customary office hours of the department for a minimum of thirty hours per week, except weeks that include state legal holidays. For the purpose of this chapter, the customary office hours shall be from ((8:00)) 9:00 a.m. until ((noon and from 1:00 p.m. until 4:30)) 3:00 p.m., Monday through Friday, excluding legal holidays. RCW 42.56.090. Such inspection and copying may be postponed if, in the department's opinion, it would interfere with duties related to an emergency at a regional office or the fire control division in central headquarters.

AMENDATORY SECTION (Amending WSR 91-14-014, filed 6/24/91, effective 7/25/91)

WAC 332-10-080 Requests for public records. Public records ~~((may be inspected or copied, or copies of such records may be obtained by members of the public, upon compliance with the following procedures:~~

~~(1) Inquiry for general information regarding department activities may be directed to the administrative office or any regional office.~~

~~(2) A request for specific public records shall be made in writing upon a form prescribed by the department which shall be available at its administrative and regional offices. The form shall be presented to the public records officer, during customary office hours. The request shall include the following information:~~

~~(a) The name and address of the person requesting the record and the organization they represent;~~

~~(b) The time of day and calendar date on which the request was made;~~

~~(c) A description of the material requested.~~

~~(3) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.~~

~~(4) The department will also honor requests received by mail for identifiable public records unless exempted)) shall be available for inspection and copying, and the department shall, upon request for identifiable public records, make them promptly available to any person including, if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure. The department shall not deny a request for identifiable public records solely on the basis that the request is overbroad. The department shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(8) or 42.56.240(14), or other statute which exempts or prohibits disclosure of specific information or records to certain persons. The department facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency. The department shall honor requests received in person during the department's normal office hours, or by mail or email, for identifiable public records unless exempted by provisions of this chapter. No official format is required for making a records request; however, the department may recommend that requestors submit requests using an agency provided form or web page. RCW 42.56.080.~~

~~The department may deny a "bot" request (a request that an agency reasonably believes was automatically generated by a computer program or script), when it is one of multiple requests from the requestor received within a twenty-four-hour period. RCW 42.56.080(3). The department must establish that responding would cause excessive interference with other department essential functions.~~

~~Requests for public records must be for "identifiable" records. A request for all or substantially all of the department's records is not a valid public records request, provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all the department's records. RCW 42.56.080.~~

AMENDATORY SECTION (Amending Order 262, filed 6/16/76)

WAC 332-10-090 Copying. ~~No fee shall be charged for the inspection of public records((. For printed, typed and written material of a maximum size of 8 1/2" by 14", the department shall charge a reasonable fee determined from time to time by the department for providing copies of public records and for use of the department's copy equipment,)) or locating public documents and making them available for copying except as provided by the Public Records Act, chapter 42.56 RCW. For copies of records, maps, photos, reports, and other nonstandard items the department shall charge a reasonable fee determined by the department payable at the time copies are furnished. This charge is the amount necessary to reimburse the department for its actual costs ((incident to such)) of copying. ((Copies of maps, photos, re-~~

~~ports and other nonstandard items shall be furnished at the regular price established by the department. When other special copy work of nonstandard items is requested, the fee charged will reflect the total cost including the time of department personnel.)) The department may require a deposit of up to ten percent of the estimated cost of providing copies for a request.~~

In addition to the charge imposed for providing copies of public records and for the use by any person of agency equipment copying costs, the agency may charge a customized service charge to reimburse the agency up to the actual cost under RCW 42.56.120(3) if the agency estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the agency for the other agency purposes. The department will notify the requestor of the customized service charge to be applied to the request, including an explanation of why the customized service charge applies, a description of the specific expertise, and a reasonable estimate cost of the charge.

AMENDATORY SECTION (Amending WSR 91-14-014, filed 6/24/91, effective 7/25/91)

WAC 332-10-100 Exemptions. (~~(1) The department reserves the right to determine that a public record requested is exempt under the provisions of RCW 42.17.310.~~

~~(2) In addition, pursuant to RCW 42.17.260, the department reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.17 RCW. The public records officer will fully justify such deletion in writing.~~

~~(3) All public records otherwise exempt by law shall be considered exempt under the provision of these rules.~~

~~(4) All denials of requests for public records will be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.~~

~~(5) The department recognizes that the preservation of personal rights is of paramount importance. Accordingly, the department policy shall be to conduct the disclosure of public records in such a manner to preserve the personal privacy of all department personnel. The policy shall extend to companies and individuals from outside the department whose records come into possession of the department.~~

~~The exemptions of this section shall be inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption shall be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.~~

~~Inspection or copying of any specific records, exempt under the provisions of this section, may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the department,~~

~~that the exemption of such records, is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.)~~ Some records are exempt from disclosure, in whole or in part. If the department believes that a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requester why portions of the record are being redacted. RCW 42.56.070(1).

AMENDATORY SECTION (Amending WSR 91-14-014, filed 6/24/91, effective 7/25/91)

WAC 332-10-130 Records index for the department. (1) The department maintains the following methods to index its records:

(a) Automated Tract Book(s). ~~((Indicate))~~ An enterprise content management (ECM) software solution which organizes and stores digital documents and related indexed data for all significant land transactions since statehood concerning the acquisition, transfer, exchange, disposition and management encumbrance activities of state lands ~~((Is organized))~~ owned and managed by the department. It is searchable by legal description, i.e., section - township - range, grantor name, lessor, lessee, file-contract number, etc. The Automated Tract Book is ~~((located in))~~ managed by the office of the chief lands recorder also known as the department's title and records office.

(b) Commissioner and department orders. Indexed from 1975 to present by year and order number. Commissioner and department orders contain and indicate subject and/or file jacket number.

(c) Board of natural resources meeting index and resolutions. Board meetings are tape recorded and written minutes prepared. These are indexed by date and are available for inspection through the public records officer in the commissioner's office.

(d) Administrative rule docket. The department has historically maintained an index of administrative rules adopted by the department. It is formatted by: Date, department rule number, subject, and contact person. Beginning in 1990 the format was expanded to conform with the requirements of RCW 34.05.315. This index is located in the office of the ~~((chief lands recorder))~~ rules coordinator.

(e) To conform with RCW ~~((42.17.260(4)))~~ 42.56.070(5), the following indexes and files are maintained by the ~~((chief lands recorder))~~ rules coordinator in the department's administrative office:

(i) All records issued before July 1, 1990, for which the department has maintained an index;

(ii) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010(1) and that contain an analysis or decision of substantial importance to the department in carrying out its duties;

(iii) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the department in carrying out its duties;

(iv) Interpretive statements as defined in RCW 34.05.010(8) that were entered after June 30, 1990; and

(v) Policy statements as defined in RCW 34.05.010(14) that were entered after June 30, 1990.

Copies of all indexes shall be available for public inspection and copying during business hours and in accordance with WAC 332-10-080. The indexes shall be kept current and updated annually. Selected final and declaratory orders that contain an analysis or decision of substantial importance to the agency in carrying out its duties, and interpretive and policy statements will be indexed chronologically by date, applicable program, hearing title, description of subject matter, citation to the law involved, or a selected combination of these, as appropriate.

(f) Rule-making file. To conform with RCW 34.05.370, the department maintains an official rule-making file for each rule that the department proposes by publication in the state register or adopts. Some rules apply to specific programs within the department, while others, such as those adopted under the State Environmental Policy Act and the Administrative Procedure Act, apply department-wide. The administrative offices of divisions that administer specific programs maintain the rule-making files that apply to those programs. The department rules coordinator maintains the rule-making files for rules that apply department-wide.

(g) Department ~~((manual))~~ policy and procedure library. The department maintains a comprehensive electronic policy and procedures ~~((manual))~~ library. The ~~((manual describes))~~ library includes policy statements and procedures used to implement the department's ~~((various))~~ administrative functions and mandated responsibilities. It is organized by program activity, i.e., ~~((fire control))~~ wildfire, timber sales, administrative functions, etc. ~~((Manuals are available for review at the department's administrative or any regional office.))~~ Documents are available to all staff from the agency's internal web site.

(h) Bibliography of department publications. It is common practice for the department to publish important policy and management plans as well as reports on specific subjects regarding resource management. The bibliography can be obtained through the department's ~~((Photo and Distribution Center, 1065 S. Capitol Way, Olympia, WA 98504, or any regional))~~ policy office.

(2) The department does not use a central filing system. Records are maintained in each of the regional offices spread throughout the state and in each of the divisions in the administrative office. Many of the land ownership and encumbrance records are located in the department's title and records office at agency headquarters and are typically identified by legal description such as section - township - range or department file-contract number. Each organizational unit maintains a record system to meet its specific needs. The department can respond to requests for records, by the public describing the type of information they are seeking. General correspondence related to governmental and regulatory activities and internal services can usually be identified by subject and usually in the division responsible for that activity. Regulatory permits and licenses may be identified by legal description or application number. Correspondence and other data related to proprietary activities are identified by application number and can be cross-referenced by legal description.

AMENDATORY SECTION (Amending WSR 91-14-014, filed 6/24/91, effective 7/25/91)

WAC 332-10-140 Address for communication requests. (~~(All communications with the department including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 42.17 RCW, and these rules, requests for copies of the department's decisions and other matters, shall be addressed as follows: Department of Natural Resources, c/o Public Records Officer, Olympia, Washington 98504.)~~) Requests for public records may be communicated by email, telephone, or fax, as well as the following means:

- (1) Online: Department of Natural Resources web site;
- (2) Mail: Department of Natural Resources, Public Disclosure Office, P.O. Box 47014, Olympia, WA 98504-7014.

AMENDATORY SECTION (Amending WSR 92-22-076, filed 11/2/92, effective 12/3/92)

WAC 332-10-170 Fees for performing the following service. Charges for the following categories of services will be collected and transmitted to the state treasurer for deposit:

(1) Twenty-five dollars for the approval of any assignment of contract of sale, assignment of lease, assignment of bill of sale or assignment of right of way.

(2) Twenty-five dollars for the division of contracts or leases pursuant to RCW 79.01.236.

(3) Five dollars for certification of any document.

(4) (~~Twenty five cents per page, plus postage if mailed, for copies of documents which do not exceed 8 1/2 x 14 inches in size. May be copied by requestor or agency staff.~~)

~~Up to one dollar per page, plus postage if mailed, for copies of documents when copying would unreasonably disrupt the operations of the agency, requiring uninterrupted, long term use of agency copy equipment. Actual costs incident to such copying will be charged. Copies not to exceed 8 1/2 x 14 inches in size.~~

~~(5) Copies of documents or nonstandard items beyond the size of documents set forth in subsection (4) of this section (e.g., computer printouts, films, recordings or maps) will be charged on the basis of the cost of reproduction including the time of department personnel as determined by the department of natural resources.)~~ The department will use the statutory fee schedule in RCW 42.56.120(2).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 332-10-065 Public records officer for the board of natural resources.