



RULE-MAKING ORDER

CR-103E (July 2011)
(Implements RCW 34.05.350)

Agency: Department of Natural Resources (DNR)

Emergency Rule Only

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) **July 23, 2017**

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: The 2017 Legislature amended portions of RCW 42.56.120 pertaining to fee charges for public record copies. EHB 1595 requires that a rule be in place if an agency needs to use the statutory public records fee schedule, rather than charging for actual costs. DNR lacks sufficient data to use the actual cost method at this time. This rule specifies that DNR will utilize the Legislature's statutory default fee schedule, effective July 23, 2017. DNR will soon be filing a preproposal statement of inquiry to begin the permanent rulemaking process for these and other changes to WAC332-10

Citation of existing rules affected by this order:

Repealed:
 Amended: 332-10-170
 Suspended:

Statutory authority for adoption: RCW 42.56.120

Other authority :

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.
- That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding:

Change in state law RCW 42.56.120(3) EHB 1595 effective 7-23-2017

Date adopted:

7/18/17

NAME (TYPE OR PRINT)

Brule Burkhart

SIGNATURE

TITLE

Deputy Supervisor For Administration

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: July 19, 2017

TIME: 2:21 PM

WSR 17-16-002

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	<u>1</u>	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

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.) For public records requests: Adopting an actual cost rule would be unduly burdensome. DNR does not currently have accurate data regarding the many specific cost elements associated with public records production, nor does it have the resources or appropriated funds to conduct an actual cost study. DNR cannot divert resources away from other critical agency programs in order to perform such a cost study. Additionally, such a study would be time consuming, and a legally suitable fee structure is necessary to defray the costs to people of Washington associated with public records production. Therefore, DNR will use the statutory fee schedule in RCW 42.56.120(2).~~

CONCISE EXPLANATORY STATEMENT

Must be prepared for all rules before a CR-103 is filed (RCW 34.05.325). Prepare at the same time as the Public Hearing Summary memo.

1. Identify reasons for adopting this rule	<p>EHB 1595 becomes law on July 23, 2017. The bill requires changes to the fees charged to public records requester, in that agencies must use a data-driven actual cost method, or if that is unduly burdensome as declared by agency rule, agencies may instead rely upon the statutory fee schedule adopted by the Legislature.</p> <p>Adopting an actual cost approach to public records fees would be unduly burdensome to DNR. DNR does not currently have accurate data regarding the many specific cost elements associated with public records production, nor does it have the resources or appropriated funds to conduct an actual cost study. DNR cannot divert resources away from other critical agency programs in order to perform such a cost study. Additionally, such a study would be time-consuming, and a legally suitable fee structure is necessary immediately to defray the costs to the people of Washington associated with public records production. Therefore, DNR will use the statutory fee schedule in RCW 42.56.120(2).</p> <p>This declaration will allow DNR to utilize the statutory default fee schedule established by the Legislature in EHB 1595 starting on July 23, 2017, the date the legislation goes into effect, and to be in full compliance with the Public Records Act, as amended. The agency will be filing a preproposal statement of inquiry to begin the permanent rulemaking process.</p>
2. Discuss any legislative background, federal laws, and statutory authority	<p>State law RCW 42.56.120 will change effective July 23, 2017. This affects all state agencies.</p> <ul style="list-style-type: none">• ACTUAL COSTS VS. PRA DEFAULT FEE SCHEDULE – RULE DECLARATION. EHB 1595 Section 3 amends RCW 42.56.120(2) to provide that an agency need not calculate actual copying costs “if it has rules or regulations declaring the reasons doing so would be unduly burdensome.” In that case, the agency can use the PRA default fee schedule. See next bullet.• PRA DEFAULT FEE SCHEDULE. EHB 1595 Section 3 amends RCW 42.56.120(2) to provide a PRA default copying fee schedule (including an optional flat fee), under which the agency may charge.
3. Identify adoption date and effective date of rule	<p>Adoption date: Effective date: July 23, 2017</p>

<p>4. Describe differences between proposed as published in the State Register and the final rule as adopted. Attach text to identify additions or deletions. Explain rationale for change</p>	<p>As an emergency rule, this rule has not been published previously in the State Register. Hence, there are no differences between any prior rule proposal and the version adopted as an emergency rule.</p> <p>The amendments to WAC 332-10-170(4) eliminate the pre-existing rule-based structure for assessing public records fees. In place of that, the new WAC 332-10-170(4) indicates the reasons why it would be infeasible and unduly burdensome for DNR to use an actual cost method of charging fees for public records. Due to that infeasibility, DNR will instead use the fee structure established statutorily by the 2017 Legislature in EHB 1595, which amended RCW 42.56.120(2).</p>
<p>4. Attach a summary of all comments and agency response to each. Indicate how final rule reflects agency consideration of comment or why it fails to do so.</p> <p>N/A to emergency rulemaking.</p>	
<p>5. Attach a list or description of all public involvement opportunities, including workshop dates and locations, hearing dates and locations, news releases, fact sheets, newspaper announcements, website info. Attach copies of all related documents. Include the number of people who attended, received mailings, etc.</p> <p>N/A to emergency rulemaking. Before DNR adopts permanent rules regarding the use of the statutory public records fee schedule established in the new RCW 42.56.120(2), DNR will collect public comments and conduct hearings in accordance with the Administrative Procedure Act.</p>	
<p>Name and Date Brule Burkhart 7/18/17</p>	