



RULE-MAKING ORDER

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

Agency: Department of Ecology AO # 16-14

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 Department of Ecology is adopting an emergency rule WAC 173-03-9000E **Calculation of actual costs of producing copies of public records declared to be unduly burdensome – adoption of statutory fee schedule.** The emergency rule includes a declaration that the calculation of actual costs of producing copies of public records would be unduly burdensome – Ecology is going to use the statutory fee schedule.

Citation of existing rules affected by this order:

Repealed:
 Amended: WAC 173-03
 Suspended:

Statutory authority for adoption: RCW 42.56.100 and 42.56.120 (Chapter 304, Laws of 2017; HB 1595)

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: (See Attachment)

Date adopted:

July 20, 2017

NAME

Maia D. Bellon

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: July 20, 2017

TIME: 2:36 PM

WSR 17-16-016

**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	<u>1</u>	Amended	_____	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	_____

Attachment:

Reasons for this finding:

Under the Public Records Act (PRA) Chapter 42.56 RCW, agencies have the ability to charge a requester for certain costs associated with providing copies of records in response to the requester's public records request, and are required to establish, maintain, and make publicly available a statement of these costs. In the 2017 legislative session, the Legislature amended the provision of the PRA that governs charges for providing public records. Under the law prior to the 2017 amendments, agencies could charge for photocopies but not copies of electronic records although the majority of records are provided in electronic format. The 2017 amendments allow agencies to charge requesters for scanning records, providing electronic records via email or other electronic delivery means, and providing records on a CD or thumb drive.

HB 1595, passed in the 2017 legislative session Chapter 304, Laws of 2017, sc. 3, amending RCW 42.56.120, the provision of the PRA that governs agency charges to requesters for providing copies of public records. These amendments in HB 1595 were designed to modernize this provision to reflect changes in the way agencies provide copies of records to requesters.

HB 1595 becomes law on July 23, 2017, and an agency must have in place either a statement following notice and public hearing that establishes the actual costs of producing records, or a rule that declares the calculation of actual costs would be "unduly burdensome." Otherwise, an agency would not be able to impose copy fees on PRA requesters. Ecology is taking the latter approach, declaring by rule that it will be "unduly burdensome" to calculate actual costs, and has already filed a pre-proposal to begin the permanent rulemaking process. Ecology will conduct this permanent rulemaking according to normal rulemaking procedures, but cannot complete it until some months after the requirements of HB 1595 take effect on July 23, 2017.

Ecology finds that it is in the general welfare and the public interest, and benefits requesters and the agency, to adopt the emergency rule in order to preserve and update fees in accordance with the legislatively adopted schedule. Without further action, this would create a period of months during which no statement or rule would be available to the public regarding PRA costs or the methods of calculating them, creating confusion and uncertainty regarding Ecology's fee structure and its ability to charge fees. Because this appears to be contrary to the intent of HB 1595 and the PRA, Ecology intends to adopt its declaration initially by emergency rule, to avoid confusion and to remain in compliance with the PRA, as amended. This declaration will allow Ecology to utilize the statutory default fee schedule created by the Legislature in the 2017 amendments starting on July 23, 2017, the date the legislation goes into effect, and to be in full compliance with the PRA, as amended.