



PROPOSED RULE MAKING

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

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OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 30, 2017

TIME: 11:01 AM

WSR 17-22-095

Agency: Office of the Attorney General

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 17-18-091 ; 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)

Adding a new rule regarding the Public Records Act: Copying Fees – Payment - WAC 44-06-092

Repealing an outdated rule regarding the Public Records Act: Copying Fees - WAC 44-06-090

Hearing location(s):

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

Date:	Time:	Location: (be specific)	Comment:
December 6, 2017	2:30 p.m.- 3:30 p.m.	Natural Resources Building Room 175 1111 Washington St. SE Olympia, WA 98501	

Date of intended adoption: On or after January 3, 2018 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Christina Beusch

Address: 1125 Washington Street SE, PO Box 40100

Email: ChristinaB@atg.wa.gov

Fax: 360-664-0228

Other: Written comments may also be submitted through the online comment form available on the website of the Office of the Attorney General on the Rulemaking Activity page <http://www.atg.wa.gov/rulemaking-activity>

By (date) December 1, 2017

Assistance for persons with disabilities:

Contact Christina Beusch

Phone: 360-664-3801

Fax: 360-664-0228

TTY:

Email: ChristinaB@atg.wa.gov

Other: Alternate Contact: Melissa Brearty, Rules Coordinator. (360) 534-4849; MeIB@ATG.WA.GOV

By (date) December 1, 2017

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this rule making is to adopt a permanent rule that implements the State Legislature's new Public Records Act (PRA) requirement and provide the necessary findings so that the Office of the Attorney General may continue to use the amended statutory default fee schedule that became effective July 23, 2017, and continue to waive copy fees under listed circumstances. The additional purpose of the rule is to continue to explain procedures for payment for copies. An emergency rule on this topic, WAC 44-06-092, was adopted effective July 23, 2017 and the office is proceeding with adopting the rule as a permanent rule. Finally, the office is repealing its permanent rule at WAC 44-06-090, a copying fees rule adopted under prior PRA statues.

Reasons supporting proposal: The Public Records Act is at chapter 42.56 RCW. The 2017 Legislature amended RCW 42.56.120 at Chap. 304, 2017 Laws, Sec. 3 to require that effective July 23, 2107 if an agency uses the new law's amended statutory default copy fee schedule (rather than determining actual costs of copies), the agency must have a rule declaring the reason it is not calculating actual costs is because to do so would be unduly burdensome. The office is not calculating actual costs for copying records because to do so would be unduly burdensome for the reasons specified in its emergency rule at WAC 44.06.092. The office is adopting the rule on a permanent basis so it can continue to use the statutory default copy fee schedule. In addition, RCW 42.56.120 as amended by Chap. 304, 2017 Laws, Sec. 3 allows an agency to waive any charge assessed for a public records pursuant to agency rule. The emergency rule at WAC 44-06-092 also describes the circumstances under which the office will waive copying fees. In order to continue that waiver ability, the office is enacting WAC 44-06-092 as a permanent rule. The office also describes in that emergency rule the procedures to pay for copies. The office also is adopting that part of the rule and the remainder of the rule on a permanent basis. Finally, the office is repealing WAC 44-06-090, its copying fees rule originally adopted under former chapter 42.17 RCW because that rule is now outdated.

Statutory authority for adoption: RCW 42.56.100; RCW 42.56.040(1)(d); RCW 42.56.120; RCW 43.10.110

Statute being implemented: RCW 42.56.120

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> 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) Bob Ferguson, Attorney General

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Christina Beusch	Olympia, WA	360-664-3801
Implementation:	N/A		
Enforcement:	N/A		

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: A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328(5)(a)(i), this agency is not mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date the joint administrative rules committee has not made the section applicable to the adoption of this rule.

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)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- 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 42.56.070; RCW42.56.120.

Explanation of exemptions, if necessary: To the extent there are costs assessed by this agency for records provided in response to public records requests by small businesses, the authorized costs are set out in statute and apply to all requesters. RCW 42.56.070; RCW 42.56.120

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: 10/26/2017

Name: Bob Ferguson

Title: Attorney General

Signature:

NEW SECTION

WAC 44-06-092 Copying fees--Payments. (1) The following copy fees and payment procedures apply to requests to the office under chapter 42.56 RCW and received on or after July 23, 2017.

(2) Pursuant to RCW 42.56.120(2)(b), the office is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons: (i) The office does not have the resources to conduct a study to determine all its actual copying costs; (ii) to conduct such a study would interfere with other essential agency functions; and, (iii) through the 2017 legislative process, the public and requesters have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120(2)(b) and (c), (3) and (4).

(3) The office will charge for copies of records pursuant to the default fees in RCW 42.56.120(2)(b) and (c). The office will charge for customized services pursuant to 42.56.120(3). Under RCW 42.56.130, the office may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The office may enter into an alternative fee agreement with a requester under RCW 42.56.120(4). The charges for copying methods used by the office are summarized in the fee schedule available on the office's website at www.atg.wa.gov.

(4) Requesters are required to pay for copies in advance of receiving records. Fee waivers are an exception and are available for some small requests under the following conditions.

(a) It is within the discretion of the public records officer to waive copying fees when: (i) all of the records responsive to an entire request are paper copies only and are twenty-five or fewer pages; or (ii) all of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of 100 printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requester will be charged in accordance with this rule.

(b) Fee waivers are not applicable to records provided in installments.

(5) The public records officer may require an advance deposit of ten percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The office will notify the requester of when payment is due.

(7) Payment should be made by check or money order to the attorney general's office. The office prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The office will close a request when a requester fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 44-06-090 Copying Fees.