



RULE-MAKING ORDER

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

Agency: Washington Department of Fish and Wildlife

Emergency Rule Only

Effective date of rule:

Emergency Rules 17-160

- 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: Amend rules for calculation of actual costs of producing copies of public records declared to be unduly burdensome – adoption of statutory fee schedule

Citation of existing rules affected by this order:

Repealed:
Amended:
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: (See Attachment)

Date adopted: July 14, 2017

NAME (TYPE OR PRINT)

J W Unsworth

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: July 14, 2017

TIME: 11:47 AM

WSR 17-15-072

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Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____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New	_____	Amended	_____	Repealed	_____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

NEW SECTION

WAC 220-120-09000A Calculation of actual costs of producing copies of public records declared to be unduly burdensome – adoption of statutory fee schedule.

Notwithstanding the provisions of chapter 220-120 WAC, effective July 23, 2017, until further notice the following rules apply:

(1) Pursuant to RCW 42.56.120(2), as amended by Chapter 304, by Laws of 2017, sec. 3, the Washington State Department of Fish and Wildlife declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

(2) The Washington State Department of Fish and Wildlife may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120, as amended by Chapter 304, by Laws of 2017, sec. 3.

Attachment

Under the Public Records Act (PRA), 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. 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 only charge for photocopies, not scanned records and other electronic records. But the majority of records are now provided in electronic format. The 2017 amendments allow agencies to charge requesters for things like 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, amended 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 a rule must be in place that establishes the actual costs of producing records, or a rule must be in place that declares the calculation of actual costs would be "unduly burdensome". Otherwise an agency would not be able to impose fees on PRA requestors. WDFW is taking the latter approach and will declare that it will be "unduly burdensome" to calculate actual costs and will file an emergency rule. This declaration will allow WDFW 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. The agency will be filing a preproposal statement of inquiry to begin the permanent rulemaking process.