



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (October 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: November 16, 2017

TIME: 7:59 AM

WSR 17-23-108

Agency: Office of the Attorney General

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) November 20, 2017

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

- Yes No If Yes, explain: The Public Records Act is at chapter 42.56 RCW. RCW 42.56.120 as amended effective July 23, 2017 (Chap. 304, 2017 Laws, Sec. 3) requires that before an agency uses the amended statutory default copy fee schedule in the new law (rather than determining actual costs of copies), the agency must have a rule declaring the reason that it is not calculating actual costs because to do so would be unduly burdensome. The emergency rule at WAC 44-06-092 makes those findings. The statute as amended also allows an agency to waive any charge assessed for a public record pursuant to a rule. WAC 44-06-092 also provides for fee waivers.

Purpose: The purpose of the rule is to implement the State Legislature’s new Public Records Act requirement and provide the necessary findings so that the Office of the Attorney General may continue to use the amended statutory default fee and waive copy fees under listed circumstances as provided in the CR-103E that was effective on July 23, 2017. The additional purpose of the rule is to explain procedures for payment. Permanent rulemaking has been initiated, and the filing of this CR-103E will prevent a gap in fee authority pending adoption of a permanent rule.

Citation of rules affected by this order:

- New:
- Repealed:
- Amended:
- Suspended:

Statutory authority for adoption: RCW 42.56.100; RCW 42.56.040(1)(d); RCW 42.56.120 (as amended by Chap. 304, 2017 Laws); RCW 43.10.110

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.

Reasons for this finding: Reasons for this finding: The Office of the Attorney General finds good cause that the emergency rule at WAC 44-06-092 is necessary for the following reasons. 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, 2017 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 WAC 44-06-092. 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 record pursuant to agency rule. In order to waive copy fees for records responsive to a request submitted on or after July 23, 2017, WAC 44-06-092 describes the circumstances under which the office will waive copy fees.

There was insufficient time under permanent rulemaking procedures for the office to bring its copy fees into statutory compliance by July 23, 2017 and as directed by the Legislature. The office also finds that it is in the general welfare and the public interest, and benefits requesters and the agency, to have adopted an emergency rule in order to preserve and update fees in accordance with the legislatively adopted schedule, allow for fee waivers, and provide payment procedures. Therefore, emergency rulemaking was and is necessary. The office has initiated permanent rulemaking on these subjects. In order to continue to be able to use the amended statutory default fee and waive copy fees under certain listed circumstances, the office is filing this CR-103E to extend the existing emergency rule pending adoption of a permanent rule.

**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 | ___ |
|-----|-----|---------|-----|----------|-----|

The number of sections adopted on the agency's own initiative:

| | | | | | |
|-----|-----|---------|-----|----------|-----|
| New | ___ | Amended | ___ | Repealed | ___ |
|-----|-----|---------|-----|----------|-----|

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

| | | | | | |
|-----|----------|---------|-----|----------|-----|
| New | <u>1</u> | Amended | ___ | Repealed | ___ |
|-----|----------|---------|-----|----------|-----|

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 | ___ |

Date Adopted: November 16, 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.