

WSR 21-24-003

EMERGENCY RULES

MILITARY DEPARTMENT

[Filed November 17, 2021, 2:58 p.m., effective November 17, 2021, 2:58 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: EHB 1596 (2017) authorizes agencies to assess statutory costs for copies of public records if the agency has adopted a rule or regulation declaring the reasons that determining the actual cost of copies would be unduly burdensome. This emergency rule makes that determination and accordingly authorizes the military department to assess statutory costs for copies, as permitted by RCW 42.56.120.

Citation of Rules Affected by this Order: Amending WAC 323-10-070.

Statutory Authority for Adoption: RCW 42.56.070, 42.56.120.

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.

Reasons for this Finding: Prior to the adoption of this emergency rule, the military department has not required public records requesters to pay for the costs of copies as permitted by RCW 42.56.120, as amended in 2017 by EHB 1596. However, public records requests made to the department have substantially increased in volume and frequency over the last year, and the costs imposed on the agency have been significant. These costs undermine the department's ability to protect public health, safety, and the general welfare. The immediate adoption of this emergency rule is therefore necessary to allow the department to charge statutory fees under RCW 42.56.120 and mitigate the current burden on the agency.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 17, 2021.

Cynthia Whaley
Rules Coordinator

OTS-3479.1

AMENDATORY SECTION (Amending WSR 14-22-096, filed 11/4/14, effective 12/5/14)

WAC 323-10-070 Costs of providing copies of public records. (1) ~~((Costs for paper copies.))~~ **Inspection.** There is no fee for inspecting public records. ~~((A requestor may obtain standard black and white photocopies for fifteen cents per page. Copies in color or larger sized documents cost will be based on the actual cost to reproduce them at the time of the request.~~

~~(2) Costs for electronic records. The cost of scanning existing office paper or other nonelectronic records is six cents per page. There will be no charge for emailing electronic records to a requestor, unless another cost applies such as a scanning fee. The charge for electronic records provided on any medium other than email will be in the amount necessary to reimburse the actual cost to the agency.~~

~~(3) Deposits. Before beginning to make copies or scanning responsive records,))~~

(2) **Statutory default costs.** Pursuant to RCW 42.56.120(2), the department 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:

(a) 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;

(b) Staff resources are insufficient to perform a study and to calculate such actual costs; and

(c) A study would interfere with and disrupt other essential agency functions.

(3) **Fee schedule.**

(a) The department will charge for copies of records pursuant to the default fees in RCW 42.56.120 and as published in the department's fee schedule available on the agency website at <https://mil.wa.gov/public-record-disclosure>.

(b) The department will charge the actual amount charged by an external vendor for records copied by an external vendor.

(c) The charges for copies under this subsection may be combined to the extent that more than one type of charge applies to copies produced in response to a particular request.

(4) **Customized electronic access services.** At the department's sole discretion, the department may provide customized electronic access to public records if the department estimates that the request would require the use of information technology expertise to prepare data compilations or provide customized electronic access services when such compilations and customized access services are not used by the department for other agency purposes. The department will charge the actual costs, including staff time, necessary to reimburse the department for providing customized electronic access services.

(5) **Deposits.** The public records officer or designee may require ((a)) an advance deposit of ((up to ten)) 10 percent of the estimated ((costs of copying all the records selected by the requestor)) fees when preparing records for an installment or an entire request. The public records officer or designee may also require the payment of the remainder of the copying or scanning costs before providing all the records, or the payment of the costs of copying or scanning an installment before providing that installment. The ((military)) department will not charge sales tax when it makes copies of or scans public records.

~~((4))~~ (6) Payment of fees. The department will not release any requested copies of public records unless and until the requestor has paid all copying and other charges as set forth in this section.

(7) Waiver of fees. The public records officer may waive the fee when the expenses of processing payment exceeds the costs of providing copies.

(8) Costs of mailing. The ~~((military))~~ department may ~~((also))~~ charge actual costs of mailing, including the cost of the shipping container.

~~((5))~~ (9) Payment. Payment may be made by cash, check, or money order to the ~~((military))~~ department.

[Statutory Authority: RCW 42.56.040. WSR 14-22-096, § 323-10-070, filed 11/4/14, effective 12/5/14. Statutory Authority: RCW 42.56.010 and 42.56.100. WSR 12-09-089, § 323-10-070, filed 4/18/12, effective 5/19/12; § 323-10-070, filed 2/13/74.]